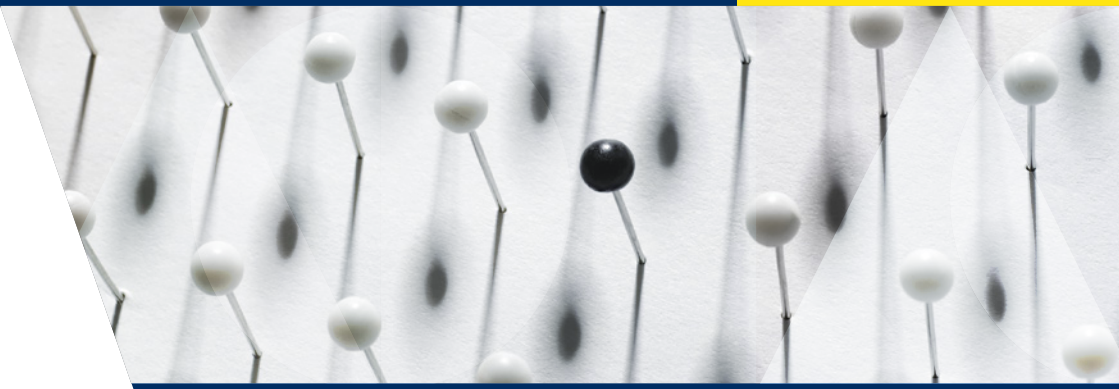
HANDBOOK



Handbook on European law relating to asylum, borders and immigration

Edition 2026

FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

The manuscript for the fourth edition of this handbook was completed on 1 June 2026. The first edition was published in four languages in 2013, followed by the second edition in 2014 and the third edition in 2020. Future updates of this handbook will become available on the European Union Agency for Fundamental Rights (FRA) web page http://fra.europa.eu/en/themes/asylum-migration-and-borders, on the European Court of Human Rights (ECtHR) web page www.echr.coe.int (for case-law / joint publications) and on the European Court of Human Rights Knowledge Sharing platform (ECHR-KS), at https://ks.echr.coe.int/.

Luxembourg: Publications Office of the European Union, 2026

Council of Europe:	ISBN 978-92-871-9730-6		
FRA – print:	ISBN 978-92-9489-720-6	doi:10.2811/0705632	TK-01-26-008-EN-C
FRA – web:	ISBN 978-92-9489-719-0	doi:10.2811/2075299	TK-01-26-008-EN-N

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Foreword

Since 2011, the European Union (EU) Agency for Fundamental Rights, the Council of Europe and the European Court of Human Rights have published handbooks on various fields of European law. This handbook provides an overview of the European legal standards relevant to asylum, borders and immigration, explaining both applicable Council of Europe and EU measures.

The handbook is intended for lawyers, judges, prosecutors, border guards, immigration officials and others working with national authorities, and for national human rights institutions, non-governmental organisations and other bodies that may be confronted with legal questions in the areas covered.

The Charter of Fundamental Rights of the European Union became legally binding when the Treaty of Lisbon entered into force in December 2009. It has the same legal value as the founding EU treaties. The Treaty of Lisbon also provides for EU accession to the European Convention on Human Rights, which is legally binding on all Member States of the EU and member states of the Council of Europe.

Since the publication of the third edition of this handbook in 2020, there have been significant developments in European law relating to asylum, borders and immigration. In 2024, the EU agreed on a series of new legal instruments under the pact on migration and asylum, which introduce significant changes to EU law. During the past few years, other EU law instruments were also amended, for instance in the field of legal migration or in border controls.

Similarly, the Court of Justice of the EU has clarified several legal questions emerging from the implementation of EU migration and asylum law in its ever-expanding case-law. Since 2020, the European Court of Human Rights has likewise delivered a number of important judgments elaborating and clarifying the principles governing the protection of rights under the European Convention on Human Rights in the evolving contemporary migration context. In light of such changes, the handbook required an update to ensure that its legal guidance remains accurate.

Improving the understanding of common principles developed in the case-law of the two European courts, and in EU regulations and directives, is essential. Such understanding helps ensure that relevant European standards and safeguards are properly implemented and that fundamental rights are fully respected at the national level. We hope this handbook will help to promote this important objective.

Marialena Tsirli

Registrar of the European Court of Human Rights

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Director of the European Union Agency for Fundamental Rights

Contents

Abbreviations

AI	artificial intelligence
API	advance passenger information
CETS	Council of Europe Treaty Series
CIR	Common Identity Repository
CJEU	Court of Justice of the European Union ([1])
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities
DPA	data protection authority
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECHR-KS	European Court of Human Rights Knowledge Sharing platform
ECJ	European Court of Justice ([2])
ECRIS-TCN	European criminal records information system on third-country nationals
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
EEA	European Economic Area
EEC	European Economic Community
EES	entry/exit system

([1]) When referring to case-law prior to December 2009, this judicial body is referred to as the 'European Court of Justice'.

([2]) When referring to case-law after December 2009, this judicial body is referred to as the 'Court of Justice of the European Union'.

AI	artificial intelligence
EFTA	European Free Trade Association
EIS	Europol information system
ESC	European Social Charter
ETIAS	European travel information and authorisation system
EU	European Union
EUAA	European Union Agency for Asylum ([3])
eu-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
Eurodac	European Asylum Dactyloscopy
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
GC	Grand Chamber
GDPR	General Data Protection Regulation
GRETA	Group of Experts on Action against Trafficking in Human Beings
HIV	human immunodeficiency virus
ICCPR	International Covenant on Civil and Political Rights
IT	information technology
NGO	non-governmental organisation
PACE	Parliamentary Assembly of the Council of Europe
PPU	urgent preliminary ruling procedure

([3]) Formerly, the European Asylum Support Office or EASO.

AI	artificial intelligence
SFRY	Socialist Federal Republic of Yugoslavia
SIS	Schengen information system
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
US	United States
VIS	visa information system

How to use this handbook

This handbook provides an overview of the law applicable to asylum, border management and immigration in relation to European Union (EU) law and the European Convention on Human Rights (ECHR). It looks at the situation of those foreigners to whom the EU usually refers as third-country nationals, although that distinction is not relevant to cited ECHR law.

The handbook does not cover the rights of EU citizens or those of citizens of Iceland, Liechtenstein, Norway and Switzerland who, under EU law, can enter the territory of the EU freely and move freely within it. Reference to such categories of citizens will be made only where necessary in order to understand the situation of family members who are third-country nationals.

There are, under EU law, some 25 different categories of third-country nationals, each with different rights that vary according to the links they have with EU Member States or that result from their need for special protection. For some, such as asylum seekers, EU law provides a comprehensive set of rules, whereas for others, such as students, researchers, au pairs, seasonal workers and highly skilled workers, the EU has adopted common rules on their admission. However, some of the conditions provided in directives are optional or regulate certain aspects, while leaving other rights to Member States' discretion. In general, third-country nationals who are allowed to settle in the EU are typically granted more comprehensive rights than those who stay only temporarily. As of 1 February 2020, the United Kingdom withdrew from the EU. EU law no longer applies to the United Kingdom. The EU–UK Trade and Cooperation Agreement ([4]) regulates the relationships between the EU and the United Kingdom in a number of areas, such as trade in goods and services, digital trade, public procurement and aviation.

Table 1 provides a broad overview of the various categories of third-country nationals under EU law.

This handbook is designed to assist legal practitioners who are not specialised in the field of asylum, borders and immigration law; it is intended for lawyers, judges, prosecutors, border guards, immigration officials and others working with national

([4]) Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10, ELI: http://data.europa.eu/eli/agree_internation/2021/689(1)/oj). For other elements of the post-Brexit legal arrangements governing the relations between the EU and the United Kingdom, see the Windsor framework.

authorities, and for non-governmental organisations (NGOs) and other bodies that may be confronted with legal questions relating to these subjects. It is a first point of reference on both EU and ECHR law related to these subject areas and explains how each issue is regulated under EU law and under the ECHR, the European Social Charter (ESC) and other instruments of the Council of Europe (CoE). Each chapter first presents a single table of the applicable legal provisions under the two separate European legal systems. Then the relevant laws of these two European orders are presented one after the other as they may apply to each topic. This allows the reader to see where the two legal systems converge and where they differ.

The handbook follows broadly the thematic areas as regulated under EU law. Distinctions and categories that are important for EU law may not be relevant under the ECHR or other CoE instruments. For example, in Chapter 6, different strands of EU law apply when third-country nationals wish to bring a family member from abroad and when they want to regularise the stay of a non-EU-national family member who is physically already present in the Member State's territory. In contrast, under the ECHR, the considerations flowing from Article 8 of the ECHR (right to respect for family and private life) and the test concerning the justified interferences with this right are the same in the above two scenarios.

Practitioners in non-EU states that are member states of the CoE and thereby parties to the ECHR can access the information relevant to their own country by going straight to the ECHR sections. Practitioners in EU Member States will need to use both sections, as those states are bound by both legal orders. For those who need more information on a particular issue, a list of references to more specialised material can be found in the 'Further reading' section of the handbook.

ECHR law is presented through short references to selected European Court of Human Rights (ECtHR) cases related to the handbook topic being covered. These have been chosen from the large number of ECtHR judgments and decisions on migration issues that exist.

EU law is founded on legislative measures that have been adopted by the institutions, in relevant provisions of the treaties and in particular in the Charter of Fundamental Rights of the European Union, as interpreted in the case-law of the Court of Justice of the European Union (CJEU) (otherwise referred to, until 2009, as the European Court of Justice (ECJ)).

The case-law described or cited in this handbook provides examples of an important body of both ECtHR and CJEU case-law. The guidelines at the end of this handbook are intended to assist the reader in searching for case-law online (see the 'How to find case-law of the European courts' section).

Not all EU Member States are bound by all the different pieces of EU legislation in the field of asylum, border management and immigration. Annex 1 on the 'Applicability of EU regulations and directives cited in this handbook' provides an overview of which states are bound by which legislation. It also shows that Denmark and Ireland have most frequently opted out of the instruments listed in this handbook. Many EU instruments concerning borders, including the Schengen *acquis* – meaning all EU law adopted in this field – and certain other EU law instruments, also apply to some non-EU member states, namely Iceland, Liechtenstein, Norway and/or Switzerland.

While all CoE member states are party to the ECHR, not all of them have signed or ratified all of the ECHR Protocols or are States Parties to the other CoE conventions mentioned in this handbook. Annex 2 provides an overview of the applicability of selected CoE instruments, including the relevant protocols to the ECHR.

Substantial differences also exist among the states that are party to the ESC. States joining the ESC system are allowed to decide whether or not to sign up to individual articles, although subject to certain minimum requirements. Annex 3 provides an overview of the acceptance of ESC provisions.

The handbook does not cover international human rights law or refugee law, except to the extent that this has been expressly incorporated into ECHR or EU law. This is the case with the 1951 Geneva Convention Relating to the Status of Refugees (hereafter, the 1951 Geneva Convention), which is expressly referred to in Article 78 of the Treaty on the Functioning of the European Union (TFEU). European states remain, of course, bound by all treaties to which they are party. The applicable international instruments are listed in the Annexes.

The handbook includes an introduction, which briefly explains the role of the two legal systems as established by ECHR and EU law, and 10 chapters covering the following issues:

- access to the territory and to procedures;
- large-scale EU information technology (IT) systems and interoperability;

- status and associated documentation;
- substantive issues pertaining to asylum determination and to barriers to removal;
- procedural safeguards and legal support in asylum and return cases (including the manner of removal);
- family life and the right to marry;
- detention and restrictions to freedom of movement;
- economic and social rights;
- persons with specific needs;
- monitoring compliance with fundamental rights and investigations.

Each chapter covers a distinct subject, while cross references to other topics and chapters provide a fuller understanding of the applicable legal framework. Key points are presented at the end of each chapter.

The handbook only covers legislation that was in force on 1 June 2026. The reader should consider that EU legislation is frequently amended. Legislative amendments including the latest consolidated version of different pieces of EU legislation can be accessed via eur-lex.europa.eu. For example, in March 2025, the European Commission proposed a common European system for returns, putting forward a legislative proposal for a new Return Regulation, which, if approved, will replace the current Return Directive (Directive 2008/115/EC). This proposal was still pending in June 2026.

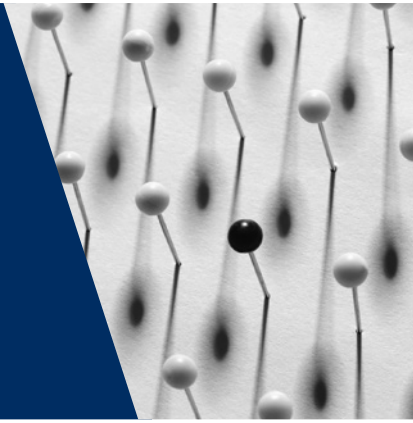
The electronic version of the handbook contains hyperlinks to the case-law of the two European courts and to EU legislation cited. Hyperlinks to EU law sources bring the reader to eur-lex.europa.eu overview pages, from which the reader can open the case or the piece of legislation in any available EU language.

Table 1: Categories of third-country nationals under EU law

Persons with rights derived from EU free movement provisions	Family members of citizens of EU Member States
Persons with rights derived from international agreements	Family members of citizens of the European Economic Area (EEA) and Switzerland
	Turkish nationals and their family members
	British nationals
	Nationals of third countries that have concluded bilateral or multilateral agreements with the EU (over 100 countries)
Short-term and long-term immigrants	Family members of third-country-national sponsors
	Long-term residents in the EU
	Single permit holders
	Blue card holders and their family members
	Posted workers
	Researchers
	Intra-corporate transferees
	Students
	Au pairs
	Seasonal workers
	Local border traffic permit holders
	Long-stay visa holders
Short-term visitors	Visa-free third-country nationals
	Visa-bound third-country nationals
Persons in need of protection	Asylum seekers
	Beneficiaries of subsidiary protection
	Beneficiaries of temporary protection
	Refugees
	Victims of human trafficking
Migrants in an irregular situation	Illegally staying third-country nationals
	Illegally staying third-country nationals whose removal has been postponed

Note: A third-country national may fall under more than one category.
Source: European Union Agency for Fundamental Rights (FRA), 2026.

Introduction



This introduction will briefly explain the roles of the two European legal orders regulating migration. References to the CoE legal system will primarily relate to the ECHR and the case-law developed by the ECtHR and, where applicable, to the European Social Charter (ESC). EU law is mainly presented through the relevant regulations and directives and the provisions of the Charter of Fundamental Rights of the European Union (the Charter). This handbook does not cover international human rights or refugee law under the United Nations (UN) system, except when European law expressly refers to these instruments and for very selective illustrative references to the 'case-law' of UN treaty bodies.

The Council of Europe

The CoE was formed in the aftermath of the Second World War to bring together the European states to promote the rule of law, democracy and human rights. As at January 2026, the CoE is composed of 46 member states, including all EU Member States ([5]).

In 1950, the CoE adopted the ECHR, which, under its Article 19, set up the ECtHR as a judicial mechanism to ensure that states observed their obligations under the convention.

([5]) Schmal, S. and Breuer, M. (eds), *The Council of Europe: Its laws and policies*, Oxford University Press, Oxford, 2017.

The ECtHR examines complaints from individuals, groups of individuals, NGOs or legal persons alleging violations of the convention. It can also examine interstate cases brought by one or more CoE member states against another member state. An applicant before the ECtHR is not required to be a citizen or a lawful resident of one of the contracting states ([6]). Article 1 of the ECHR requires states to 'secure' the convention rights to 'everyone within their jurisdiction'. In certain specific cases, the concept of jurisdiction can extend beyond the territory of a state. A State Party to the ECHR is responsible under Article 1 of the ECHR for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations ([7]).

Migration issues have generated a vast body of case-law from the ECtHR ([8]). This handbook presents selected examples. They mainly relate to Article 3 (prohibition of torture, inhuman and degrading treatment and punishment), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the ECHR. Article 13 of the ECHR requires states to provide a domestic remedy for complaints made under the convention.

The principle of subsidiarity places the primary responsibility on states to ensure their compliance with obligations under the ECHR, leaving recourse to the ECtHR as a last resort. States have a margin of appreciation. The ECtHR does not replace independent and impartial domestic courts when these have carefully examined the facts, applying the relevant human rights standards consistently with the ECHR and its case-law, adequately balanced the applicant's personal interests against the more general public interest and reached conclusions that were 'neither arbitrary nor manifestly unreasonable' ([9]).

States have an international obligation to ensure that their officials comply with the ECHR. All CoE member states have now incorporated or given effect to the ECHR in their national law, which requires their judges and officials to act in accordance with the provisions of the convention.

([6]) The ECHR contains only a few provisions expressly mentioning foreigners or limiting certain rights to nationals or lawful residents (see, for example, Art. 5(1) (f) of the ECHR; Arts 2, 3 and 4 of Protocol No 4 to the ECHR; and Art. 1 of Protocol No 7 to the ECHR).

([7]) ECtHR, *Matthews v. the United Kingdom* [GC], No 24833/94, 18 February 1999, para. 32; ECtHR, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], No 45036/98, 30 June 2005, para. 153.

([8]) ECtHR, *75 years of the European Convention on Human Rights – Focus on: Immigration*, 2026.

([9]) ECtHR, *Faruk Rooma Alam v. Denmark* (dec.), No 33809/15, 6 June 2017, para. 35.

In 1961, the CoE adopted the ESC (revised in 1996) to guarantee fundamental social and economic rights. As at January 2026, 42 out of the 46 CoE member states had ratified the ESC ([10]). The ESC does not provide for a court, but does have the European Committee of Social Rights (ECSR), which is composed of independent experts who rule on the conformity of national law and practice within the framework of two procedures: the reporting procedure, under which states submit national reports at regular intervals, and the collective complaints procedure ([11]), which allows organisations to lodge complaints. The ECSR adopts conclusions in respect of national reports and adopts decisions in respect of collective complaints. Some of its conclusions and decisions are mentioned in this handbook.

The European Union

The EU comprises 27 Member States. EU law is composed of treaties and secondary EU law. The treaties, namely the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), have been approved by all EU Member States and are also referred to as 'primary EU law'. The regulations, directives and decisions of the EU have been adopted by the EU institutions that have been given such authority under the treaties; they are often referred to as 'secondary EU law'.

The EU has evolved from three international organisations established in the 1950s that dealt with energy, security and free trade; collectively, they were known as the European Communities. The core purpose of the European Communities was the stimulation of economic development through the free movement of goods, capital, people and services. The free movement of persons is thus a core element of the EU. The first regulation on the free movement of workers, in 1968 ([12]), recognised that workers must be not only free to move, but also able to take their family members – of whatever nationality – with them. The EU has developed an accompanying body of complex legislation on the movement of social security entitlements,

([10]) Thirty-six states are bound by the 1996 revised ESC and nine by the 1961 Charter. The ESC offers the possibility to States Parties to sign up to specific provisions only, subject to a certain minimum. Annex 3 provides an overview of the applicability of ESC provisions.

([11]) The complaints procedure is optional (unlike the reporting procedure) and, as at June 2026, had been accepted by 16 states that are party to the ESC.

([12]) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2, ELI: http://data.europa.eu/eli/reg/1968/1612/oj).

on social assistance rights, on healthcare and on provisions relating to the mutual recognition of qualifications. Much of this law, which was developed for EU nationals primarily, also applies to various categories of non-EU nationals.

The EEA entered into force in 1994. Nationals of non-EU member states that are part of the EEA – namely, Iceland, Liechtenstein and Norway – have the same free movement rights as EU nationals ([13]). Similarly, based on a special agreement concluded with the EU on 21 June 1999 ([14]), Swiss nationals enjoy a right to move and settle in the EU. Iceland, Liechtenstein, Norway and Switzerland are members of the European Free Trade Association (EFTA), which is an intergovernmental organisation set up for the promotion of free trade and economic integration. EFTA has its own institutions, including a court. The EFTA Court is competent to interpret the Agreement on the European Economic Area (hereafter, the EEA Agreement) with regard to Iceland, Liechtenstein and Norway. It is modelled on the CJEU and tends to follow its case-law.

Turkish nationals may also have a privileged position under EU law. They do not have the right to freedom of movement into or within the EU. However, in 1963 the European Economic Community (EEC)–Turkey Association Agreement (the Ankara Agreement) was concluded with Türkiye, and an additional protocol was adopted in 1970 ('Additional Protocol to the Ankara Agreement') ([15]). As a result, those Turkish nationals who are permitted to enter the EU to work or establish themselves enjoy certain privileges, have the right to remain and are protected from expulsion. They also benefit from a standstill clause in Article 41 of the Additional Protocol to the Ankara Agreement, which prevents them from being subjected to more restrictions than those which were in place at the time at which the clause came into effect for the host Member State. The EU has also concluded agreements with several other countries (see Chapter 8, Section 8.2.5), but none of those are as wide-ranging as the Ankara Agreement.

([13]) Agreement on the European Economic Area, Part III, 'Free movement of persons, services and capital' (OJ L 1, 3.1.1994, p. 12, ELI: http://data.europa.eu/eli/agree_internation/1994/1/oj).

([14]) Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6, ELI: http://data.europa.eu/eli/agree_internation/2002/309(1)/oj). The agreement was signed in Luxembourg on 21 June 1999 and entered into force on 1 June 2002.

([15]) Agreement establishing an Association between the European Economic Community and Turkey (OJ L 361, 31.12.1977, p. 29, ELI: http://data.europa.eu/eli/agree_internation/1964/732/oj). This was supplemented by an additional protocol signed in November 1970: Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (OJ L 293, 23.11.1970, p. 3, ELI: http://data.europa.eu/eli/prot/1972/2760(1)/oj).

With the withdrawal of the United Kingdom from the EU, British nationals have been third-country nationals since 1 February 2020. After the transition period expired at the end of 2020, the EU–UK Trade and Cooperation Agreement ([16]) regulates the relationships between the EU and the United Kingdom in a number of areas such as trade in goods and services, digital trade, public procurement and aviation. The new arrangements outline the conditions under which British nationals – who are exempt from visa requirement for short-term stays under Regulation (EU) 2019/592 ([17]) – may work, travel or relocate within the EU, alongside provisions on social security coordination. A Joint Political Declaration on Asylum and Returns ([18]) highlights the importance of effective migration management and acknowledges the unique circumstances caused by border controls and other complex travel arrangements. Accordingly, the United Kingdom plans to engage in bilateral negotiations with the most concerned EU Member States to establish practical arrangements on asylum, family reunion for unaccompanied children and irregular migration.

The Treaty of Maastricht entered into force in 1993 and created the citizenship of the EU, although predicated on possessing the citizenship of one of the EU Member States. This concept has been widely used to buttress freedom of movement for citizens and their family members of any nationality.

In 1985, the Schengen Agreement was signed, which led to the abolition of internal border controls of participating EU Member States. By 1995, a complex system for applying external controls was put in place, regulating access to the Schengen area. In 1997, the Schengen system – regulated thus far at the intergovernmental level – became part of the EU legal order. The rules relating to border management continue to evolve and develop in the context of the Schengen Borders Code (Regulation (EU) 2016/399). In 2004, the EU created the Frontex (formally called the European Border and Coast Guard Agency since 2016) to assist EU Member States in the management of the external borders of the EU and in the field of returns.

([16]) Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10, ELI: http://data.europa.eu/eli/agree_internation/2021/689(1)/oj).

([17]) Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union (OJ L 103I, 12.4.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/592/oj).

([18]) Declarations referred to in the Council Decision on the signing on behalf of the Union, and on a provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information (OJ L 444, 31.12.2020, p. 1475, ELI: http://data.europa.eu/eli/declar/2020/2252/oj).

Since the Treaty of Rome in 1957, successive treaty amendments have enlarged the competences of the European Communities, now the EU, in issues affecting migration; the Treaty of Amsterdam gave the EU new powers across the field of borders, immigration and asylum, including visas and returns. This process culminated with the Treaty of Lisbon, which afforded the EU new powers in the field of integration of third-country nationals.

Against this background, there has been an ongoing evolution of the EU asylum *acquis*, a body of intergovernmental agreements, regulations and directives that governs almost all asylum-related matters in the EU. Not all EU Member States, however, are bound by all elements of the asylum *acquis* (see Annex 1).

Over the past few decades, the EU has adopted legislation concerning immigration to the EU for certain categories of persons and concerning rules on third-country nationals residing lawfully within the EU (see 'EU instruments and selected agreements').

Under the EU treaties, the EU established its own court, which was known as the European Court of Justice (ECJ) until the entry into force of the Treaty of Lisbon in December 2009; since then, it has been renamed the Court of Justice of the European Union (CJEU) ([19]). The CJEU is entrusted with a number of powers. On the one hand, the Court has the right to decide on the validity of EU acts and on failures to act by the EU institutions under EU and relevant international law, and it has the right to decide on infringements of EU law by EU Member States. On the other hand, the CJEU retains exclusive authority to ensure the correct and uniform application and interpretation of EU law in all EU Member States. Pursuant to Article 263(4) of the TFEU, access to the CJEU by individuals is relatively restricted ([20]).

However, individual complaints having as an object the interpretation or the validity of EU law can always be brought before national courts. The judicial authorities of EU Member States, based on the duty of sincere cooperation and the principles that rule the effectiveness of EU law at the national level, are entrusted with the responsibility to ensure that EU law is correctly applied and enforced in the national

([19]) This handbook refers to the ECJ for decisions and judgments issued prior to December 2009 and to the CJEU for cases ruled on since December 2009.

([20]) This was the case in, for example, ECJ, Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* [GC], 3 September 2008; and CJEU, C-274/12 P, *Telefonica SA v. European Commission* [GC], 19 December 2013.

legal system. In addition, following the ECJ rulings in the *Francovich* cases ([21]), EU Member States are required, under certain conditions, to provide redress, including compensation in appropriate cases for those who have suffered as a consequence of a Member State's failure to comply with EU law. In case of doubt on the interpretation or the validity of an EU provision, national courts can – and must in certain cases ([22]) – seek guidance from the CJEU using the preliminary reference procedure under Article 267 of the TFEU. In the area of freedom, security and justice, the urgent preliminary ruling procedure (PPU) was created to ensure a quick ruling in cases pending before any national court or tribunal with regard to a person in custody ([23]).

The Charter of Fundamental Rights of the European Union

The original treaties of the European Communities did not contain any reference to human rights or their protection. However, as cases came before the ECJ alleging human rights breaches occurring in areas within the scope of EU law, the ECJ developed a new approach to grant protection to individuals by including fundamental rights in what are called the general principles of EU law. According to the ECJ, these general principles would reflect the content of human rights protection found in national constitutions and human rights treaties, in particular the ECHR. The ECJ stated that it would ensure the compliance of EU law with these principles ([24]).

([21]) ECJ, Joined Cases C-6/90 and C-9/90, *Francovich and Bonifaci and Others v. Italian Republic*, 19 November 1991; ECJ, Case C-479/93, *Andrea Francovich v. Italian Republic*, 9 November 1995.

([22]) According to Art. 267(3) of the TFEU, this obligation always arises for courts against whose decisions there is no judicial remedy under national law and also for other courts whenever a preliminary reference concerns the validity of an EU provision and there are grounds to consider that the challenge is well founded (see, for example, ECJ, Case 314/85, *Foto-Frost v. Hauptzollamt Lübeck-Ost*, 22 October 1987).

([23]) See the Statute of the Court of Justice, Protocol No 3, Art. 23a, and the Rules of Procedure of the Court of Justice, Arts 107–114. For a better overview of cases that might be subject to a PPU, see CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ C, C/2024/6008, 9.10.2024), para. 43: 'a national court or tribunal may, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation, or in proceedings concerning parental authority or custody of … children, in so far, in particular, as the outcome of the dispute in the main proceedings depends on the answer to the question referred for a preliminary ruling and the use of the ordinary procedure could cause serious, and perhaps irreparable, harm'.

([24]) ECJ, Case 44/79, *Liselotte Hauer v. Land Rheinland-Pfalz*, 13 December 1979, para. 15.

Recognising that its policies could have an impact on human rights and in an effort to make citizens feel closer to the EU, the EU proclaimed the Charter in 2000. The Charter contains a list of human rights inspired by the rights enshrined in EU Member State constitutions, the ECHR, the ESC and international human rights treaties, such as the United Nations Convention on the Rights of the Child. The Charter as proclaimed in 2000 was merely a declaration, meaning it was not legally binding. The European Commission, the primary body for proposing new EU legislation, soon thereafter stated that it would ensure the compliance of legislative proposals with the Charter.

When the Treaty of Lisbon entered into force on 1 December 2009, it altered the status of the Charter, making it legally binding with the same legal value as the EU treaties. In addition to EU institutions, EU Member States are also bound to comply with the Charter 'when implementing EU law' (Article 51(1) of the Charter).

A protocol has been adopted interpreting the Charter in relation to Poland and the United Kingdom ([25]). In a 2011 migration case before the CJEU, the Court held that the main purpose of the protocol was to limit the application of the Charter in the field of social rights. The Court furthermore held that the protocol does not affect the implementation of EU asylum law ([26]).

Article 18 of the Charter contains – for the first time at the European level – a right to asylum. According to Article 18, it is a qualified right: '[t]he right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention … and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union'. Article 19 of the Charter includes a prohibition on returning a person to a situation where they have a well-founded fear of being persecuted or that runs a real risk of torture or inhuman and degrading treatment or punishment (the principle of *non-refoulement*) and includes the prohibition of collective expulsion.

Moreover, other Charter provisions on the protection granted to individuals appear to be relevant in the context of migration. Article 47 of the Charter provides for an autonomous right to an effective (judicial) remedy and lays down fair trial principles. The principle of judicial review enshrined in Article 47 requires a review by

([25]) TFEU, Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom (OJ C 115, 9.5.2008, p. 313).

([26]) CJEU, Joined Cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [GC], 21 December 2011.

a tribunal. This provides broader protection than Article 13 of the ECHR, which guarantees the right to an effective remedy before a national authority that is not necessarily a court. Furthermore, Article 52(3) of the Charter stipulates that the minimum protection afforded by the Charter provisions is that provided by the ECHR; the EU may nevertheless apply a more generous interpretation of the rights than that put forward by the ECtHR.

European Union accession to the European Convention on Human Rights

EU law and the ECHR are closely connected. The CJEU looks to the ECHR for inspiration when determining the scope of human rights protection under EU law. The Charter reflects the range of rights provided for by the ECHR, although it is not limited to these rights. Consequently, EU law has largely developed in line with the ECHR, although the EU is not yet a signatory to the ECHR. According to the law as it currently stands, however, individuals wishing to complain about the EU and its failure to guarantee human rights are not entitled to bring an application against the EU as such before the ECtHR. Under certain circumstances, it may be possible to complain indirectly about the EU by bringing an action against one or more EU Member States before the ECtHR ([27]).

The Treaty of Lisbon contains a provision mandating the EU to join the ECHR as a party in its own right (Article 6(2) of the TEU). Protocol No 14 to the ECHR ([28]) amends the ECHR to allow this accession to take place. It is not yet clear what effect this will have in practice and, in particular, how this will influence the relationship between the CJEU and ECtHR in the future. The EU's accession to the ECHR is, however, likely to improve access to justice for individuals who consider that the EU has failed to guarantee their human rights.

Negotiations on a draft agreement on the accession of the EU to the ECHR started in 2010. The draft accession agreement consists of a package of texts necessary for the accession of the EU to the ECHR. It includes provisions on the scope of the accession, the adjustments needed to the ECHR text and system, the participation of the EU in the CoE bodies and its right to vote within the Committee of Ministers.

([27]) For more details on ECtHR case-law in this complex area, see, in particular, ECtHR, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], No 45036/98, 30 June 2005; ECtHR, *Avotiņš v. Latvia* [GC], No 17502/07, 23 May 2016.

([28]) CoE, Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, Council of Europe Treaty Series (CETS) No 194, 2004.

In Opinion 2/13 ([29]) of the CJEU on the draft agreement on the accession of the EU to the ECHR, the Court decided that the draft agreement was incompatible with the EU treaties. After the CJEU's Opinion 2/13, negotiations were postponed for a few years and resumed in 2020. In 2023, a provisional agreement on revised accession instruments was found ([30]). The process may still take several years.

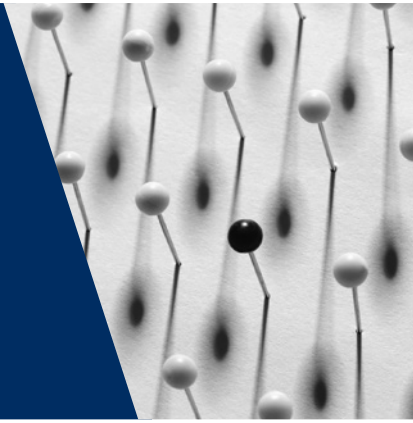
Key points

- Migration into and within Europe is regulated by a combination of national law, EU law, the ECHR, the ESC and other international obligations entered into by European states.
- Complaints against acts or omissions by a public authority violating the ECHR may be brought against any of the 46 member states of the CoE. These include all 27 EU Member States. The ECHR protects all individuals within the jurisdiction of any of its 46 states, regardless of their citizenship or residence status.
- Article 13 of the ECHR requires states to provide a national remedy for complaints under the convention. The principle of subsidiarity, as understood in the ECHR context, places the primary responsibility for ensuring compliance with the ECHR on the states themselves, leaving recourse to the ECtHR as a last resort.
- Complaints against acts or omissions by an EU Member State violating EU law can be brought to national courts, which are under an obligation to ensure that EU law is correctly applied and may – and sometimes must – refer the case to the CJEU for a preliminary ruling on the interpretation or the validity of the EU law provision concerned.

([29]) CJEU, Opinion 2/13, 18 December 2014.

([30]) CoE, *Interim report to the Committee of Ministers, for information, on the negotiations on the accession of the European Union to the European Convention on Human Rights, including the revised draft accession instruments in appendix*, 2023.

1 Access to the territory and to procedures



EU	Issues covered	CoE
Convention Implementing the 1985 Schengen Agreement, signed 19 June 1990 Visa List Regulation (Regulation (EU) 2018/1806) Visa Code (Regulation (EC) No 810/2009) Visa Information System (VIS) Regulation (Regulation (EC) No 767/2008, as last amended by Regulation (EU) 2023/2667)	Schengen visa regime	
Carriers Sanctions Directive (Directive 2001/51/EC) Facilitation Directive (Directive 2002/90/EC) Screening Regulation (Regulation (EU) 2024/1356) Advance Passenger Information Regulations (Regulation (EU) 2025/12 and Regulation (EU) 2025/13)	Preventing unauthorised entry	
Schengen Information System (SIS) Border Checks Regulation (Regulation (EU) 2018/1861) SIS Returns Regulation (Regulation (EU) 2018/1860) Return Directive (Directive 2008/115/EC), Article 11	Schengen alerts and entry bans	ECHR, Article 2 of Protocol No 4 (freedom of movement)
Schengen Borders Code (Regulation (EU) 2016/399)	Border checks	

EU	Issues covered	CoE
Schengen Borders Code (Regulation (EU) 2016/399), Title III	Internal borders	
Return Directive (Directive 2008/115/EC), Article 4(4) Screening Regulation (Regulation (EU) 2024/1356), Article 6 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Articles 43 to 54 (on asylum border procedure) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 4	Transit zones	ECtHR, *Amuur v. France*, No 19776/92, 1996; and ECtHR, *Z. A. and Others v. Russia* [GC], No 61411/15 and three others, 2019 (detention in transit zone found to be a deprivation of liberty) ECtHR, *Ilias and Ahmed v. Hungary* [GC], No 47287/15, 2019 (states are obliged to respect the rights of non-nationals in transit zones at land borders)
Local Border Traffic Regulation (Regulation (EC) No 1931/2006)	Local border traffic	
Charter of Fundamental Rights of the European Union, Article 18 (right to asylum) and Article 19 (protection in the event of removal, expulsion or extradition) Asylum Procedure Regulation (Regulation (EU) 2024/1348)	Asylum seekers	ECHR, Article 3 (prohibition of torture)
Schengen Borders Code (Regulation (EU) 2016/399), Articles 4 and 13 Sea Borders Regulation (Regulation (EU) No 656/2014), Article 10	Search and rescue at sea and disembarkation	ECtHR, *Safi and Others v. Greece*, No 5418/15, 2022 (obligations of sea rescue operations concerning persons in distress at sea) ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No 27765/09, 2012 (return following search and rescue operation)
Charter of Fundamental Rights of the European Union, Article 47 (right to an effective remedy and to a fair trial) Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 67 Schengen Borders Code (Regulation (EU) 2016/399), Article 14(3) SIS Border Checks Regulation (Regulation (EU) 2018/1861), Article 54 Visa Code (Regulation (EC) No 810/2009), Article 32(3) and Article 34(7)	Remedies	ECHR, Article 13 (right to an effective remedy) ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No 27765/09, 2012 (collective expulsion on the high seas)

Introduction

This chapter provides an overview of the systems applicable to those who wish to enter the territory of a European state bound by the ECHR and EU law. Furthermore, it sets out the main parameters that states have to respect under ECHR law and under EU law when imposing conditions for access to the territory or when carrying out border management activities.

As a general rule, states have a sovereign right to control the entry and continued presence of non-nationals in their territory. Both EU law and the ECHR impose some limits on this exercise of sovereignty. Nationals have the right to enter their own country and EU nationals have a general right under EU law to enter other EU Member States. In addition, as explained in the following paragraphs, both EU law and the ECHR prohibit rejecting persons at borders and returning them to states where they are at risk of persecution or other serious harm (the principle of *non-refoulement*).

Under EU law, common rules exist for EU Member States regarding the issuance of short-term visas and the implementation of border controls. The EU has also set up rules to prevent irregular entry. Third-country nationals who (i) cross an EU external border in an irregular manner, (ii) apply for international protection at a border-crossing point or in a transit zone, (iii) disembark in the EU after a search and rescue operation at sea or (iv) are found irregularly staying in an EU Member State without having been subject to border checks are subject to pre-entry screening under the Screening Regulation (Regulation (EU) 2024/1356, Articles 5 and 7). After going through identity and security checks and preliminary health and vulnerability checks, screened individuals are directed to either an asylum procedure or a return procedure, or may be relocated to another EU Member State (see Sections 5.1 and 5.3).

The European Border and Coast Guard Agency, Frontex, supports EU Member States in the management of EU external borders ([31]). The agency provides technical and operational support through joint operations, through rapid border interventions at land, air or sea borders and by sending experts to migration management support teams deployed in EU Member States facing disproportionate migration challenges. The European Border Surveillance System, also called Eurosur, serves as an information exchange system between the EU Member States and Frontex. Frontex has

([31]) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/1896/oj).

a standing corps to support EU Member States with border control and return tasks. When acting in the context of a joint operation or a rapid border intervention, EU Member States maintain responsibility for their acts and omissions.

As illustrated in Figure 1, the Schengen *acquis* applies to most EU Member States. It establishes a unified system of external border controls and allows individuals to travel freely across borders within the Schengen area. Not all EU Member States are parties to the Schengen area, and the Schengen system extends beyond the borders of the EU to Iceland, Liechtenstein, Norway and Switzerland. Article 4 of the Schengen Borders Code (Regulation (EU) 2016/399 as last amended by Regulation (EU) 2024/1717) prohibits the application of the code in a way that amounts to *refoulement* or unlawful discrimination.

Under the ECHR, states have the right, as a matter of well-established international law and subject to their treaty obligations (including the ECHR), to control the entry, residence and expulsion of non-nationals. The ECHR does not expressly regulate the access of non-nationals to a state's territory, nor does it regulate who is entitled to receive a visa. ECtHR case-law only imposes certain limitations on the right of states to turn someone away from their borders, for example where this would amount to *refoulement* (see Chapter 4). Also, Article 8 of the ECHR requires states to allow the entry of an individual when it is a precondition for the individual's exercise of the right to respect for their family life ([32]). The ECtHR's case-law requires, in some cases, that states issue travel documents to non-nationals, such as beneficiaries of international protection, to allow them to exercise their right to leave a country, prescribed in Article 2(2) of Protocol No 4 to the ECHR ([33]). Finally, Article 4 of Protocol No 4 prohibits removals that are of a collective nature (see Section 4.2).

1.1. The Schengen visa regime

EU nationals and nationals from countries that are part of the EEA have the right to enter the territory of EU Member States with a valid identity card or passport without prior authorisation (Article 5 of the Free Movement Directive (Directive 2004/38/EC)). Their family members who are third-country nationals, in turn, are exempted from an entry visa when they hold a valid residence permit issued

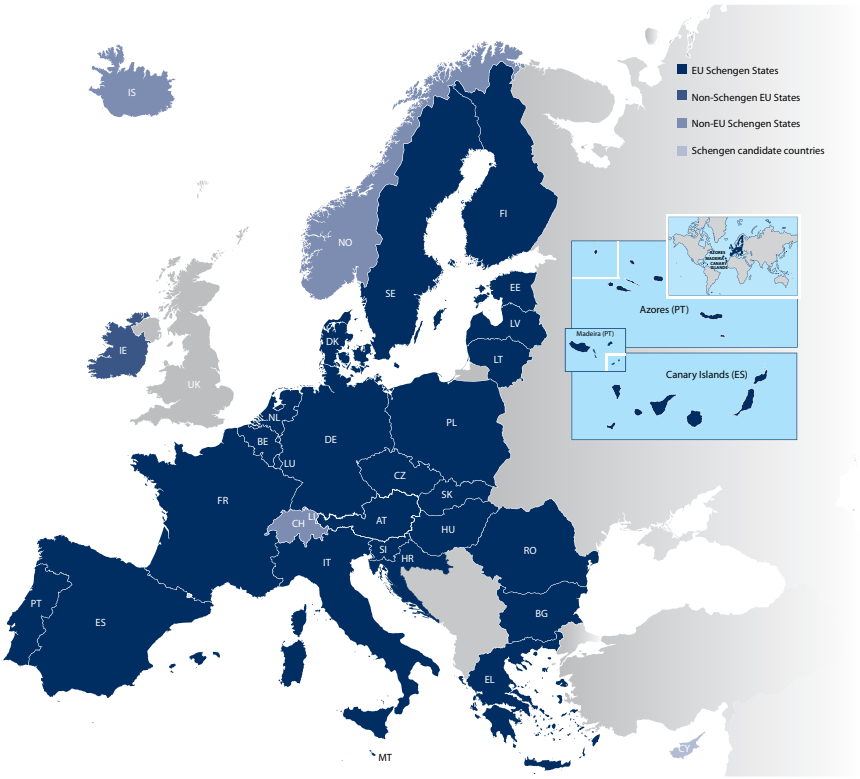
([32]) See ECtHR, *M. A. v. Denmark* [GC], No 6697/18, 9 July 2021, paras 130–136.

([33]) For more information, see ECtHR, *L. B. v. Lithuania*, No 38121/20, 14 June 2022; ECtHR, *S. E. v. Serbia*, No 61365/16, 11 July 2023. See also ECtHR, *Memedova and Others v. North Macedonia*, Nos 42429/16, 8934/18 and 9886/18, 24 October 2023.

by a Member State. EU and EEA nationals and their family members can only be excluded on grounds of public policy, public security or public health (Article 27 of the Free Movement Directive).

Third-country nationals who are not family members of EU or EEA nationals may enter the Schengen area if they fulfil the conditions of the Schengen Borders Code (Article 6).

Figure 1: Schengen area



Source: FRA, based on data from European Commission: Directorate-General for Migration and Home Affairs, 2026.

Under EU law, nationals of countries listed in Annex 1 to the Visa List Regulation (Regulation (EU) 2018/1806; see also amendments) can access the territory of the EU with a visa issued prior to entry. The annex to the regulation is regularly amended. The website of the European Commission contains an up-to-date map with visa requirements for the Schengen area ([34]). EU Member States cannot impose a visa requirement on the categories of Turkish nationals who were not subject to a visa requirement at the time of the entry into force of the provisions of the stand-still clause included in the 1970 Additional Protocol to the Ankara Agreement ([35]).

Personal information on short-term visa applicants is stored in the visa information system (VIS), a central EU IT system that connects consulates and external border-crossing points (as set down in the VIS Regulation, or Regulation (EC) No 767/2008 as last amended by Regulation (EU) 2023/2667).

Visits for up to 90 days in any 180-day period in states that are part of the Schengen area are subject to the Visa Code (Regulation (EC) No 810/2009 as last amended by Regulation (EU) 2024/1415). In contrast, long-stay visas – which have a maximum period of validity of one year under Regulation (EU) No 265/2010 – are primarily the responsibility of individual states. Nationals who are exempted from a visa under the Visa List Regulation (Regulation (EU) 2018/1806; note also amendments), such as nationals of Japan or the United Kingdom (see amendment in Regulation (EU) 2019/592), may require visas prior to their visit if coming for purposes other than a short visit. All visas must be obtained before travelling. Only specific categories of third-country nationals are exempt from this requirement.

Example: in the *Koushkaki* case ([36]), the CJEU held that the authorities of a Member State cannot refuse to issue a Schengen visa to an applicant, unless one of the grounds for refusal listed in the Visa Code applies. The national authorities have, however, wide discretion to ascertain this. A visa is to be refused where there is reasonable doubt of the applicant's intention to leave the territory of the Member States before the expiry of the visa. To determine if there is a reasonable doubt of that intention, the competent authorities must carry out an individual examination of the visa application that takes into account the

([34]) European Commission: Directorate-General for Migration and Home Affairs, 'Visa policy', European Commission website, 23 June 2025.

([35]) Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (OJ L 293, 23.11.1970, p. 3), Art. 41.

([36]) CJEU, C-84/12, *Rahmanian Koushkaki v. Bundesrepublik Deutschland* [GC], 19 December 2013.

general situation in the applicant's country of residence and the applicant's individual characteristics, inter alia the applicant's family, social and economic situation, whether they may have previously stayed legally or illegally in one of the Member States and the applicant's ties in their country of residence and in the Member States.

Example: in *X. and X.* ([37]), a Syrian couple and their three children travelled to the Belgian embassy in Beirut (Lebanon) and applied for a visa with limited territorial validity on the basis of Article 25(1)(a) of the Visa Code. The application was refused, as the intention of the applicants was to stay beyond 90 days and apply for asylum in Belgium. The CJEU ruled that, although the applicants formally submitted a visa application, their request fell outside the scope of the Visa Code. The Court noted that, in line with the EU asylum *acquis*, applications for international protection were to be made in the territory of the EU Member States. Allowing the situation in the present case would be allowing third-country nationals to lodge visa applications to seek international protection. It further stated that the present case fell within the scope of national law, as no EU measure had been adopted on the basis of Article 79(2)(a) of the TFEU, on long-stay visas and residence permits on humanitarian grounds.

Under Article 32(3) of the Visa Code, negative visa decisions are subject to appeal. The CJEU interpreted this provision as requiring judicial review ([38]). Under Article 19 of the Convention Implementing the 1985 Schengen Agreement ([39]), third-country nationals who hold uniform visas may freely move within the whole Schengen area while their visas are still valid and as long as they fulfil the entry conditions related to their visa. According to Article 21, a residence permit accompanied by a travel document may under certain circumstances replace a visa. Regulation (EC) No 1030/2002 (as last amended by Regulation (EU) 2017/1954) lays down a uniform format for residence permits.

([37]) CJEU, C-638/16 PPU, *X. and X. v. État belge* [GC], 7 March 2017. In a similar case, the ECtHR held that the ECHR does not apply to visa applications submitted to embassies and consulates of the contracting parties (ECtHR, *M. N. and Others v. Belgium* [GC], No 3599/18, 5 May 2020).

([38]) See CJEU, C-403/16, *Soufiane El Hassani v. Minister Spraw Zagranicznych*, 13 December 2017; CJEU, C-225/19 and C-226/19, *R. N. N. S. and K. A. v. Minister van Buitenlandse Zaken*, 24 November 2020; and CJEU, C-153/14, *Minister van Buitenlandse Zaken v. K. and A.*, 9 July 2015.

([39]) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 249, 22.9.2000, p. 19, ELI: http://data.europa.eu/eli/convention/2000/922/oj).

Third-country nationals not subject to a visa requirement may move freely within the Schengen territory for a maximum period of 90 days in any 180-day period, provided that they fulfil the entry conditions under the Schengen Borders Code. Once the European travel information and authorisation system (ETIAS) under Regulation (EU) 2018/1240 becomes operational, obtaining a travel authorisation will also become an entry requirement for visa-exempt third-country nationals (see Section 2.1.5).

1.2. Preventing unauthorised entry

Under EU law, the Schengen Borders Code requires that EU external borders be crossed only at designated border-crossing points (Article 5(1) and (2)). EU Member States are required to put in place an effective border surveillance system to prevent unauthorised entry, while fully respecting fundamental rights (Articles 4 and 13 of the Schengen Borders Code) (see also Sections 1.8 and 9.2).

Legislative measures have been taken to prevent unauthorised access to EU territory. The Carriers Sanctions Directive (Directive 2001/51/EC) provides for sanctions against carriers, such as airlines, that transport undocumented migrants into the EU. Two regulations on advance passenger information (API) (Regulation (EU) 2025/12 and Regulation (EU) 2025/13) further require air carriers to collect a mandatory list of passenger information data, electronically, and transfer them to the relevant national border control authorities ([40]). The transfer of passenger name record data from airlines to EU Member States is further regulated by the Passenger Name Record Directive (Directive (EU) 2016/681).

The Facilitation Directive (Directive 2002/90/EC) defines unauthorised entry, transit and residence and provides for sanctions against those who facilitate such breaches. Such sanctions must be effective, proportionate and dissuasive (Article 3). EU Member States can decide not to sanction humanitarian assistance, but they are not obliged to do so (Article 1(2)). The CJEU clarified that, in specific circumstances linked to family life, facilitation of unauthorised entry cannot be criminalised ([41]). As at June 2026, the Facilitation Directive was under revision.

([40]) The API regulations will start applying after the system required to transfer API data between air carriers and border authorities is put into service.

([41]) See CJEU, C-460/23[Kinsa], *Criminal proceedings against OB* [GC], 3 June 2025, para. 74.

Under the ECHR, although states have the sovereign right to control the entry of non-nationals, actions taken to prevent unauthorised entry (including, for example, detention) must comply with states' treaty obligations, including the ECHR (see Sections 1.8 and 4.2 and 7.3.1).

1.3. Entry bans and Schengen alerts

An entry ban prohibits individuals from entering a state from which they have been expelled. A ban is typically valid for a certain period of time and ensures that individuals who are considered dangerous or undesirable are not given a visa or otherwise admitted to the territory.

Under EU law, entry bans are entered into a database called the Schengen information system (SIS), which the authorities of other Schengen states can access and consult. In practice, this is the only way that the issuing state of an entry ban can ensure that the banned third-country national will not come back to its territory by entering through another Schengen state and then moving freely without border controls. Article 24 of the SIS Border Checks Regulation (Regulation (EU) 2018/1861) lists two situations in which a Member State must enter an alert for refusal of entry and stay in the SIS. The first case concerns alerts for third-country nationals about whom a Member State, after an individual assessment, has adopted a judicial or administrative decision concluding that that individual's presence on the Member State's territory poses a threat to public policy, to public security or to national security. The second case concerns persons against whom a return decision has been issued. Under Article 54 of the regulation, entry bans can be challenged. For those individuals subject to an entry ban made in the context of a return decision under Article 3(6) of the Return Directive (Directive 2008/115/EC), the ban should normally not extend beyond five years ([42]).

Example: in *Ouhrami* ([43]), the CJEU clarified the distinction between a return decision and an entry ban. The Court stated that, until a person's obligation to return is complied with, the 'illegal stay' of the person is governed by the return decision. Once the person leaves the territory of the Member State, the entry

([42]) CJEU, C-297/12, *Criminal proceedings against Gjoko Filev and Adnan Osmani*, 19 September 2013.

([43]) CJEU, C-225/16, *Criminal proceedings against Mossa Ouhrami*, 26 July 2017. See also CJEU, C-806/18, *Criminal proceedings against JZ*, 17 September 2020.

ban starts producing its legal effects, and the starting point of the duration of the entry ban must be calculated from the date on which the returnee actually left the EU territory.

Under the SIS Returns Regulation (Regulation (EU) 2018/1860), the return decision itself is also recorded in the SIS. This functionality has been active since March 2023 ([44]). If another Member State wishes to grant or extend a residence permit or long-stay visa to a person subject to a return decision accompanied by an entry ban, it must consult the Member State concerned. Similarly, if a Member State wishes to issue an entry ban to a person who holds a valid residence permit issued by another Member State, it must also consult the latter ([45]).

Entry bans issued outside the scope of the SIS Border Checks Regulation and the Return Directive do not formally bar other states from allowing access to the Schengen area. Other states, however, may take entry bans into account when deciding whether or not to issue a visa or allow admission. The bans may therefore have effects across the Schengen area, even though a ban may only be relevant to the issuing state that deems an individual undesirable, including, for example, for reasons related to disturbing political stability: a Schengen alert issued on a Russian politician by an EU Member State prevented a member of the Parliamentary Assembly of the Council of Europe (PACE) from attending sessions of the parliamentary assembly in France. This was discussed in detail at the October 2011 meeting of the PACE Committee on Legal Affairs and Human Rights, which led to the preparation of a report on restrictions of freedom of movement as punishment for political positions ([46]).

Under the ECHR, recording information about a return decision or an entry ban issued against someone in the SIS database is an action taken by an individual Member State within the scope of EU law. Complaints can be brought to the ECtHR alleging that the state in question violated the ECHR in placing or retaining someone on the list.

([44]) See European Commission: Directorate-General for Migration and Home Affairs, 'What is SIS and how does it work?', European Commission website.

([45]) CJEU, C-240/17, *E*, 16 January 2018.

([46]) CoE Parliamentary Assembly, Resolution 1894 (2012) on the inadmissibility of restrictions on freedom of movement as punishment for political positions, 2012.

Example: in the *Dalea v. France* case ([47]), a Romanian citizen whose name had been listed in the SIS database by France before Romania joined the EU was unable to conduct his business or provide or receive services in any of the Schengen states. His complaint that this was an interference with his right to conduct his professional activities (protected under Article 8 of the ECHR on the right to respect for private and family life) was declared inadmissible. The ECtHR considered that, with regard to entry into national territory, states enjoyed a wider margin of appreciation in choosing the safeguards against arbitrariness than they did in relation to expulsion.

The ECtHR has examined the effects of travel bans imposed as a result of placing an individual on a UN-administered list of terrorist suspects or designed to prevent breaches of domestic or foreign immigration laws. In this connection, it also found that travel bans should respect the right to leave any country as set out in Article 2 of Protocol No 4 to the ECHR.

Example: the case of *Nada v. Switzerland* ([48]) concerned an Italian-Egyptian national, living in Campione d'Italia (an Italian enclave in Switzerland), who was placed on the Federal Taliban Ordinance by the Swiss authorities, which had implemented UN Security Council counterterrorism sanctions. The listing prevented the applicant from leaving Campione d'Italia, and his attempts to have his name removed from that list were refused. The ECtHR noted that the Swiss authorities had enjoyed a certain degree of discretion in the application of the UN counterterrorism resolutions. The Court went on to find that Switzerland had violated the applicant's rights under Article 8 of the ECHR by failing to alert Italy or the UN-created Sanctions Committee promptly that there was no reasonable suspicion against the applicant and to adapt the effects of the sanctions regime to his individual situation. It also found that Switzerland had violated Article 13 of the ECHR in conjunction with Article 8, as the applicant did not have any effective means of obtaining the removal of his name from the list.

Example: the *Stamose v. Bulgaria* ([49]) case concerned a Bulgarian national upon whom the Bulgarian authorities imposed a two-year travel ban on account of breaches of United States (US) immigration laws. Assessing for the first time if a travel ban designed to prevent breaches of domestic or foreign immigration

([47]) ECtHR, *Dalea v. France* (dec.), No 964/07, 2 February 2010.

([48]) ECtHR, *Nada v. Switzerland* [GC], No 10593/08, 12 September 2012.

([49]) ECtHR, *Stamose v. Bulgaria*, No 29713/05, 27 November 2012.

laws was compatible with Article 2 of Protocol No 4 to the ECHR, the ECtHR found that a blanket and indiscriminate measure prohibiting the applicant from travelling to every foreign country on account of the breach of the immigration law of one particular country was not proportionate.

1.4. Checks at the EU's external borders

Under EU law, to cross the EU's external borders, third-country nationals must fulfil the conditions for entry or exit. If entry is refused, authorities must issue a decision stating the precise reasons for the refusal (Article 14 of the Schengen Borders Code). Under Article 14(3) of the Schengen Borders Code, persons refused entry have a right to appeal. More favourable rules for crossing the EU external borders exist for third-country nationals who enjoy free movement rights (Articles 3 and 8(6)). Article 4 of the Schengen Borders Code requires that border control tasks be carried out with full respect for human dignity ([50]). Checks at border-crossing points must be carried out in a way that does not discriminate against a person on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Under Articles 5 and 7 of the Screening Regulation (Regulation (EU) 2024/1356), individuals are to be submitted to pre-entry screening if they:

- cross an external border in an irregular manner;
- apply for international protection at a border-crossing point or in a transit zone;
- disembark in the EU after a search and rescue operation at sea; or
- are found in an irregular situation in an EU Member State without having been subject to border checks before.

Screening consists of identity checks, security checks and preliminary health and vulnerabilities checks (Articles 8 and 12 to 16). Fundamental rights must be respected during screening (Article 3), compliance with which must be monitored at the national level by independent mechanisms (Articles 1 and 10) (see Chapter 10).

([50]) See CJEU, C-23/12, *Mohamad Zakaria*, 17 January 2013.

Under the ECHR, the ECtHR examined whether the requirement to remove religious clothing during identity or security checks violated Article 9 of the ECHR. It found no violation of this provision when a Muslim woman was required to remove her headscarf for an identity check at a consulate or a Sikh man was asked to remove his turban at an airport security check ([51]).

In the case of *Ranjit Singh v. France*, the UN Human Rights Committee considered that obliging a Sikh man to remove his turban in order to have his official identity photo taken amounted to a violation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR). It did not accept the argument that the requirement to appear bareheaded on an identity photo was necessary to protect public safety and order. The reasoning of the UN Human Rights Committee was that the state had not explained why the wearing of a Sikh turban would make it more difficult to identify a person who wears that turban all the time or how this would increase the possibility of fraud or falsification of documents. The committee also took into account the fact that an identity photo without the turban might result in the person concerned being compelled to remove his turban during identity checks ([52]).

1.5. Internal borders within the Schengen area

Under EU law, the Schengen Borders Code (Regulation (EU) 2016/399) abolished internal border controls within the Schengen area. Temporary reintroduction of border control is only allowed in exceptional cases (Schengen Borders Code, Title III, Chapter II).

Example: in *NW v. Landespolizeidirektion Steiermark* and *Bezirkshauptmannschaft Leibnitz* ([53]), the CJEU held that the Schengen Borders Code precludes border control at internal borders from being temporarily reintroduced by a Member State if the duration of its reintroduction exceeds the maximum total duration set out in the code. The CJEU added that, if border controls are

([51]) ECtHR, *Phull v. France* (dec.), No 35753/03, 11 January 2005; ECtHR, *El Morsli v. France* (dec.), No 15585/06, 4 March 2008.

([52]) UN Human Rights Committee, *Ranjit Singh v. France*, Communications Nos 1876/2009, views of 22 July 2011, para. 8.4. See also UN Human Rights Committee, *Mann Singh v. France*, Communication No 1928/2010, views of 19 July 2013.

([53]) CJEU, Joined Cases C-368/20 and C-369/20, *NW v. Landespolizeidirektion Steiermark and Bezirkshauptmannschaft Leibnitz* [GC], 26 April 2022.

reintroduced in contradiction of this, national legislation obliging persons to present a passport or identity card when crossing an internal border is contrary to EU law.

The CJEU clarified that states cannot conduct surveillance at internal borders that has an equivalent effect to border checks ([54]). Surveillance, including through electronic means, of internal Schengen borders is allowed when based on evidence of irregular residence, but it is subject to certain limitations, such as intensity and frequency ([55]).

Example: in *Bundesrepublik Deutschland v. Touring tours* ([56]), the CJEU held that Article 21 of the Schengen Borders Code precludes national legislation that requires every coach transport undertaking that provides a cross-border service within the Schengen area to check the passports and residence permits of passengers before they cross an internal border to prevent the transport of third-country nationals who are not in possession of travel documents. This would constitute checks within the territory of a Member State that are equivalent to border checks and is, therefore, prohibited.

When Member States exceptionally introduce temporary controls at the internal border, they are made public on the European Commission website ([57]). The temporary introduction of border controls does not make an internal EU border into an external border.

Example: in *Arib* ([58]), the CJEU considered whether or not an internal border where border controls were reintroduced pursuant to the Schengen Borders Code could be equated to an external border for the purpose of the Return Directive. The CJEU noted that the Return Directive continues to apply if a Member State reintroduces border controls at its internal border. The Court ruled that the concepts of internal borders and external borders are mutually exclusive, and internal borders at which border controls are reinstated cannot be considered external borders. The CJEU concluded that opting out from the application

([54]) CJEU, Joined Cases C-188/10 and C-189/10, *Aziz Melki and Selim Abdeli* [GC], 22 June 2010, para. 74.

([55]) CJEU, C-278/12 PPU, *Atiqullah Adil v. Minister voor Immigratie, Integratie en Asiel*, 19 July 2012.

([56]) CJEU, Joined Cases C-412/17 and C-474/17, *Bundesrepublik Deutschland v. Touring tours und Travel GmbH and Sociedad de Transportes SA*, 13 December 2018.

([57]) See European Commission: Directorate-General for Migration and Home Affairs, 'Temporary reintroduction of border control', European Commission website.

([58]) CJEU, C-444/17, *Préfet des Pyrénées-Orientales v. Abdelaziz Arib* [GC], 19 March 2019.

of the directive in border cases does not cover the situation of migrants in an irregular situation who were apprehended at an internal border at which border controls have been reintroduced.

1.6. Local border traffic

Under EU law, the local border traffic regime (Regulation (EC) No 1931/2006) constitutes a derogation from the general rules governing border control of persons crossing the external borders of the EU Member States. The criteria and conditions to be complied with for crossing an external land border are eased for residents in a border area of a neighbouring third country, thus enhancing the EU's relationship with its neighbours. This regime ensures that the borders with the EU's neighbours are not a barrier to trade, social and cultural interchange or regional cooperation.

Under Article 4 of the Local Border Traffic Regulation, border residents who are in possession of a local border traffic permit can enter the neighbouring state when they hold a valid travel document and have no SIS alert that would prevent their entry into the Schengen area. Visas are not required, passports do not need to be stamped and no checks are carried out on the purpose of the journey or possession of means of subsistence. Holders of a local border traffic permit earn the right to an uninterrupted stay of up to three months (Local Border Traffic Regulation, Article 5). The CJEU considered the question of stay for local border traffic permit holders.

Example: the *Shomodi* case ([59]) concerned a Ukrainian national in possession of a local border traffic permit that authorised him to enter the border area of Hungary. Having stayed in the Schengen area for more than three months in a six-month period, he was refused entry into Hungary. The CJEU distinguished between the limitation in time under the local border traffic regime and the Schengen limitation of 90 days in a 180-day period. The Court noted that the Local Border Traffic Regulation sets a limitation specific to uninterrupted stays, and the legislation does not suggest that the three-month limitation must fall within one and the same six-month period. The Court also clarified that the stay of the holder of a local border traffic permit is interrupted as soon as the person

([59]) CJEU, C-254/11, *Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége v. Oskar Shomodi*, 21 March 2013.

crosses back into the third country of residence, irrespective of the frequency of the crossings. Once the border resident re-enters the Schengen area, the maximum three-month period will start anew.

Holders of the local border traffic permit can stay within the border area of the state, which extends not more than 30 km (in exceptional cases, 50 km) from the border. In the case of Kaliningrad (an exclave forming part of Russia), under Regulation (EU) No 1342/2011, the local border traffic regime covers the entire Kaliningrad region.

1.7. Transit zones

Under EU law, Article 4(4) of the Return Directive sets out minimum rights that are also to be applied to persons apprehended or intercepted in connection with irregular border crossing and those subject to a refusal of entry. Their treatment cannot be less favourable than that of other migrants in an irregular situation, and the principle of *non-refoulement* must be respected at all times.

Under the Screening Regulation, during the period of up to seven days in which third-country nationals may be subject to screening, they are not legally authorised to enter the territory of a Member State (Article 6). They may be kept in a location at or in close proximity to the external border (Screening Regulation, Article 8). At the same time, screening must be carried out with full respect for fundamental rights (Screening Regulation, Article 3). Under Article 4 of the Screening Regulation, the Reception Conditions Directive (Directive (EU) 2024/1346) applies to those who request international protection during screening.

The Asylum Procedure Regulation (Regulation (EU) 2024/1348) and the Return Border Procedure Regulation (Regulation (EU) 2024/1349) also envisage situations in which a third-country national is not legally authorised to enter the territory of a Member State and may be kept in a location at or in close proximity to the external border. Both these regulations set forth a number of fundamental rights safeguards relating to the border procedure (see Sections 1.8, 5.1.4 and 5.3).

Under the ECHR, the state's responsibility may be engaged in the case of persons staying in a transit zone.

Example: in *Amuur v. France* ([60]), the applicants were held in the transit zone of a Paris airport. The French authorities argued that, as the applicants had not 'entered' France, they did not fall within French jurisdiction. The ECtHR disagreed and concluded that the domestic law provisions in force at the time did not sufficiently guarantee the applicants' right to liberty under Article 5(1) of the ECHR.

Example: in *Z. A. and Others v. Russia* ([61]), the applicants were held in the transit zone of a Russian airport. The Russian government argued that the applicants were not under Russian jurisdiction. However, the ECtHR disagreed and concluded that the applicants' confinement in the transit zone amounted to a de facto deprivation of liberty resulting in a violation of Article 5(1) of the ECHR. The Court also found a violation of Article 3 of the ECHR, as the conditions at the transit zone were in a state that caused the applicants mental suffering, undermined their dignity and humiliated them.

Example: in *Ilias and Ahmed v. Hungary* ([62]), the ECtHR found that the applicants staying in the transit zones located at the land border with Serbia were fully dependent on the Hungarian authorities for their most basic human needs and were under their control.

Example: in *Shahzad v. Hungary* ([63]), the Court found that removing the applicant from Hungary to a strip of land a few metres wide between a border fence erected in Hungary and the border between Hungary and Serbia constituted a situation falling under Article 4 of Protocol No 4 to the ECHR, which prohibits collective expulsion. This was because, even though the strip of land was part of the Hungarian territory, there was no infrastructure in the strip and expelled migrants had to go to one of the transit zones to enter Hungary, which normally involved crossing Serbia. Consequently, crossing the border was the only option for those removed to the strip.

([60]) ECtHR, *Amuur v. France*, No 19776/92, 25 June 1996, paras 52–54. See also ECtHR, *Nolan and K. v. Russia*, No 2512/04, 12 February 2009; ECtHR, *Riad and Idiab v. Belgium*, Nos 29787/03 and 29810/03, 24 January 2008.

([61]) ECtHR, *Z. A. and Others v. Russia* [GC], Nos 61411/15 and three others, 21 November 2019.

([62]) ECtHR, *Ilias and Ahmed v. Hungary* [GC], No 47287/15, 21 November 2019, para. 186.

([63]) ECtHR, *Shahzad v. Hungary*, No 12625/17, 8 July 2021.

1.8. Access to asylum

In practice, due to difficulties in obtaining valid travel documents, individuals seeking asylum often arrive at the border without such documents or enter the territory through irregular means. Regardless of where they are detected or apprehended – on the high seas, at the border or within the territory – if they express the wish to seek asylum, they must be referred to appropriate national procedures. Under EU law and the ECHR, the principle of *non-refoulement* forbids sending away individuals who seek protection from persecution or serious harm without first assessing their claim (see also Chapter 4).

Under EU law, the Charter of Fundamental Rights of the European Union provides for the right to asylum in Article 18 and the prohibition of *refoulement* in Article 19. Under Article 4 of the Schengen Borders Code, border control activities must fully comply with the requirements of the 1951 Geneva Convention and the obligations related to access to international protection, in particular the principle of *non-refoulement* ([64]). These requirements apply to all border controls, including checks at official border-crossing points and border surveillance activities at the land or sea borders, including those exercised on the high seas.

The EU asylum *acquis* only applies from the moment an individual has arrived at the border, including territorial waters and transit zones (Article 2(1) of the Asylum Procedure Regulation). Chapter III, Section I of the regulation lays down details of access to the asylum procedure. In particular, Article 27 requires Member States to register an application within five days. When an application is submitted to authorities, such as courts ([65]), other than those responsible for its registration, the authorities that receive the application must inform within three days the authority responsible for registering the application, which then has five days to complete the registration. In exceptional cases, these deadlines can be extended and the application can be registered no later than 15 days from when it was made (Article 27(5)). Under Article 30 of the regulation, where there are indications that persons present at the border may wish to make an application for asylum, Member States must provide them with information on the possibility to do so.

([64]) For more information on fundamental rights issues at EU external land borders, see FRA, *Migration: Fundamental rights issues at land borders*, Publications Office of the European Union, Luxembourg, 2020.

([65]) CJEU, C-36/20 PPU, *Ministerio Fiscal v. VL*, 25 June 2020, paras 59–68.

Example: in *European Commission v. Hungary* ([66]), the CJEU held that Hungary failed to fulfil its obligations under EU rules regulating access to asylum procedures by requiring those seeking asylum in Hungary or at Hungarian external borders to lodge a 'declaration of intent' at designated Hungarian embassies in neighbouring third countries and obtain a travel document to enter Hungary before being allowed to make an asylum application. The CJEU stressed that persons in the territory of a Member State or who present themselves at a Member State's borders fall within the scope of the EU asylum *acquis* and must be able to make an asylum application as soon as they express their wish to do so. As a result, imposing a condition that such application can only be made after the person travels from the Member State or from its border to lodge a declaration of intent at an embassy in a third country runs counter to the objective of the EU asylum *acquis* of ensuring effective, easy and rapid access to the asylum procedure.

Article 43 of the Asylum Procedure Regulation permits the processing of asylum applications at the border or in transit zones (see Section 5.1.4). The basic principles and guarantees applicable to asylum claims submitted inside the territory apply. There is a duty under Article 21(2) to refrain from using border procedures for vulnerable applicants in need of special procedural guarantees where adequate support cannot be provided at the border. Article 53 sets some limitations to the processing of applications at the border made by unaccompanied children.

While the **ECHR** does not explicitly guarantee a right to asylum ([67]), Article 3 prohibits torture and inhuman or degrading treatment or punishment. This provision also imposes positive obligations on states to protect individuals from such risks, including in the context of removal or expulsion. Article 3, therefore, prohibits turning away an individual, whether at the border or elsewhere within a state's jurisdiction, without examining the individual's claim relating to a risk of torture or inhuman or degrading treatment or punishment in the country to which they would be removed.

([66]) CJEU, C-823/21, *European Commission v. Hungary*, 22 June 2023.

([67]) See ECtHR, *H. A. v. the United Kingdom*, No 30919/20, 5 December 2023, paras 41–42.

Example: in *M. A. and Others v. Lithuania* ([68]), the applicants, who had fled the Chechen Republic, attempted to cross the land border between Lithuania and Belarus on three separate occasions. Although they claimed they were seeking international protection each time, they were refused entry on the grounds that they did not have the necessary travel documents. The Lithuanian border guards had not accepted their asylum applications and had not forwarded them to a competent authority for examination and status determination, as required by domestic law. The ECtHR found that no assessment had been carried out of whether or not it was safe to return the applicants to Belarus, a country that was not a State Party to the ECHR. The Court ruled that the failure to allow the applicants to submit their asylum applications and their removal to Belarus amounted to a violation of Article 3 of the ECHR.

Similar ECtHR rulings concerned individuals removed from a seaport ([69]) and from an airport ([70]) without having had the chance to apply for asylum and without an assessment of whether they would be at risk of harm upon return.

A removal, extradition or expulsion may also raise an issue under Article 2 of the ECHR, which protects the right to life ([71]).

1.9. Search and rescue and disembarkation in a safe port

Border surveillance operations carried out at sea need to respect human rights and refugee law as well as the international law of the sea.

Activities on the high seas are regulated by the UN Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue. These instruments contain a duty to

([68]) ECtHR, *M. A. and Others v. Lithuania*, No 59793/17, 11 December 2018, paras 105–115. See also ECtHR, *M. K. and Others v. Poland*, Nos 40503/17, 42902/17 and 43643/17, 23 July 2020, paras 180–186; ECtHR, *A. B. and Others v. Poland*, No 42907/17, 30 June 2022, paras 39–43; ECtHR, *A. R. E. v. Greece*, No 15783/21, 7 January 2025, paras 281–284.

([69]) ECtHR, *Kebe and Others v. Ukraine*, No 12552/12, 12 January 2017.

([70]) ECtHR, *S. S. and Others v. Hungary*, Nos 56417/19 and 44245/20, 12 October 2023.

([71]) ECtHR, *N. A. v. Finland*, No 25244/18, 14 November 2019.

render assistance to and rescue persons in distress at sea ([72]). A ship's captain is furthermore under the obligation to deliver those rescued at sea to a 'place of safety'. In this context, a debated issue is where to disembark persons rescued or intercepted at sea. Another point concerns the right to life of persons at sea.

Example: in *Safi and Others v. Greece* ([73]), the applicants were on board a fishing boat transporting 27 migrants in the Aegean Sea, which capsized as the Greek coastguard tried to tow it. The sinking of the boat resulted in the death of 11 persons. The ECtHR held that the Hellenic authorities had failed to comply with the duty under Article 2 of the ECHR to take preventive measures to protect the individuals whose lives were at risk. The ECtHR acknowledged that the captain and crew of a vessel involved in a sea rescue operation often had to make difficult and quick decisions and that such decisions were, as a rule, at the captain's discretion. However, it had to be demonstrated that the decisions had been inspired by the essential effort to secure the right to life of the persons in distress. Having regard to several omissions and delays in the manner in which the rescue operation was conducted and organised in the case under consideration, the Court found that the Hellenic authorities had not done all that could have reasonably been expected of them to provide the deceased individuals and their relatives with the level of protection required.

Example: in *Alkhatib and Others v. Greece* ([74]), a person who was travelling, together with others, in a boat with a view to irregularly entering Greece, sustained a serious gunshot wound as a result of shots fired by the coastguard. The Court found that Greece had violated Article 2 of the ECHR, as it had failed to comply with its obligation to put in place an adequate legal and administrative framework governing the use of potentially lethal force in maritime surveillance operations. It found that the coastguard who fired the shots could have presumed the presence of passengers hidden on board the boat and had not exercised due care to minimise the use of lethal force and the possible risks to life.

Removing someone who is trying to access the territory by sea may raise issues related to the principle of *non-refoulement* and the right to leave any country.

([72]) For more information on search and rescue operations in the Mediterranean sea, see FRA, *Search and rescue (SAR) operations in the Mediterranean and fundamental rights – June 2025 update*, Publications Office of the European Union, Luxembourg, 2025.

([73]) ECtHR, *Safi and Others v. Greece*, No 5418/15, 7 July 2022.

([74]) ECtHR, *Alkhatib and Others v. Greece*, No 3566/16, 16 January 2024.

Under EU law, Article 13, read in conjunction with Articles 3 and 4, of the Schengen Borders Code stipulates that border surveillance must prevent unauthorised border crossings and it must prevent and discourage persons from circumventing the checks at border-crossing points, while respecting the prohibition of *refoulement* and the principle of proportionality. Such measures should also contribute to reducing the loss of life of migrants. The Sea Borders Regulation (Regulation (EU) No 656/2014) regulates surveillance of the external sea borders by EU Member States within the context of operational cooperation with Frontex. Article 4 ensures the protection of fundamental rights and the principle of *non-refoulement*. Article 10 of the Sea Borders Regulation specifies procedures for disembarking rescued persons.

Under the ECHR, the ECtHR has held, on several occasions ([75]), that individuals may fall within its jurisdiction when a State Party to the ECHR exercises control over them on the high seas. In a 2012 case against Italy, the ECtHR's Grand Chamber (GC) set out the rights of migrants seeking to reach European soil and the duties of states in such circumstances.

Example: in *Hirsi Jamaa and Others v. Italy* ([76]), the applicants were part of a group of about 200 migrants, including asylum seekers and others, who had been intercepted by the Italian coastguards on the high seas while within Malta's search and rescue area. The migrants were summarily returned to Libya under an agreement concluded between Italy and Libya, and were given no opportunity to apply for asylum. No record was taken of their names or nationalities. The ECtHR noted that the situation in Libya was well known and easy to verify on the basis of multiple sources. It therefore considered that the Italian authorities knew, or should have known, that the applicants, when returned to Libya as irregular migrants, would be exposed to treatment in breach of the ECHR and that they would not be given any kind of protection. The Italian authorities also knew, or should have known, that there were insufficient guarantees protecting the applicants from the risk of being arbitrarily returned to their countries of origin, which included Eritrea and Somalia. They should have had particular regard to the lack of any asylum procedure and the impossibility of making the Libyan authorities recognise the refugee status granted by the United Nations High Commissioner for Refugees (UNHCR).

([75]) ECtHR, *Xhavara and Others v. Italy and Albania* (dec.), No 39473/98, 11 January 2001; ECtHR, *Medvedyev and Others v. France* [GC], No 3394/03, 29 March 2010.

([76]) ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No 27765/09, 23 February 2012.

The ECtHR reaffirmed that the fact that the applicants had failed to ask for asylum or to describe the risks they faced as a result of the lack of an asylum system in Libya did not exempt Italy from complying with its obligations under Article 3 of the ECHR. It reiterated that the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees. The transfer of the applicants to Libya therefore violated Article 3 of the ECHR because it exposed them to the risk of *refoulement*.

Example: *M. A. and Z. R. v. Cyprus* ([77]) concerned two Syrians who tried to reach Cyprus by boat from Lebanon. The boat on which they travelled was intercepted by the Cypriot coastguard. They claimed they wished to request asylum in Cyprus, but their request was disregarded, and they were returned to Lebanon on the basis of a bilateral agreement between Cyprus and Lebanon. As the Cypriot authorities returned the applicants to Lebanon without processing their asylum claims or conducting any assessment of the risk of lack of access to an effective asylum process in Lebanon, the Court found a violation of Article 3 of the ECHR.

Key points

- States have a right to decide whether or not to grant foreigners access to their territory, but must respect EU law, the ECHR and applicable human rights guarantees (see Introduction to this chapter).
- EU law and the ECHR prohibit rejecting persons at borders and returning them to states where they are at risk of persecution or other serious harm (prohibition of *refoulement*) (see Introduction to this chapter).
- EU law establishes common rules for EU Member States regarding the issuance of short-stay visas (see Section 1.1).
- EU law requires EU Member States to put in place an effective border surveillance system to prevent unauthorised entry (see Section 1.2) but also contains fundamental rights safeguards relating to the implementation of border control (see Section 1.4) and border surveillance activities, particularly at sea (see Section 1.9).

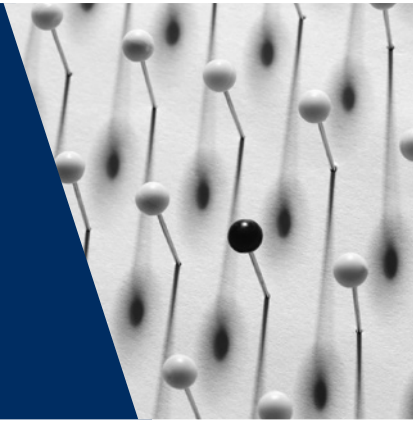
([77]) ECtHR, *M. A. and Z. R. v. Cyprus*, No 39090/20, 8 October 2024.

- EU law provides for a pre-entry screening of those who cross an external border in an irregular manner, apply for international protection during border checks, disembark in the EU after a search and rescue operation at sea or are found irregularly staying in an EU Member State. Fundamental rights must be respected during screening (see Introduction to this chapter, Section 1.4 and Chapter 10).
- EU law, particularly the Schengen *acquis*, enables individuals to travel free from border controls within the Schengen area (see Sections 1.1 and 1.5).
- The local border traffic regime of EU law makes it easier for residents of border areas to cross an external land border of a Member State (see Section 1.6).
- Under EU law, an entry ban against an individual by a Schengen state denies that person access to the entire Schengen area (see Section 1.3).
- The Charter of Fundamental Rights of the European Union provides for the right to asylum and for the prohibition of *refoulement*. The EU asylum *acquis* applies from the moment an individual has arrived at an EU border and seeks asylum. The ECHR does not provide for the right to asylum as such; however, turning away an individual and thereby putting the individual at risk of torture or other forms of ill-treatment is prohibited (see Section 1.8).
- In certain circumstances, the ECHR imposes limitations on the right of a state to detain or turn away a migrant at its border (see Introduction to this chapter and Sections 1.7, 1.8 and 1.9), regardless of whether the migrant is in a transit zone or otherwise within that state's jurisdiction.

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

2
Large-scale EU IT systems and interoperability



EU	Issues covered	CoE
VIS Regulation (Regulation (EC) No 767/2008) Decision on access to VIS by law enforcement authorities (Council Decision 2008/633/JHA) European Asylum Dactyloscopy (Eurodac) Regulation (Regulation (EU) 2024/1358) SIS Regulation (Regulation (EU) 2018/1862); SIS Border Checks Regulation (Regulation (EU) 2018/1861); SIS Returns Regulation (Regulation (EU) 2018/1860) Entry/Exit System (EES) Regulation (Regulation (EU) 2017/2226) ETIAS Regulation (Regulation (EU) 2018/1240) European Criminal Records Information System on Third-country Nationals (ECRIS-TCN) Regulation (Regulation (EU) 2019/816) European Union Agency for Law Enforcement Cooperation (Europol) Regulation (Regulation (EU) 2016/794) European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) Regulation (Regulation (EU) 2018/1726)	**EU IT systems**	ECHR, Article 8 (right to respect for private and family life) Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data ('Convention No 108') Modernised Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data ('Modernised Convention No 108')

EU	Issues covered	CoE
Interoperability Regulation – borders and visa (Regulation (EU) 2019/817) Interoperability Regulation – asylum and migration (Regulation (EU) 2019/818)	**Interoperability**	ECHR, Article 8 (right to respect for private and family life) Convention No 108 Modernised Convention No 108
Artificial Intelligence (AI) Act (Regulation (EU) 2024/1689)	**AI in EU large-scale IT systems**	Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law
Charter of Fundamental Rights of the European Union, Article 8(2) (right to protection of personal data) TFEU, Article 16(1) (right to protection of personal data) General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), Article 5 Law Enforcement Directive (Directive (EU) 2016/680), Article 4 EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725), Article 4 CJEU, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland* [GC], 2014 (processing of excessive data)	**Purpose limitation**	ECHR, Article 8 (right to respect for private and family life) Modernised Convention No 108, Article 5 ECtHR, *S. and Marper v. the United Kingdom* [GC], Nos 30562/04 and 30566/04, 2008 (retention of fingerprints) ECtHR, *Škoberne v. Slovenia*, No 19920/20, 2024 (systematic and indiscriminate retention of telecommunication data)
GDPR (Regulation (EU) 2016/679), Articles 13 and 14 Law Enforcement Directive (Directive (EU) 2016/680), Article 13 EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725), Articles 14 to 16	**Right to information**	ECHR, Article 8 (right to respect for private and family life) Modernised Convention No 108, Article 8
GDPR (Regulation (EU) 2016/679), Article 5 Law Enforcement Directive (Directive (EU) 2016/680), Article 4 EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725), Article 4 CJEU, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland* [GC], 2014 (protection of personal data against the risk of abuse and unlawful access) Legal instruments establishing the EU IT systems (as listed above)	**Unauthorised access to data**	Modernised Convention No 108, Article 7

EU	Issues covered	CoE
GDPR (Regulation (EU) 2016/679), Chapter 5 Law Enforcement Directive (Directive (EU) 2016/680), Chapter 5 EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725), Chapter 5 Legal instruments establishing the EU IT systems (as listed above)	**Data transfer to third countries**	Modernised Convention No 108, Article 14
Charter of Fundamental Rights of the European Union, Article 8(2) (right to protection of personal data) TFEU, Article 16(1) (right to protection of personal data) GDPR (Regulation (EU) 2016/679), Articles 15 to 17 Law Enforcement Directive (Directive (EU) 2016/680), Articles 14 to 17 EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725), Articles 14 to 24 CJEU, Joined Cases C-203/15 and C-698/15, *Tele2 Sverige* [GC], 2016 (obligation to notify to ensure right to effective remedy)	**Data subject rights (access to, and correction and deletion of, data)**	ECHR, Article 8 (right to respect for private and family life) Modernised Convention No 108, Article 9 ECtHR, *Segerstedt-Wiberg and Others v. Sweden*, No 62332/00, 2006 (access to information held by security services)

Introduction

This chapter looks at large-scale IT systems established by the EU in the area of freedom, security and justice. It presents their safeguards relating to selected fundamental rights, especially those connected to data protection, the right to respect for private life, the right to asylum and the right to an effective remedy. It also explains interoperability, which is achieved through interconnecting large-scale EU IT systems. It will enable authorised users to carry out a search for an individual across the systems and to see the data they are authorised to access, rather than searching each system separately.

Under EU law, visa, border, asylum and immigration authorities of EU Member States increasingly rely on technology when making decisions affecting a person. IT systems are also increasingly serving internal security purposes. For third-country

nationals – applicants for international protection, migrants in an irregular situation, visa applicants or everyday travellers – it is difficult to understand how the IT systems function and how they influence decision-making.

The EU has set up six large-scale IT systems, not counting European Union Agency for Law Enforcement Cooperation (Europol) databases. These IT systems provide support to manage migration, asylum and borders, enhance judicial cooperation and contribute to strengthening internal security within the EU.

The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) was established in 2011 by Regulation (EU) No 1077/2011 and reinforced by Regulation (EU) 2018/1726 (last amended by Regulation (EU) 2025/12). The agency is responsible for the development and operational management of large-scale EU IT systems. It ensures their effective, secure and continuous operation, as well as the continuous and uninterrupted exchange of data between the national authorities using them. The agency must ensure the highest levels of data security, data quality and data protection.

FRA's online information platform on EU IT systems for migration and policing explains the EU databases, their interoperability and their impact on fundamental rights. For more information on EU data protection rules, see the *Handbook on European Data Protection Law – 2018 edition*.

Under CoE law, the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention No 108) as modernised by its amending protocol (CETS No 223) lays down the core principles on the protection of personal data processing, carried out by both the private and public sectors. These principles equally apply to data processing by large-scale EU IT systems. Convention No 108 and its modernising protocol ('Modernised Convention No 108') protect individuals against abuses that may accompany the processing of personal data, and they seek to regulate the transnational flows of personal data. Under the right to respect for private and family life in Article 8 of the ECHR, the ECtHR has dealt with the automated processing of personal data in large-scale databases established at the national level. Together with CoE soft law instruments, such as the Police Recommendation (Recommendation No R (87) 15), such case-law provides guidance on the use of personal data by law enforcement authorities, for example when querying any of the below EU IT systems.

2.1. Large-scale EU information systems

The EU IT systems are used in a number of migration-related processes: in the asylum process, in visa processing, during border checks, when issuing residence permits, when apprehending migrants in an irregular situation, in return procedures, for issuing entry bans and when exchanging information on third-country nationals' criminal convictions. They also have additional purposes. In particular, law enforcement authorities can consult them to fight terrorism and other serious crime under strict conditions.

This section presents the six large-scale EU systems and the Europol databases, and illustrates how these will become interoperable. Not all systems presented below were operational in June 2026. For updated information about their state of implementation, the reader is invited to consult the European Commission's 'Interoperability' web page or the eu-LISA website.

2.1.1. European Asylum Dactyloscopy

The European Asylum Dactyloscopy (Eurodac) contains the biometric data (defined under the Eurodac Regulation as fingerprints and facial image data) of:

- third-country nationals who apply for asylum in one of the EU Member States;
- persons registered for the purpose of an admission procedure under the Union Resettlement and Humanitarian Admission Framework Regulation (Regulation (EU) 2024/1350);
- persons admitted in accordance with a national resettlement scheme;
- migrants apprehended in connection with an irregular border crossing;
- migrants found in an irregular situation in a Member State; and
- those disembarked following a search and rescue operation at sea.

Beneficiaries of temporary protection, except for displaced persons from Ukraine, will also be registered in Eurodac (see recitals 9 to 11 of the Eurodac Regulation).

Fingerprints of children under the age of six years are not processed. According to eu-LISA, Eurodac stored almost 7.4 million fingerprint datasets at the end of 2023 ([78]). The system has been operational since 2003 and was, as at June 2026, most recently revised by the Eurodac Regulation (Regulation (EU) 2024/1358) ([79]).

Eurodac assists EU Member States in determining where applicants for international protection first entered the EU. The storing of biometric data in Eurodac allows an EU Member State to know if the individual has already applied for asylum elsewhere or if the person has been apprehended in another EU Member State after an irregular entry or stay. It thus supports EU Member States in applying the rules of the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351) on determining the Member State responsible for the examination of an asylum application (see Section 5.2).

Eurodac also serves other purposes. Following the revision of the Eurodac Regulation in 2024, these include assisting Member States with the control of irregular migration, the detection of secondary movements within the EU, the identification of migrants in an irregular situation, child protection, supporting Member States in applying the Union Resettlement and Humanitarian Admission Framework Regulation, supporting the ETIAS and VIS, assisting Member States with the implementation of the Temporary Protection Directive (Directive 2001/55/EC) and producing statistics to support evidence-based policymaking.

National law enforcement authorities and Europol are authorised to access data in Eurodac for the prevention, detection or investigation of terrorist offences or of other serious crime, but only for these purposes, under strict conditions.

The Eurodac Regulation applies to all EU Member States and to the Schengen associated countries (see Table 2).

([78]) eu-LISA, *Eurodac 2023 Annual Report*, Publications Office of the European Union, Luxembourg, 2024, p. 14.

([79]) It is complemented by an implementing regulation laying down more detailed rules for the application of Eurodac; see Commission Implementing Regulation (EU) 2025/2055 of 2 October 2025 laying down rules for the application of Regulation (EU) 2024/1351 of the European Parliament and of the Council, as regards asylum and migration management and repealing Commission Regulation (EC) No 1560/2003 (OJ L, 2025/2055, ELI: http://data.europa.eu/eli/reg_impl/2025/2055/oj).

2.1.2. Visa information system

VIS aims to facilitate the application procedure for Schengen visas (short-stay visas), long-stay visas and residence permits, and the exchange of data between Schengen member states – including their diplomatic and consular representations – on such applications. It also serves asylum, immigration control and security-related purposes. It stores data about visa and residence permit applicants, including fingerprints, photographs and decisions on applications for visas and residence permits. Fingerprints of children under the age of six years are not processed.

The VIS Regulation (Regulation (EC) No 767/2008) (last amended by Regulation (EU) 2023/2667) describes how VIS works. VIS was rolled out worldwide in November 2015 ([80]). In 2023, 51 million visa applications, 47 million fingerprint datasets and 51 million facial images were stored in VIS ([81]).

As one of the purposes of VIS is reinforcing the internal security of the Schengen area, Council Decision 2008/633/JHA grants national law enforcement authorities and Europol access to data for the prevention, detection or investigation of terrorist offences or of other serious crime, but only for these purposes and under strict conditions. This access was put into effect as of September 2013 ([82]). For example, between October 2021 and September 2023, nearly 32 000 searches were carried out in VIS by national law enforcement authorities and Europol ([83]). Table 2 shows in which EU Member States VIS applies.

([80]) Commission Implementing Decision (EU) 2015/912 of 12 June 2015 determining the date from which the visa information system (VIS) is to start operations in the 21st, 22nd and 23rd regions (OJ L 148, 13.6.2015, p. 28, ELI: http://data.europa.eu/eli/dec_impl/2015/912/oj).

([81]) eu-LISA, *VIS Technical Report (2021–2023) – Factsheet*, 2024.

([82]) See Council Decision 2013/392/EU of 22 July 2013 fixing the date of effect of Decision 2008/633/JHA concerning access for consultation of the visa information system (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 198, 23.7.2013, p. 45, ELI: http://data.europa.eu/eli/dec/2013/392/oj), which was then replaced, as a result of a successful action for annulment before the CJEU, by Council Implementing Decision (EU) 2015/1956 of 26 October 2015 fixing the date of effect of Decision 2008/633/JHA concerning access for consultation of the visa information system (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 284, 30.10.2015, p. 146, ELI: http://data.europa.eu/eli/dec_impl/2015/1956/oj).

([83]) eu-LISA, *VIS Technical Report (2021–2023) – August 2024*, Publications Office of the European Union, Luxembourg, 2024, p. 22.

2.1.3. Schengen information system

The SIS stores alerts on certain categories of wanted or missing persons (both EU citizens and third-country nationals) and missing or stolen objects. It also contains alerts on third-country nationals who are subject to a refusal of entry or a return decision. The database includes instructions to police officers and border guards on specific action to be taken when a person or object is located (e.g. to arrest a suspect, to protect a vulnerable missing person or to seize an invalid passport). National law enforcement, border control, customs, visa and judicial authorities can access the data stored in the SIS, strictly within their mandates.

The system has been operational since March 1995; its more advanced second generation ([84]) was launched in April 2013. A revision of the SIS legal framework encompassing three different legal acts – namely the SIS Regulation (Regulation (EU) 2018/1862), SIS Border Checks Regulation (Regulation (EU) 2018/1861) and SIS Returns Regulation (Regulation (EU) 2018/1860) – entered into force in December 2018. The upgraded SIS entered into operation in March 2023 ([85]). It brought about important technical and operational improvements including new alert categories (e.g. return decisions, preventive alerts to protect vulnerable persons) and created more efficient information exchange between EU Member States' law enforcement authorities and with EU agencies such as Europol, the European Union Agency for Criminal Justice Cooperation (Eurojust) and Frontex, with the aim of enhancing security and border management.

In 2024, the SIS included a total of more than 93 million alerts ([86]), of which only some 1.8 % were alerts on persons, the rest being on objects ([87]). In 2024, over 15 billion queries were performed in SIS by the Member States and the EU agencies authorised to access the system ([88]). Table 2 shows in which Member States the SIS applies.

([84]) See Regulation (EU) No 1987/2006 (OJ L 381, 28.12.2006, p. 4, ELI: http://data.europa.eu/eli/reg/2006/1987/oj); and Decision 2007/533/JHA (OJ L 205, 7.8.2007, p. 63, ELI: http://data.europa.eu/eli/dec/2007/533/oj).

([85]) European Commission, 'Security union: The renewed Schengen Information Systems enters into operation', European Commission website, 7 March 2023.

([86]) eu-LISA, *2024 SIS Annual Statistics*, 2025, p. 4.

([87]) eu-LISA, *2024 SIS Annual Statistics*, 2025, p. 11.

([88]) eu-LISA, *2024 SIS Annual Statistics*, 2025, p. 6.

2.1.4. Entry/exit system

The entry/exit system (EES) was created by the EES Regulation (Regulation (EU) 2017/2226, last amended by Regulation (EU) 2021/1152) for registering the movements into and out of the Schengen area of all third-country nationals who are admitted for a short stay (both visa-bound and visa-free travellers), meaning one or multiple visits amounting to a maximum of 90 days in a period of 180 days. The system calculates and monitors the duration of stay of third-country nationals admitted, with a view to facilitating the border crossing of bona fide travellers and to identifying overstayers and identity fraud. It will replace the current obligation to stamp passports manually with electronic registration of when and where the person entered and exited the Schengen area and an automated calculation of how many days the person can still stay on a short-term basis. The EES also records refusals of entry.

The objectives of the EES also include preventing irregular immigration and facilitating the management of migration flows. As an additional purpose, the system should contribute to the prevention, detection and investigation of terrorist offences and of other serious crime. As a result, alongside border, visa and immigration authorities, national law enforcement authorities and Europol will have access to the data stored therein but only for the national-security-related purposes described above and under strict conditions.

The system started to operate in October 2025 pursuant to Commission Implementing Decision (EU) 2025/1544 but did not operate in full for the first six months (see Regulation (EU) 2025/1534). The EES applies to all states that are part of the Schengen area (see Table 2).

2.1.5. European travel information and authorisation system

The ETIAS Regulation (Regulation (EU) 2018/1240, last amended by Regulation (EU) 2021/1152) established a pre-border checks system for visa-free travellers. The automated system screens nationals from visa-free third countries to establish whether or not they should be allowed to enter the EU for visits of up to 90 days in any 180-day period. Using an online application tool, it collects personal data on visa-free travellers prior to their arrival at the EU's external borders. Frontex and the border control authorities of the relevant Member State(s) cross-check those data against all relevant databases. If the checks conclude that the person does not

pose a security, irregular migration or public health risk, the individual will receive an automatic authorisation to travel to the EU. Otherwise, the application will be referred to manual checks by competent authorities. The ETIAS thus facilitates travel by providing travellers with an early indication of their likely admissibility into the Schengen area.

Before a person embarks on a trip, carriers, such as airlines, have limited access to ETIAS and the EES data only to verify if the traveller holds an ETIAS authorisation and has not yet exhausted the 90 days in a 180-day period.

The system is expected to go live in the last quarter of 2026. ETIAS will apply to all states that are part of the Schengen area and Cyprus (see Table 2).

2.1.6. European criminal records information system on third-country nationals

The European criminal records information system on third-country nationals (ECRIS-TCN) is a centralised database that enables EU Member States to exchange information on the criminal records of third-country nationals convicted in the EU. The system was created by the ECRIS-TCN Regulation (Regulation (EU) 2019/816) and supplements the decentralised EU criminal records database (the European criminal records information system, or ECRIS) established by Directive (EU) 2019/884.

ECRIS-TCN helps identify, on a 'hit / no hit' basis, which Member State(s) hold(s) criminal records on a third-country national being checked. Queries may be made using biometric data, such as fingerprints. In the event of a hit, national judicial authorities can contact the corresponding Member State bilaterally for more details using ECRIS.

National authorities will be entitled to query ECRIS-TCN for criminal proceedings but also for non-criminal proceedings (e.g. when processing applications for a residence permit). Europol, Eurojust and the European Public Prosecutor's Office are also afforded direct access to ECRIS-TCN, within their respective mandates. The ECRIS-TCN Regulation was amended in 2024 by Regulation (EU) 2024/1352 to enable access and search of the ECRIS-TCN database by national authorities in charge of screening third-country nationals at the external borders.

ECRIS-TCN is expected to be operational in 2026. All EU Member States except for Denmark participate in the system (see Table 2).

2.1.7. Europol information system

The Europol information system (EIS) is Europol's central criminal information and intelligence database. It became operational in 2005 and is regulated in Europol's founding regulation, Regulation (EU) 2016/794. It covers all of Europol's mandated crime areas and contains information on serious crimes with a transnational character, on suspected and convicted persons, on criminal structures and on the means used to commit crimes. The EIS can store and cross-check biometrics and cybercrime-related data. The EIS is a reference system, which can be used to check if information on an individual or an object of interest is available beyond national jurisdictions.

Europol staff and designated officers in EU Member States' law enforcement authorities have access to the EIS. National authorities can run searches in the system and, in the event of a hit, they can request additional information via Europol's Secure Information Exchange Network Application. In addition, Europol's cooperation partners may have indirect access to store and query data via Europol's operational centre.

Table 2 lists the existing large-scale IT systems, indicating the main purpose, the third-country nationals covered, the biometric identifiers processed and their geographical applicability. For more information on these EU databases, particularly from the data protection angle, see the *Handbook on European Data Protection Law – 2018 edition*, Section 8.3.2.

Table 2: Large-scale EU IT systems in the field of migration and security

IT system	Main purpose	Persons covered	Biometric identifiers	Applicability
Eurodac	General support for the common European asylum system; determining the state responsible for examining an application for international protection; curbing irregular migration and secondary movements within the EU; child protection; comparison of data for law enforcement purposes; supporting ETIAS and VIS; producing statistics	Applicants for and beneficiaries of international protection (including temporary protection holders) Migrants who crossed the external borders irregularly or those who are found in an irregular situation Third-country nationals eligible for resettlement		27 EU Member States + SAC
VIS	Facilitating the exchange of data between Schengen member states on visa and residence permit applications	Visa applicants and sponsors		25 EU Member States (not CY, IE) + SAC
SIS – police	Facilitating law enforcement cooperation to safeguard security in the EU and in Schengen member states	Missing, vulnerable and wanted persons		27 EU Member States + SAC
SIS – border checks	Entering and processing alerts for the purpose of refusing entry into or stay in the Schengen member states	Third-country nationals convicted or suspected of an offence subject to a custodial sentence of at least one year Migrants in an irregular situation		27 EU Member States + SAC

IT system	Main purpose	Persons covered	Biometric identifiers	Applicability
SIS – return	Entering and processing alerts on third-country nationals subject to a return decision	Migrants in an irregular situation subject to a return decision		27 EU Member States + SAC
EES	Calculating and monitoring the duration of authorised stay of third-country nationals and identifying overstayers	Third-country-national travellers coming for a short-term stay		25 EU Member States (not CY, IE) + SAC
ETIAS	Pre-travel assessment of whether or not a visa-exempt third-country national poses a security, irregular migration or public health risk	Travellers coming from visa-free third countries	None	26 EU Member States (not IE) + SAC
ECRIS-TCN	Sharing information on previous convictions of third-country nationals	Third-country nationals with a criminal record		26 EU Member States (not DK)
EIS	Storing and querying data on serious international crime and terrorism	Persons suspected or convicted of serious organised crime and terrorism		27 EU Member States

Note: **Blue colouring** *of an IT system means that it will start (fully) functioning later – precise date to be determined by the European Commission. To find up-to-date information on the go-live dates, consult eulisa.europa.eu (for all IT systems except for Europol) and europol.europa.eu (for Europol).*

 *: fingerprints;*  *: palm prints;*  *: facial image;*  *: DNA profile.*

SAC denotes Schengen associated countries, that is, Iceland, Liechtenstein, Norway and Switzerland.

For further details on applicability, see notes to Annex 1.

Source: FRA, based on legal instruments, 2026.

2.2. Interoperability

Interoperability is the ability of different IT systems to communicate and exchange data with each other. In practice, this means that entitled users will be able to carry out a targeted search for an individual across the various IT systems in one go and see the personal data they are authorised to access, rather than having to undertake multiple searches in separate systems. This needs to be done in line with the entitled user's access rights and the data protection requirements of the underlying systems. In other words, the EU IT systems, which are currently not interlinked and operate in silos, will be able to 'speak to each other' once they are interoperable. Interoperability aims to help authorities to verify the identity of those individuals whose data are stored in at least one of the underlying IT systems and to detect multiple identities.

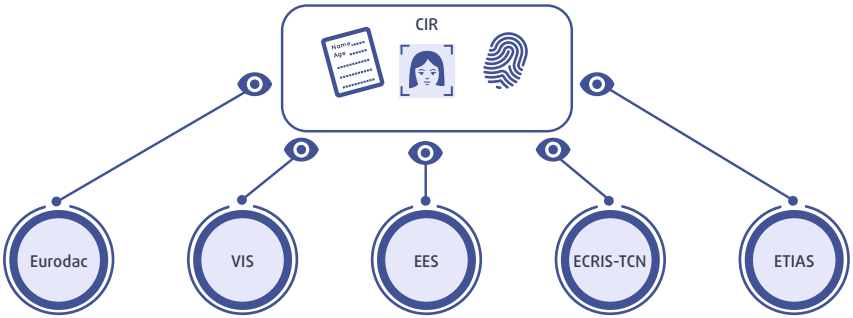
Interoperability may enhance protection – for example by supporting the detection of missing people, including children – but also creates fundamental rights challenges. These result from the weak position of the individuals whose data are stored in IT systems, who often lack knowledge of their rights.

The core components of interoperability of large-scale EU IT systems as established by the Interoperability Regulations (Regulation (EU) 2019/817 and Regulation (EU) 2019/818) are explained in Sections 2.2.1 to 2.2.4. They are expected to become operational by the end of 2026. Interoperability will also facilitate identity and security checks under the Screening Regulation (Regulation (EU) 2024/1356).

2.2.1. Common Identity Repository

The Common Identity Repository (CIR) holds the basic identity data of all people whose data are in large-scale EU IT systems in a common, central data store (Chapter IV of the Interoperability Regulations). This identity data repository will be common to and used by all the IT systems except for the SIS, for which a separate technical solution is applied. As illustrated in Figure 2, specific biometric and biographical data are stored in the common repository. These continue to 'belong' to the underlying IT systems.

Figure 2: Common Identity Repository



Source: FRA, 2026.

2.2.2. European Search Portal

The European Search Portal acts as a single window to simultaneously query the various IT systems and the CIR with one search. Through the portal, users will be able to see data on an individual stored in those IT systems that they are authorised to view, including the SIS, the EIS and two Interpol databases, using both biographical and biometric data. A single screen will show the combined results.

2.2.3. Multiple-identity detector

The multiple-identity detector is a mechanism to detect if data on the same person are stored in several IT systems under different names and identities (Chapter V of the Interoperability Regulations). Different identities used by the same person will be detected and linked, which will help combat identity fraud. When national authorities with access rights search the systems, they can see all identities registered in the systems relating to the individual, regardless of whether or not they have been stored under a different name. The multiple-identity detector is intended to ensure the correct identification of an individual through automated and manual verification processes.

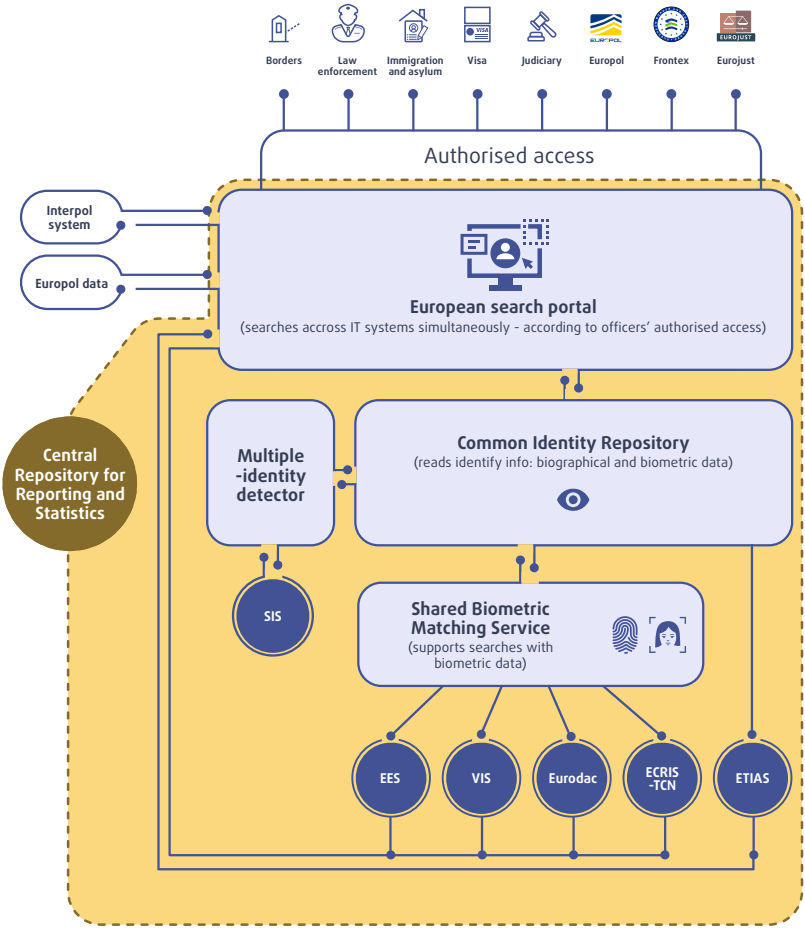
2.2.4. Shared biometric matching service

By comparing templates from biometric data stored in the IT systems, the shared biometric matching service enables the searching and comparing of biometric data (e.g. fingerprints and facial images) across different IT systems (Chapter III of the

Interoperability Regulations). It is a tool to facilitate searches launched across systems using biometric data. Without it, biometric data could not be used for the CIR and the multiple-identity detector.

Figure 3 illustrates the technical components of interoperability of large-scale IT systems and the individual underlying IT systems affected.

Figure 3: Technical components of interoperability



Source: FRA, based on data from European Commission, 2026.

2.3. Using artificial intelligence in large-scale EU IT systems

Under EU law, considering the latest technological developments and to foster trustworthy artificial intelligence (AI) in Europe, the EU adopted a legal framework governing AI. The AI Act (Regulation (EU) 2024/1689) establishes harmonised risk-based rules on AI and aims at addressing the specific challenges that the development and operation of AI systems may bring.

In relation to large-scale EU IT systems in the area of migration, asylum and border management, Annex III to the AI Act classifies as 'high risk' those AI systems that are used for biometric identification at the border, for law enforcement or for migration, asylum and border management. Such high-risk AI systems must comply with a series of requirements and meet various preconditions before they can be put on the market. This includes human oversight, traceability, transparency obligations and risk management procedures.

The AI Act entered into force in August 2024 and its provisions will apply gradually. Article 111 of the AI Act establishes transitional provisions for AI components within large-scale EU IT systems. AI systems integrated into these systems and in use before 2 August 2027 must comply with the AI Act by the end of December 2030. EU legislation to postpone these deadlines was pending on 1 June 2026.

Article 39 of the Interoperability Regulations envisage the creation of a Central Repository for Reporting and Statistics. The AI-supported common repository will contain a large amount of anonymised statistical data relating to individuals whose personal data are stored in EU IT systems that the EU agencies and Member States' authorities can use for analytical purposes ([89]).

Under CoE law, the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ([90]) was adopted in May 2024. It aims to fill legal gaps in these areas that may result from rapid technological advances. It is the first-ever international legally binding treaty in this field and establishes a common approach to ensure that activities within the life cycle of AI systems are compatible with human rights, democracy and the rule of law while enabling innovation

([89]) For more details see FRA's online information platform on EU IT systems for migration and policing.

([90]) CoE, Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CETS No 225, Vilnius, 2024.

and trust. The abovementioned Framework Convention covers the use of AI systems by public authorities – including private actors working on their behalf – and private actors. It seeks consistency with the EU AI Act, and accession to it is open to CoE member states, the EU and other states.

2.4. Oversight

Under EU law, to ensure a high and consistent level of data protection, national and EU bodies are mandated to oversee the IT systems' compliance with EU data protection standards. Supervision is shared between the data protection authorities (DPAs) of EU Member States and the European Data Protection Supervisor (EDPS). Each individual IT system and the Interoperability Regulations set out the specific roles and powers of the DPAs and the EDPS.

The EDPS is responsible for monitoring and ensuring the protection of fundamental rights of individuals with regard to the processing of personal data by EU agencies and bodies, including data stored in large-scale EU IT systems. To that end, the EDPS acts as an investigating and complaints body. It works in close cooperation with the national supervisory authorities.

While there are slight differences between the legal bases for the EU IT systems, in general they establish that national DPAs and the EDPS must cooperate, each acting within the scope of its own powers. They form supervision coordination groups for each large-scale EU IT system, to ensure coordinated and effective supervision of their functioning. Representatives of the national DPAs and of the EDPS meet regularly – usually twice a year, within the framework of the European Data Protection Board – to discuss common issues regarding supervision. Activities include, inter alia, joint inspections and inquiries, and work on a shared methodology. The same obligations also flow from Article 62 of the EU Institutions Data Protection Regulation (Regulation (EU) 2018/1725).

In addition, every person has the right to lodge a complaint with the national DPA, which must investigate and inform the complainant of the progress or the outcome of the complaint within three months ([91]). For alleged data protection breaches by eu-LISA when managing the EU IT systems, individuals can turn to the EDPS, which needs to inform the complainant of the progress and the outcome of the complaint within three

([91]) GDPR, Arts 13(2)(d), 14(2)(e), 52 and 53.

months (Article 57(1)(e), and Article 63 of the EU Institutions Data Protection Regulation). If unsuccessful, both complaint procedures can lead to judicial review, before the competent national courts or the CJEU, respectively ([92]) (see also Section 2.9).

Under CoE law, Modernised Convention No 108 requires states to appoint one or more fully independent and impartial supervisory authorities for ensuring compliance with the convention (Article 15). Such authorities must have powers to investigate, to intervene, to issue decisions on violations of the convention's data protection standards and to impose administrative sanctions, alongside the power to initiate legal proceedings in the event of alleged violations of the safeguards in the convention. Supervisory authorities also need to be mandated to deal with individual complaints concerning data protection rights.

2.5. Purpose limitation, data minimisation and data accuracy

Under EU law, the principle of purpose limitation requires that personal data be collected only for specified purposes, which must be explicitly defined. The principle flows from Article 8(2) of the Charter of Fundamental Rights of the European Union (the Charter) and is mirrored in the EU data protection legislation, namely in Article 5(1)(b) of the General Data Protection Regulation (GDPR); Article 4(1)(b) of the Law Enforcement Directive; and Article 4(1)(b) of the EU Institutions Data Protection Regulation. Purpose limitation also implies that personal data must not be further processed in a manner that is incompatible with the purposes for which they were collected. The person concerned needs to be able to anticipate the purpose for which data will be processed ([93]).

All legal instruments setting up EU IT systems specify the purpose for which they process personal data. EU IT systems may have additional purposes, such as helping apprehend and return migrants in an irregular situation and fighting terrorism and other serious crime (see Table 3) ([94]). Optimising the use of IT systems and their interoperability to serve additional purposes must not lead to function creep, resulting in data being used for purposes that were not initially envisaged.

([92]) GDPR, Art. 52; EU Institutions Data Protection Regulation, Art. 64.

([93]) CJEU, C-77/21, *Digi Távközlési és Szolgáltató Kft. v. Nemzeti Adatvédelmi és Információszabadság Hatóság*, 20 October 2022, paras 25–27.

([94]) See also CJEU, C-482/08, *United Kingdom of Great Britain and Northern Ireland v. Council of the European Union* [GC], 26 October 2010.

Table 3: Primary and additional purposes in the legal instruments on EU IT systems

IT system	Primary purpose	Additional purposes	
		Apprehension and return	Fighting serious crime and terrorism
Eurodac	General support for the common European asylum system; determining the state responsible for examining an application for international protection; curbing irregular migration and secondary movements; child protection; comparison of data for law enforcement purposes; supporting ETIAS and VIS; producing statistics	Yes	—
VIS	Supporting the visa and residence permit application process and border checks	Yes	Yes
SIS – police	Safeguarding internal security in the Member States	No	—
SIS – borders	Processing alerts on refusals of entry and stay	—	No
SIS – return	Processing of alerts on return decisions	—	No
EES	Registration of entry and exit of all third-country nationals	Yes	Yes
ETIAS	Pre-border checks for visa-free third-country nationals	No	Yes
ECRIS-TCN	Information exchange on previous convictions of third-country nationals in other EU Member States in the context of judicial cooperation	No	—
Interoperability	Ensuring the correct identification of the person	—	—

Note: *— = already part of the primary purpose.*
Source: *FRA, based on existing legal instruments, 2026.*

The trend in EU IT systems and in national systems is to process more biometric and alphanumeric data. Closely linked to the principle of purpose limitation is the principle of data minimisation. It is spelled out in Article 5(1)(c) of the GDPR; Article 4(1)(c) of the Law Enforcement Directive; and Article 4(1)(c) of the EU Institutions Data

Protection Regulation. Data minimisation requires that personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. Following the principle of data minimisation, in VIS for instance, previously collected biometric data should be reused if the applicant applies again for a Schengen visa within 59 months (Article 13(3) of the Visa Code (Regulation (EC) No 810/2009)).

Example: in *Digital Rights Ireland* ([95]), the CJEU criticised the generalised way in which the Data Retention Directive (Directive 2006/24/EC) ([96]) covered all individuals and all means of electronic communication as well as all traffic data without any differentiation, limitation or exception.

Example: the limits on the collection and retention of personal data set in *Digital Rights Ireland* have been further clarified in *La Quadrature du Net* ([97]) in the specific context of indiscriminate data retention by telecommunication providers to combat copyright infringements. In this case, the CJEU confirmed the disproportionate nature of general and indiscriminate retention of personal data even for reasons of national security. However, the CJEU ruled that, for the purpose of safeguarding national security, EU law allows the temporary and targeted retention of traffic and location data where a Member State is confronted with a serious threat to national security and where the measures are strictly necessary, proportionate and subject to independent oversight.

Under the principle of data accuracy, the controller should not use information without taking steps to ensure with reasonable certainty that the data are accurate and up to date. This principle is reflected in Article 5(1)(d) of the GDPR; Article 4(1)(d) of the Law Enforcement Directive; and Article 4(1)(d) of the EU Institutions Data Protection Regulation. The controller must take every reasonable step to ensure that inaccurate personal data are erased or rectified without delay. The principle of data

([95]) CJEU, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others* [GC], 8 April 2014, para. 57.

([96]) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 105, 13.4.2006, p. 54, ELI: http://data.europa.eu/eli/dir/2006/24/oj).

([97]) CJEU, C-511/18, *La Quadrature du Net and Others v. Premier ministre and Others* [GC], 6 October 2020, paras 134–139.

accuracy is also reflected in all legal instruments regulating EU IT systems ([98]). The eu-LISA Regulation also mandates the agency to work towards establishing automated data quality control mechanisms, common data quality indicators and minimum quality standards to store data for all IT systems (Article 12).

Under CoE law, the right to respect for family and private life under Article 8 of the ECHR encompasses private and family life, the home and correspondence. In addition, Article 5(4)(b) of Modernised Convention No 108 establishes the principle of purpose limitation. The processing of personal data must be done for legitimate purposes, and personal data cannot be processed in a way incompatible with those purposes. This is followed by the principle of data minimisation under Article 5(4)(c) of the convention, which establishes that the processing of personal data must be 'adequate, relevant and not excessive in relation to the purposes for which they are processed'. The convention also requires that the data be kept accurate (Article 5(4)(d)).

Example: the ECtHR held that access of national authorities to personal data stored in centralised systems constitutes an interference with the right to private life (Article 8 of the ECHR). In *S. and Marper v. the United Kingdom* ([99]), the ECtHR found that the retention of fingerprints on the authorities' records can be regarded as constituting an interference with the right to respect for private life. In *Škoberne v. Slovenia* ([100]), the ECtHR ruled that that systematic and indiscriminate retention of telecommunications data for a period of 14 months breached the right to private life (Article 8 of the ECHR). In *Weber and Saravia v. Germany* ([101]), the ECtHR further held that the transmission of data to other authorities and the subsequent use of data by them enlarges the group of individuals with knowledge of the personal data intercepted and can therefore lead to investigations being instituted against the persons concerned. In the Court's view, this danger amounts to an interference with the right to private life separate from that entailed by the initial collection and storage of personal data.

([98]) See VIS Regulation, Art. 29(1)(c); Eurodac Regulation, Art. 36(1)(b); SIS Regulation, Art. 59(1); SIS Border Checks Regulation, Art. 44(1); SIS Returns Regulation, Art. 19 (containing a cross reference to the SIS Border Checks Regulation); EES Regulation, Art. 39(1)(c); ETIAS Regulation, Arts 7(2)(a) and 8(2)(a); and ECRIS-TCN Regulation, Art. 13(1)(d).

([99]) ECtHR, *S. and Marper v. the United Kingdom* [GC], Nos 30562/04 and 30566/04, 4 December 2008, para. 73.

([100]) ECtHR, *Škoberne v. Slovenia*, No 19920/20, 15 February 2024. As regards the nature of interference in the case of data retention and subsequent use of such data, and the applicable safeguards, see also ECtHR, *Big Brother Watch and Others v. the United Kingdom* [GC], Nos 58170/13 and two others, 25 May 2021; ECtHR, *Ekimdzhiev and Others v. Bulgaria*, No 70078/12, 11 January 2022; and ECtHR, *Breyer v. Germany*, No 50001/12, 30 January 2020.

([101]) ECtHR, *Weber and Saravia v. Germany*, No 54934/00, 29 June 2006.

For more on purpose limitation, data minimisation and accuracy, see the *Handbook on European Data Protection Law – 2018 edition*, Chapter 3 and Section 8.3.2.

2.6. Right to information

Under EU law, the EU data protection legislation includes provisions guaranteeing the right to information and the principle of transparency ([102]). Under Articles 13 and 14 of the GDPR and Article 14 of the Law Enforcement Directive, individuals must be informed of the identity and contact details of the controller, the purpose of the processing of data, the retention periods, the right to request access to stored data and its erasure or rectification, and the right to lodge a complaint with a supervisory authority. Similar requirements stem from Article 79 of the EU Institutions Data Protection Regulation. However, Article 13(3) of the Law Enforcement Directive and Article 79(3) of the EU Institutions Data Protection Regulation carve out some possible exceptions to this obligation, to avoid obstructing or prejudicing ongoing investigations or to protect public security and national security. The provision of information is not only a transparency requirement under EU data protection law, but it also promotes respect for the dignity of the person as protected in Article 1 of the Charter.

The right to information is included in the legal instruments for Eurodac, VIS, SIS, EES and ETIAS and in the Interoperability Regulations ([103]). Under the SIS, it fully applies in the event of alerts on refusal of entry or stay and on return decisions. In the context of police or judicial cooperation in criminal matters, the right to information can be restricted where national laws allow, in particular to safeguard national security, defence and public security, and for the prevention, detection, investigation and prosecution of criminal offences (Article 52(2) of the SIS Border Checks Regulation). For ECRIS-TCN, individuals have the right to obtain information in writing concerning their own criminal records in accordance with the law of the Member State where they request such information to be provided (recital 21 of the ECRIS-TCN Regulation).

Although persons must normally be informed when their data are collected, such information does not necessarily cover all the purposes for which data may be used. Table 4 illustrates the main aspects of the right to information as guaranteed by the different instruments setting up large-scale EU IT systems.

([102]) GDPR, Art. 5(2); Law Enforcement Directive, recital 26; and EU Institutions Data Protection Regulation, Art. 4(1).

([103]) Eurodac Regulation, Art. 42; VIS Regulation, Art. 37; SIS Border Checks Regulation, Art. 52 and SIS Returns Regulation, Art. 19 (containing a cross reference to the SIS Border Checks Regulation); EES Regulation, Art. 50; ETIAS Regulation, Art. 64; and Interoperability Regulations, Art. 47.

Table 4: The right to information when data are collected in EU IT systems

		Eurodac	VIS	SIS – police	SIS – borders SIS – return	EES	ETIAS	ECRIS-TCN	Inter-operability
Instrument has a provision on the right to information		Yes	Yes	No	Yes, with restriction	Yes	Yes	No	Yes
Instrument expressly requires that information be provided in an understandable manner		Yes	Yes	n/a	No	Yes	No	n/a	Yes
Information must include that data can be used for:	Determining the Member State responsible for the asylum procedure	Yes	Yes	n/a	n/a	n/a	n/a	n/a	Yes
	Apprehension and return purposes	Yes	Yes	n/a	Yes, with restriction	Yes	n/a	n/a	Yes
	Prevention, detection and investigations of serious crime and terrorism	Yes	Yes	n/a	Yes, with restriction	Yes	No	n/a	Yes
Data subject must be informed about possible data sharing with third countries		Yes	Yes	n/a	n/a	Yes	n/a	n/a	n/a

Note: *n/a = not applicable.*
Source: *FRA, based on existing legal instruments, 2026.*

Under CoE law, pursuant to Article 8 of Modernised Convention No 108, States Parties must provide that controllers inform the data subjects about their identity and habitual residence, the legal basis and purpose of the processing, the categories of personal data processed, the recipients of their personal data (if any) and how they can exercise their rights to access, rectification and remedy. Any other information deemed necessary to ensure fair and transparent personal data processing should also be communicated.

For more on the right to information, see the *Handbook on European Data Protection Law – 2018 edition*, Sections 6.1 and 8.3.2, and FRA's online information platform on EU IT systems for migration and policing.

2.7. Access to data

Under EU law, the legal instruments instituting large-scale EU IT systems clearly define the type of authorities that can search the IT systems, including by means of interoperability. EU Member States are obliged to notify the European Commission of the names of the authorities entitled to access the IT system. This information is made publicly available in the *Official Journal of the European Union* and by eu-LISA ([104]). Table 5 gives an overview of the types of authorities allowed to search the individual EU IT systems. The larger the number with access, the higher the risk of unlawful use.

All EU IT systems, except ECRIS-TCN, allow access by national law enforcement authorities and Europol for fighting terrorism and other serious crime. This is covered by the main purpose of the SIS regulations on police cooperation and border checks, in the Eurodac Regulation ([105]) and as an additional purpose in the regulations establishing VIS, EES and ETIAS ([106]).

([104]) On the SIS, see OJ 2024 C 2024/2875; on Eurodac, see eu-LISA, *List of designated authorities which have access to data recorded in the central system of Eurodac pursuant to Article 27(2) of Regulation (EU) No 603/2013, for the purpose laid down in Article 1(1) of the same regulation*, 2025; and on the VIS, see OJ 2023 C 169/2.

([105]) SIS Regulation, Art. 1; SIS Border Checks Regulation, Art. 1; Eurodac Regulation, Art. 1(1).

([106]) VIS Regulation, Art. 1; EES Regulation, Art. 6(2); and ETIAS Regulation, Art. 1(2).

Table 5: Authorities allowed to search EU IT systems, by purpose

IT system	Visa issuance	Border checks	Fighting serious crime and terrorism	Combating irregular migration	Return procedure	Dublin procedure
Eurodac	Yes	n/a	Police and Europol	n/a (*)	Immigration authorities	Asylum authorities
VIS	Visa and border authorities	Border authorities	Police and Europol	Police	Immigration authorities	Asylum authorities
SIS – police SIS – borders SIS – return	Visa and border authorities	Border authorities	Police and Europol	Police	Immigration authorities	n/a
EES	Visa and border authorities	Border authorities	Police and Europol	Police	Immigration authorities	n/a
ETIAS	n/a	Border authorities	Police and Europol	Immigration authorities	n/a	n/a
ECRIS-TCN	n/a	n/a	Police, Europol, judicial authorities, Eurojust and the European Public Prosecutor's Office	n/a	n/a	n/a
Interoperability	Visa and border authorities	Border authorities	Police and Europol	Police	Immigration authorities	Asylum authorities

(*) Screening authorities will have access to Eurodac.
Note: n/a = not applicable.
'Dublin procedure' is defined in Section 5.2 of this handbook.
Source: FRA, based on existing legal instruments, 2026.

EU data protection legislation prohibits unauthorised access to personal data in Article 5(1)(f) of the GDPR and Article 4(1)(f) of the Law Enforcement Directive. Both state that personal data must be 'processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing'. Under Articles 28 and 32 of the GDPR, the processor and controller need to take the necessary measures to avoid data being disclosed to or accessed by unauthorised third parties.

> Example: in *Digital Rights Ireland* ([107]), the CJEU clarified that EU legislation providing for the collection and retention of personal data must impose sufficient guarantees to protect personal data effectively against the risk of abuse and against any unlawful access and use of those data. The quantity and sensitive nature of the data must be taken into account. The CJEU emphasised the need for stronger safeguards where personal data are processed automatically and where there is a significant risk of unlawful access to those data. On this matter, the CJEU highlighted that there must be clear and strict rules to ensure the integrity and confidentiality of the data.

Under CoE law, Modernised Convention No 108 requires that the controller and, where applicable, the processor take appropriate security measures against risks such as unauthorised access to, or destruction, loss or disclosure of, personal data (Article 7). Under Article 15 of the convention, states must ensure that supervisory authorities are bound by obligations of confidentiality with regard to confidential information to which they have access, or have had access, in the performance of their duties.

For more on the use of stored data and protection from unauthorised access, see the *Handbook on European Data Protection Law – 2018 edition*, Chapter 4 and Section 8.3.2, and FRA's online information platform on EU IT systems for migration and policing.

([107]) CJEU, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others* [GC], 8 April 2014, para. 54 (with further references).

2.8. Data transfers to third parties

Under EU law, the EU data protection framework and the individual legal instruments establishing the various EU IT systems strictly regulate the transmission of personal data to third countries and international organisations. Chapter V of the GDPR and Chapter V of the Law Enforcement Directive oblige the data controller and processor to ensure that the processing of data after transfer to a third country or an international organisation complies with data protection rules. Under Article 44 of the GDPR, the controller and processor will also be responsible for onward transfers, for example from one third country to another.

Given the different types of data stored in the individual EU IT systems, data sharing with third countries and international organisations is regulated differently in each of the information systems, as illustrated in Table 6. Typically, information is shared to obtain the assistance of the country of origin for the purposes of identifying a third-country national in view of a future removal. This also concerns rejected asylum applicants.

To facilitate police cooperation, under certain conditions, a Member State may share SIS data with third countries through mechanisms used by Europol (Article 48) and Eurojust (Article 49) according to the SIS Regulation. The ECRIS-TCN Regulation does not allow direct data sharing with third countries, but non-EU states' requests for information on previous convictions contained in ECRIS-TCN can be addressed to Eurojust, which will contact the EU Member State that holds information on the conviction (Article 17).

Table 6: Purposes allowing the sharing of data with third countries or international organisations in EU IT systems

IT system	Purposes allowing sharing data with third parties
Eurodac	For return purposes (Article 50, Eurodac Regulation)
VIS	For return purposes (Article 31, VIS Regulation)
SIS – police	No sharing, except by Europol and Eurojust with the consent of the Member State that issued the alert, under certain conditions (Articles 48 and 49, SIS Regulation)
SIS – borders	No sharing, except by Europol with the consent of the Member State that issued the alert (Article 35, SIS Border Checks Regulation)
SIS – return	For return purposes (Article 15, SIS Returns Regulation)
EES	For return purposes (Article 41, EES Regulation)
ETIAS	For return purposes (Article 65, ETIAS Regulation)

IT system	Purposes allowing sharing data with third parties
ECRIS-TCN	No sharing, except by application to Eurojust, which will contact the EU Member State that holds information (Articles 17 and 18, ECRIS-TCN Regulation)
Interoperability	No sharing (Article 50, Regulation (EU) 2019/817, and Article 50, Regulation (EU) 2019/818)

Note: Queries of Interpol databases are not covered by this table.
Source: FRA, based on existing legislative instruments, 2026.

Under CoE law, Modernised Convention No 108 regulates the transborder flows of personal data. States Parties cannot prohibit the transfer of such data to a recipient under the jurisdiction of another State Party unless there is a real and serious risk that it would lead to the circumvention of the provisions of the convention. Article 14(2) of the convention prescribes that transborder data flows to a recipient who is not subject to the jurisdiction of a State Party are only allowed if there is an appropriate level of protection. An appropriate level of protection can be secured by the law of that state or international organisation, or protection can be secured by ad hoc or approved standardised safeguards adopted and implemented by the persons involved in the transfer and further processing of the data.

For more on international data transfers, see the *Handbook on European Data Protection Law – 2018 edition*, Chapter 7, and FRA's online information platform on EU IT systems for migration and policing.

2.9. Data subjects' rights

Under EU law, Article 8(2) of the Charter sets out, as part of the right to protection of personal data, that '[e]veryone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.' The possibility of exercising the right of access is part of the right to an effective remedy, as protected under Article 47 of the Charter. The CJEU has stated that the characteristics of a remedy must be determined in a way that is consistent with the principle of effective judicial protection ([108]).

([108]) CJEU, C-432/05, *Unibet (London) Ltd, Unibet (International) Ltd v. Justitiekanslern* [GC], 13 March 2007, para. 37; CJEU, C-93/12, *ET Agrokonsulting-04-Velko Stoyanov v. Izpalnitelen direktor na Darzhaven fond 'Zemedelie' – Razplashtatelna agentsia*, 27 June 2013, para. 59; and CJEU, C-562/13, *Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida* [GC], 18 December 2014, para. 45.

The rights of access to, and correction and deletion of, one's own stored data are also included in the EU data protection legislation, namely in Articles 15 to 17 of the GDPR, Articles 14 to 17 of the Law Enforcement Directive and Articles 80 to 83 of the EU Institutions Data Protection Regulation. The right of access, as guaranteed under Article 15 of the GDPR and Articles 14 to 15 of the Law Enforcement Directive, may be restricted, provided the measure is necessary and proportionate for specific reasons. For example, such a reason may entail the need to protect national security or prevent criminal offences.

As a rule, the persons concerned must be informed about the rights of access, correction and deletion at the moment the data are included in the IT systems (see Section 2.6).

> Example: in *Tele2 Sverige* ([109]), the CJEU held that, in the context of security measures affecting the right to private life and the right to the protection of personal data, national law enforcement authorities must notify the persons affected, under the applicable national procedures, as soon as that notification is no longer capable of jeopardising the investigations undertaken by those authorities. The CJEU has found that notification is, in fact, necessary to enable the persons affected by these measures to exercise, inter alia, their right to an effective legal remedy guaranteed in Article 47 of the Charter.

The right of access, rectification and erasure of data is reflected in all EU IT systems (including the components of interoperability) ([110]), but it is limited regarding the SIS. Under Article 19 of the SIS Returns Regulation, Article 53(3) of the SIS Border Checks Regulation and Article 67(3) of the SIS Regulation, the authorities can deny access to the SIS if this is indispensable for the performance of a lawful task in connection with an alert or for the protection of rights and freedoms of third parties. In the context of interoperability, Article 49 of Regulation (EU) 2019/817 and Article 49 of Regulation (EU) 2019/818 mandate eu-LISA to run a web portal for the purposes of facilitating the exercise of the rights of access to, or rectification, erasure or restriction of

([109]) CJEU, Joined Cases C-203/15 and C-698/15, *Tele2 Sverige AB v. Post- och telestyrelsen and Secretary of State for the Home Department v. Tom Watson and Others* [GC], 21 December 2016, para. 12. See also, *mutatis mutandis*, CJEU, C-555/07, *Seda Kücükdeveci v. Swedex GmbH & Co. KG* [GC], 19 January 2010, para. 52; and CJEU, C-362/14, *Maximillian Schrems v. Data Protection Commissioner* [GC], 6 October 2015, para. 95.

([110]) See VIS Regulation, Art. 38; Eurodac Regulation, Art. 43; EES Regulation, Art. 52; ETIAS Regulation, Art. 64; ECRIS-TCN Regulation, Art. 25; and Interoperability Regulations, Art. 48.

processing of, personal data. The web portal will include a user interface enabling persons to receive the contact information of the authorities of the Member State that is responsible for the manual verification of different identities.

All EU IT systems, including in the context of interoperability, guarantee the right to appeal before a court or a competent authority ([111]). In addition, Articles 78 to 79 of the GDPR, Article 53 to 54 of the Law Enforcement Directive and Article 64 of the EU Institutions Data Protection Regulation reconfirm that the right to an effective judicial remedy must be provided for in any decisions by the controller or the processor and the supervisory authority. The possibility of lodging an administrative complaint before a supervisory authority is not considered an effective remedy under the Charter.

Under CoE law, the rights of data subjects are regulated under Article 9 of Modernised Convention No 108. Every individual has a right to obtain confirmation of the processing of personal data relating to them, to object at any time to the processing of their personal data and to obtain rectification or erasure of data if those data have been processed contrary to the convention. Remedies are provided for under the convention (Article 12).

> Example: in *Yonchev v. Bulgaria* ([112]), the ECtHR found that the legislation must provide an effective and accessible procedure enabling applicants to have access to any important information concerning them. However, in *Segerstedt-Wiberg and Others v. Sweden* ([113]), concerning access to personal information held by security services, the ECtHR held that the interests of national security and the fight against terrorism prevail over the applicant's interest in having access to information about them in Swedish Security Service (Säkerhetspolisen) files.

For more on the rights of data subjects, see the *Handbook on European Data Protection Law – 2018 edition*, Chapter 6.

([111]) VIS Regulation, Art. 40(1); Eurodac Regulation, Art. 43(5); EES Regulation, Art. 54(1); ETIAS Regulation, Art. 64(4); SIS Returns Regulation, Art. 19; SIS Border Checks Regulation, Art. 54; SIS Regulation, Art. 68(1); ECRIS-TCN Regulation, Art. 27; and Interoperability Regulations, Art. 48(8).

([112]) ECtHR, *Yonchev v. Bulgaria*, No 12504/09, 7 December 2017, paras 49–53.

([113]) ECtHR, *Segerstedt-Wiberg and Others v. Sweden*, No 62332/00, 6 June 2006, para. 91.

Key points

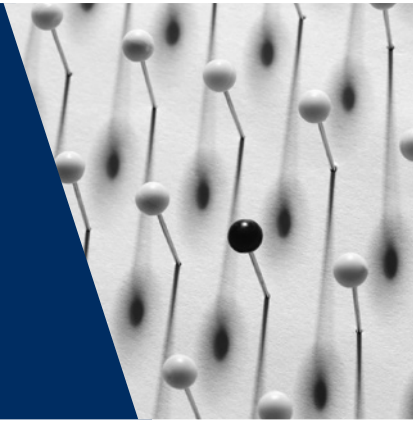
- Visa, border, asylum and immigration authorities of EU Member States rely on technology when making decisions affecting a person (see Introduction to this chapter).
- Eurodac serves various purposes such as, among others, assisting Member States in determining where applicants for international protection first entered the EU and where their claims should be examined, curbing irregular migration, detecting secondary movements, ensuring child protection and assisting Member States with other aspects relating to the EU's asylum policies (see Section 2.1.1).
- VIS contains fingerprints, facial images and decisions on applications for Schengen visas, long-stay visas and residence permits and facilitates the application procedure for visas and residence permits (see Section 2.1.2).
- The SIS contains alerts on certain categories of wanted or missing persons, missing or stolen objects and third-country nationals subject to a refusal of entry or a return decision. The SIS assists national law enforcement, border control, customs, visa and judicial authorities (see Section 2.1.3).
- The EES registers the travel(s) of all third-country nationals into and out of the Schengen area and monitors the duration of their stay. It facilitates the identification of third-country nationals who overstay in the Schengen area (see Section 2.1.4).
- When operational, ETIAS will screen visa-free third-country nationals to establish whether or not they pose a security, irregular migration or public health risk (see Section 2.1.5).
- When operational, the ECRIS-TCN will enable the exchange of information on criminal records of third-country nationals who have been convicted in the EU (see Section 2.1.6).
- These different large-scale EU IT systems will be made interoperable, allowing authorities to search for an individual across all systems, including using biometric data, in accordance with their access rights (see Section 2.2).
- The latest technological developments have prompted the EU and the CoE to adopt legislative frameworks to address the legal gaps and address the specific challenges brought by the development and operation of AI systems (see Section 2.3).
- National DPAs and the EDPS ensure that data processing respects European data protection law (see Section 2.4).
- EU and CoE law requires that personal data be only used for the purpose(s) for which they were collected (see Section 2.5).

- Under EU and CoE law, individuals have a right to know about the processing of their personal data, but that right can be limited in some cases (see Section 2.6).
- EU law clearly defines what personal data each authority can access and for what purpose (see Section 2.7).
- EU and CoE law strictly limits personal data sharing with third countries and international organisations (see Section 2.8).
- Under EU and CoE law, individuals have a qualified right to access data pertaining to them and to request that inaccurate or unlawfully processed data be corrected or deleted (see Section 2.9).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

3 Status and associated documentation



EU	Issues covered	CoE
Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 10 (right to remain), Article 29 (documentation)	**Asylum seekers**	ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 2008; and ECtHR, *Suso Musa v. Malta*, No 42337/12, 2013 (entry considered unauthorised until formally authorised)
Qualification Regulation (Regulation (EU) 2024/1347) Temporary Protection Directive (Directive 2001/55/EC)	**Recognised refugees and other beneficiaries of international protection**	ECHR, Article 3 (prohibition of torture)
Residence Permits for Victims of Trafficking Directive (Directive 2004/81/EC) Employers Sanctions Directive (Directive 2009/52/EC)	**Victims of trafficking and particularly exploitative working conditions**	Convention on Action against Trafficking in Human Beings, 2005, Article 14 (residence permit also owing to the personal situation of the victim) ECtHR, *Chowdury and Others v. Greece*, No 21884/15, 2017 (Bangladeshi victims of trafficking in Greece) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 2010 (Russian victim of trafficking in Cyprus)

EU	Issues covered	CoE
	Persons affected by Rule 39 interim measures	ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], Nos 46827/99 and 46951/99, 2005; and ECtHR, *O. M. and D. S. v. Ukraine*, No 18603/12, 2022 (extradition despite indication of Rule 39 interim measures)
Return Directive (Directive 2008/115/EC)	Migrants in an irregular situation	ECtHR, *Novruk and Others v. Russia*, Nos 31039/11 and four others, 2016 (victim of discrimination because of health status and refusal of temporary residence permit)
Long-term Residents Directive (Directive 2003/109/EC) CJEU, C-302/18, *X v. Belgische Staat*, 2019 (the 'resources' criterion does not refer to the origin of the resources)	Long-term residents	Convention on Establishment, 13 December 1955 ECtHR, *Kurić and Others v. Slovenia* [GC], No 26828/06, 2012 (unlawful deprivation of residence permits)
1970 Additional Protocol to the Ankara Agreement, Article 41 (standstill clause) Decision 1/80 of the EEC–Turkey Association Council (privileges for family members)	Turkish nationals	
EU–UK Withdrawal Agreement, Articles 10 and 13 (right of residence for British nationals and their family members)	British nationals	
Free Movement Directive (Directive 2004/38/EC)	Third-country-national family members of EEA nationals	
CJEU, C-135/08, *Rottmann* [GC], 2010; and CJEU, C-221/17, Tjebbes [GC], 2019 (loss of EU citizenship) CJEU, C-118/20, *JY v. Wiener Landesregierung*, 2022 (decision to revoke the assurance of granting the nationality of a Member State)	Stateless persons and loss of citizenship	ECtHR, *Hoti v. Croatia*, No 63311/14, 2018 (stateless long-term residents)

Introduction

This chapter will look at the status and documentation of different groups of migrants. As shown in the overview table above, many categories of non-nationals exist and various rules and instruments regulate these diverse statuses within European states.

For many migrants, lack of status or documentation as evidence of their status can lead to various problems, such as being denied access to public or private services or to the labour market. EU law includes detailed mandatory provisions relating to both status and documentation, and any failure to comply with those provisions will violate EU law. The ECtHR may be called on to consider whether or not the absence of status or documentation interferes with the enjoyment of an ECHR right of the individual concerned and, if so, whether or not such interference is justified.

If no formal authorisation has been given by the host state, a third-country national's presence may be considered unlawful by that state. Both EU and ECHR law, however, set out circumstances in which a third-country national's presence must be considered lawful, even if unauthorised by the state concerned (see Sections 3.1 and 3.5). Some EU, ECHR, Charter of Fundamental Rights of the European Union (Charter) and European Social Charter (ESC) rights are granted only to those whose presence in a particular country is lawful (see Chapter 8).

EU law may make express provision for a particular type of status to be recognised or granted. It may make the issue of specific documentation mandatory (see Sections 3.1, 3.2 and 3.9). Where an individual is entitled under EU or national law to a certain status or to certain documentation, failure to accord the status or issue the documentation will constitute an infringement of EU law.

The ECHR does not expressly require a state to grant a migrant a certain status or issue specific documentation to them. In some circumstances, the right to respect for family and private life (Article 8) may require the state to recognise the status of, authorise the residence of or issue documentation to a migrant. Article 8 cannot, however, be construed as guaranteeing, as such, the right to a particular type of residence permit. Where the domestic legislation provides for several different types of residence permits, the ECtHR will normally be called upon to analyse the legal and practical implications of issuing a particular permit ([114]).

([114]) ECtHR, *Hoti v. Croatia*, No 63311/14, 26 April 2018, paras 121–122; ECtHR, *Liu v. Russia*, No 42086/05, 6 December 2007, para. 50.

3.1. Asylum seekers

Asylum seekers request international protection on the basis that they cannot return or be returned to their country of origin because they have a well-founded fear of persecution or are at risk of being ill-treated or being subjected to other serious harm (see Chapter 4).

Under EU law, asylum seekers are defined as 'applicants for international protection'. Their situation is regulated by the EU asylum *acquis*. All the relevant texts of the asylum *acquis* and the states in which they apply are listed in Annex 1. Obtaining access to the asylum procedure is discussed in Chapter 1. This section deals with those asylum seekers whose claims are pending and who are waiting for a final decision. EU law prohibits removal of an asylum seeker until a decision on the asylum application is taken. Article 10(1) of the Asylum Procedure Regulation (Regulation (EU) 2024/1348) provides that the asylum seeker's presence in the territory of an EU Member State is lawful. It states that asylum seekers have 'the right to remain on the territory of the Member State' for the purpose of the procedure until the responsible authority has made a decision, although exceptions exist (see Section 5.1). As described in Section 5.1.4, the presence of asylum applicants in border procedures is not considered lawful (legal fiction of non-entry).

The right of asylum seekers to documentation under EU law is set out in the Asylum Procedure Regulation. Article 29(4) of this regulation provides that asylum applicants must, as soon as possible, be provided with a document including a statement that the applicant has the right to remain on the territory of that Member State for the purpose of having the asylum application examined. According to Article 29(5), states can refrain from doing so when the applicant is in detention.

Under the ECHR, no corresponding provision exists governing the asylum seekers' status during the processing of their claims for protection. However, the removal of an asylum seeker without granting such a person access to an asylum procedure will be in breach of Article 3, in conjunction with Article 13, of the ECHR ([115]).

Article 5(1)(f) of the ECHR permits the detention of asylum seekers to prevent them from effecting 'an unauthorised entry' into the territory of a state. According to the ECtHR, an entry remains 'unauthorised' until it has been formally authorised by the national authorities.

([115]) ECtHR, *Y. K. v. Croatia*, No 38776/21, 17 July 2025, para. 132.

Example: the ECtHR held in *Saadi v. the United Kingdom* ([116]) that an entry remained unauthorised until it had been formally authorised by the national authorities. In that case, the Court found that there had been no violation of Article 5(1) of the ECHR when an asylum seeker had been lawfully detained for seven days in suitable conditions while his asylum application was being processed.

In contrast, in *M. B. v. the Netherlands* ([117]), the ECtHR ruled that Article 5(1) of the ECHR had been breached when during the detention of the asylum seeker no steps were taken to process his asylum application.

Example: in *Suso Musa v. Malta* ([118]), the Court held that, when a state had exceeded its legal obligations and enacted legislation explicitly authorising the entry or stay of migrants pending an asylum application, either independently or pursuant to EU law, any ensuing detention for the purpose of preventing an unauthorised entry might raise an issue as to the lawfulness of that detention under Article 5(1).

Article 2 of Protocol No 4 to the ECHR refers to the free movement of persons who are 'lawfully' within a state. This implies the freedom to leave any country. Article 2(2) of Protocol No 4 to the ECHR requires states, in certain conditions, to issue travel documents to non-nationals lawfully staying within their territory ([119]).

Article 1 of Protocol No 7 to the ECHR provides for certain procedural safeguards against the expulsion of those who are 'lawfully resident in the territory of a state'. A person can, however, lose their lawful status.

Example: before the UN Human Rights Committee ([120]), the German government had acknowledged that asylum seekers were lawfully resident for the duration of their asylum procedure. However, in *Omwenyeke v. Germany* ([121]), the ECtHR accepted the government's argument that, in violating the conditions

([116]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008, para. 65.

([117]) ECtHR, *M. B. v. the Netherlands*, No 71008/16, 23 April 2024, paras 70–75.

([118]) ECtHR, *Suso Musa v. Malta*, No 42337/12, 23 July 2013.

([119]) ECtHR, *L. B. v. Lithuania*, No 38121/20, 14 June 2022; ECtHR, *S. E. v. Serbia*, No 61365/16, 11 July 2023.

([120]) United Nations ICCPR, *Consideration of reports submitted by States Parties under Article 40 of the Covenant – Fifth periodic report – Germany*, CCPR/C/DEU/2002/5, Geneva, 2002.

([121]) ECtHR, *Omwenyeke v. Germany* (dec.), No 44294/04, 20 November 2007.

that the state had attached to his temporary residence – that is, the obligation to stay within the territory of a certain city – the applicant had lost his lawful status and thus fell outside the scope of Article 2 of Protocol No 4 to the ECHR.

3.2. Recognised refugees and subsidiary and temporary protection beneficiaries

Under EU law, the Charter guarantees the right to asylum (Article 18), thus going beyond the right to seek asylum. Those who qualify for asylum have the right to have their status recognised. Article 13 (on refugee status) and Article 18 (on subsidiary protection status for those who need international protection but do not qualify for refugee status) of the Qualification Regulation (Regulation (EU) 2024/1347) give an explicit right to be granted the status of refugee or subsidiary protection. Persons granted international protection can lose their status if there is a genuine improvement in the situation in their country of origin (see Section 4.1.8).

Article 24 of the same regulation regulates the right to documentation. Those recognised as being in need of international protection are entitled to residence permits for as long as they hold the status of refugee or subsidiary protection. EU Member States must offer integration measures free of charge (Article 35). If participation in civic integration is compulsory, any sanction must be exceptional and based on objective evidence such as proven and persistent lack of willingness to integrate ([122]). A residence permit must have an initial period of validity of at least three years for refugees and at least one year for beneficiaries of subsidiary protection. Article 25 entitles refugees and, in certain cases, beneficiaries of subsidiary protection to travel documents.

EU law also guarantees, in exceptional cases, immediate and temporary protection to third-country nationals in cases of mass influx, without the need for individual examination of asylum applications. The Temporary Protection Directive (Directive 2001/55/EC) applies when the Council of the EU, on a proposal from the European Commission, establishes that there is a mass influx, in particular if it also entails a risk that Member States' standard asylum system will be unable to process this sudden influx without adverse effects on the efficient operation of the asylum system. The Temporary Protection Directive establishes the decision-making procedure needed

([122]) See CJEU, C-158/23 [Keren], *T. G. v. Minister van Sociale Zaken en Werkgelegenheid*, 4 February 2025, para. 74.

to trigger, extend or end temporary protection and sets out the rights granted to beneficiaries of temporary protection. The Temporary Protection Directive was triggered for the first time by the Council of the EU following the Russian war of aggression against Ukraine in February 2022 ([123]). Beneficiaries of temporary protection are entitled to apply for refugee status or subsidiary protection ([124]).

Under the ECHR, there is no right to asylum such as that found in Article 18 of the Charter. Moreover, the ECtHR cannot examine whether or not the refusal or withdrawal of refugee status under the 1951 Geneva Convention ([125]) or the refusal of subsidiary protection under the Qualification Directive ([126]) is contrary to the ECHR. The ECtHR can, however, examine whether or not the removal of a non-national would subject that individual to a real risk of treatment contrary to Article 3 of the ECHR or certain other ECHR provisions (see Chapter 4) ([127]).

3.3. Victims of trafficking and of particularly exploitative labour conditions

Under EU law, the Employers Sanctions Directive (Directive 2009/52/EC) criminalises some forms of illegal employment of migrants in an irregular situation. Workers who are children, or are subject to particularly exploitative working conditions, may be issued with a temporary residence permit to facilitate the lodging of complaints against their employers (Article 13).

Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate irregular immigration (hereafter, the Residence Permits for Victims of Trafficking Directive) allows a reflection period during which the victim cannot be

([123]) Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1, ELI: http://data.europa.eu/eli/dec_impl/2022/382/oj). In July 2025, Council Implementing Decision (EU) 2025/1460 extended such temporary protection until March 2027.

([124]) See CJEU, C-195/25 [Framholm], *AA and Others v. Migrationsverket*, 20 November 2025.

([125]) ECtHR, *Ahmed v. Austria*, No 25964/94, 17 December 1996, para. 38.

([126]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011, para. 226 (relating to Art. 15 of the Qualification Directive).

([127]) ECtHR, *NA. v. the United Kingdom*, No 25904/07, 17 July 2008, paras 106–107; ECtHR, *H. A. v. the United Kingdom*, No 30919/20, 5 December 2023, paras 41–42.

expelled (Article 6) ([128]). It also requires EU Member States to issue a residence permit to victims of trafficking who cooperate with the authorities (Article 8). The permit has to be valid for at least three months and is renewable. Although not dealing directly with residence permits for victims, the Anti-trafficking Directive (Directive 2011/36/EU, as amended by Directive (EU) 2024/1712) requires assistance and support measures to be provided before, during and after the conclusion of criminal proceedings (Article 11). However, where proceedings against the traffickers are not envisaged or the victim has not cooperated with any investigation, there is no clear requirement for an EU Member State to grant a residence permit.

Under the ECHR, the prohibition of slavery and forced labour in Article 4 of the ECHR may, in certain circumstances, require states to investigate suspected trafficking and to take measures to protect victims or potential victims.

Example: the case of *Chowdury and Others v. Greece* ([129]) concerned 42 undocumented Bangladeshi nationals, who had worked as seasonal agricultural workers in Greece. The applicants complained that they had been subjected to trafficking in human beings and that Greece had failed to fulfil its positive obligation under Article 4 of the ECHR. Although Greece had in principle put in place a legislative framework to combat trafficking in human beings, operational measures were ad hoc, despite the national authorities' awareness of the migrant workers' situation and the abuses they had been exposed to. In addition, the ECtHR concluded that, by acquitting the defendants of charges of trafficking in human beings interpreted very narrowly, commuting their sentences and awarding the victims very low compensation, the authorities had failed to fulfil their procedural obligation to guarantee an effective investigation and judicial procedure in respect of the situations of human trafficking and forced labour ([130]).

Example: the case of *Rantsev v. Cyprus and Russia* ([131]) concerned a Russian victim of trafficking in Cyprus. The ECtHR held that Cyprus had failed to comply with its positive obligations under Article 4 of the ECHR on two counts: first, it had failed to put in place an appropriate legal and administrative framework to combat trafficking and, second, the police had failed to take suitable operational

([128]) See CJEU, C-66/21, *O. T. E. v. Staatssecretaris van Justitie en Veiligheid*, 20 October 2022, paras 58–64.

([129]) ECtHR, *Chowdury and Others v. Greece*, No 21884/15, 30 March 2017.

([130]) For another illustration of the failure of national authorities to investigate alleged cases of trafficking of migrant workers, see ECtHR, *Zoletic and Others v. Azerbaijan*, No 20116/12, 7 October 2021.

([131]) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010, para. 284.

measures to protect the victim from trafficking. It also found that the Russian authorities had failed to conduct an effective investigation into the victim's recruitment by traffickers, which had occurred on Russian territory. This failure had serious consequences in light of the circumstances of her departure from Russia and her subsequent death in Cyprus ([132]).

Under CoE law, in states that are party to the Council of Europe Convention against Trafficking in Human Beings (CETS No 197), the authorities must allow the suspected victim a recovery and reflection period during which the victim cannot be removed (Article 14). If the competent authorities have 'reasonable grounds for believing that a person has been a victim of trafficking', the person may not be removed from the country until it has been determined whether or not they have been a victim of a trafficking offence (Article 10(2)). The competent authority can issue renewable residence permits to victims if it believes the victims' stay is necessary owing to their personal situation or for the purposes of the criminal investigation (Article 14(1)). The provisions are intended to ensure that the victims of trafficking are not at risk of being returned to their country without being given the appropriate help (see also Chapter 9 on vulnerable groups and, for the list of ratifications, Annex 2).

3.4. Persons affected by Rule 39 interim measures

When the ECtHR receives an application, it may decide, at the request of a party or of any other person concerned, or of its own motion, that a state should take certain provisional measures while the ECtHR continues its examination of the case ([133]). In the immigration context, interim measures based on Rule 39 of the Rules of Court ([134]) typically consist of requesting a state to refrain from returning individuals to countries where it is alleged that they would face death or torture or other ill-treatment ([135]). Whatever the status of an individual in the state concerned is, once

([132]) See also ECtHR, *F. M. and Others v. Russia*, Nos 7167/16 and 40190/18, 10 December 2024.

([133]) ECtHR, Rules of Court, 2025, Rule 39 (as in force on 15 September 2025).

([134]) For detailed instructions on how to lodge a request under Rule 39, see ECtHR, 'Interim measures'.

([135]) ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 23 March 2016.

the ECtHR has applied a Rule 39 interim measure to prevent the individual's removal while it examines the case, the expelling state is under an obligation to comply with any Rule 39 measure indicated ([136]).

Example: in the *Mamatkulov and Askarov v. Turkey* case ([137]), the respondent state extradited the applicants to Uzbekistan notwithstanding a Rule 39 interim measure indicated by the ECtHR. The facts of the case clearly showed that, as a result of their extradition, the Court had been prevented from conducting a proper examination of the applicants' complaints in accordance with its settled practice in similar cases. This ultimately prevented the Court from protecting them against potential violations of the ECHR. By virtue of Article 34 of the convention, states undertook to refrain from any act or omission that might hinder the effective exercise of an individual applicant's right of application. A failure by a member state to comply with interim measures was to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of the applicant's right, thus violating Article 34 of the convention.

Example: in *O. M. and D. S. v. Ukraine* ([138]), the applicants were removed from Ukraine to Georgia despite the interim measures indicated by the ECtHR. The ECtHR ruled that failure by a respondent state to comply with any Rule 39 measure amounts to a breach of Article 34 of the ECHR.

3.5. Migrants in an irregular situation

The presence of those who have either entered or remained in a state without authorisation or legal justification is considered irregular or unlawful. Irregular or unlawful presence can arise in many ways, ranging from clandestine entry to being ineligible to renew an otherwise lawful residence permit because of a change of personal circumstance. Lack of lawful status often affects the possibility of benefiting from other procedural and substantive rights (see Section 8.6 on access to social security and social assistance).

([136]) ECtHR, *Azimov v. Russia*, No 67474/11, 18 April 2013.

([137]) ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], Nos 46827/99 and 46951/99, 4 February 2005.

([138]) ECtHR, *O. M. and D. S. v. Ukraine*, No 18603/12, 15 September 2022.

Under EU law, according to the Return Directive (Directive 2008/115/EC), 'illegally staying third-country nationals' can no longer be left in limbo (see Annex 1 for EU Member States bound by the directive). EU Member States bound by the directive must either regularise their stay or issue a return decision. All persons without legal authorisation to stay fall within the ambit of the directive. Article 6 obliges EU Member States to issue them with a 'return decision'. Article 6(4), however, also sets out the circumstances excusing states from this obligation. Along with humanitarian or other reasons, another reason to regularise the stay can be pressing reasons of family or private life guaranteed under Article 7 of the Charter and Article 8 of the ECHR (see Chapter 6 on family life).

> Example: in *UP* ([139]), the CJEU ruled that Article 6(4) of the Return Directive allows Member States to grant a right to stay to migrants in an irregular situation. In granting such a right, Member States benefit from very broad discretion. Nothing prevents Member States from granting a right to stay to a migrant in an irregular situation who has applied for permission to stay for one of the reasons under the above provision of the Return Directive.

Allowing people to remain pending the outcome of any procedure seeking authorisation of stay is possible (Article 6(5)) but not, unlike the case of asylum seekers, mandatory. The provision does not address the status of such people. Recital 12 of the Return Directive reveals an awareness of the common situation that some of those who stay without authorisation cannot be removed. It also notes that states should provide written confirmation of their situation. This written confirmation is compulsory if the period for voluntary departure has been extended or removal has been postponed (Article 14(2)) ([140]). The situation is most acute for those who have to be released from detention because the maximum permitted detention has elapsed (see Chapter 7 on detention) but who still do not have permission to stay ([141]). In such cases, EU law does not allow further immigration detention of the person on the ground that they are not in possession of valid documents ([142]).

([139]) CJEU, C-825/21, *UP v. Centre public d'action sociale de Liège*, 20 October 2022.

([140]) See CJEU, C-352/23 [Changu], *LF v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, 12 September 2024.

([141]) On the situation of non-removed persons, see FRA, 'Non-removed persons', in: *Fundamental rights of migrants in an irregular situation in the European Union*, Publications Office of the European Union, Luxembourg, 2011, pp. 27–38.

([142]) ECJ, C-357/09 PPU, *Said Shamilovich Kadzoev (Huchbarov)* [GC], 30 November 2009; and CJEU, C-146/14 PPU, *Bashir Mohamed Ali Mahdi*, 5 June 2014.

Under the ECHR, there is no convention right to be granted a specific status or related documentation in a host country; however, a refusal may, in certain circumstances, violate the ECHR if it was based on discriminatory grounds.

> Example: the case of *Novruk and Others v. Russia* ([143]) concerned several applicants who applied for a temporary residence permit in Russia and were refused because the applicants tested positive for human immunodeficiency virus (HIV). The ECtHR stressed the particular vulnerability of persons with HIV and noted that the entry, stay and residence restrictions on people living with HIV could not be objectively justified by reference to public health concerns. The blanket provision of domestic law requiring the removal of HIV-positive non-nationals left no room for an individualised assessment based on the facts of the particular case and was found not to be objectively justified. The Court ruled that there was a violation of Article 14 of the ECHR in conjunction with Article 8, as the applicants had been victim to discrimination on account of their health status.

Under the ESC, the personal scope is, in principle, limited to nationals of other States Parties who are lawfully resident or working regularly within the territory. The ECSR has held, however, that, given their fundamental nature and their link to human dignity, certain rights apply to all persons in the territory, including irregular migrants. These rights comprise the right to medical assistance ([144]), the right to shelter ([145]) and the right to education ([146]).

The UN Human Rights Committee also affirmed the positive obligation of states to ensure that everyone has access to the essential healthcare necessary to prevent anticipated risks to life, regardless of migration status ([147]).

([143]) ECtHR, *Novruk and Others v. Russia*, Nos 31039/11 and four others, 15 March 2016. See also ECtHR, *Kiyutin v. Russia*, No 2700/10, 10 March 2011.

([144]) ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No 14/2003, merits, 8 September 2004; ECSR, *Defence for Children International (DCI) v. Belgium*, Complaint No 69/2011, merits, 23 October 2012.

([145]) ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, merits, 20 October 2009.

([146]) ECSR, *Statement of Interpretation on Article 17(2)*, 2011.

([147]) UN Human Rights Committee, *Toussaint v. Canada*, Communication No 2348/2014, views of 24 July 2018.

3.6. Long-term residents

Under EU law, the Long-term Residents Directive (Directive 2003/109/EC as amended by Directive 2011/51/EU) provides for entitlement to enhanced 'long-term residence' status for third-country nationals who have resided in an EU Member State legally and continuously for five years (see Annex 1 for EU Member States bound by the directive) ([148]).

To acquire long-term resident status, under Article 5(1)(a) of the Long-term Residents Directive, third-country nationals must show that they have stable, regular and sufficient resources and sickness insurance.

> Example: in the case of *X v. Belgische Staat* ([149]), the CJEU clarified that the origin of the resources is not a decisive criterion to establish whether or not they are stable, regular and sufficient. The person need not necessarily have such resources themselves; they may also come from a third party. The CJEU used comparable requirements under Article 7(1)(b) and (c) of the Free Movement Directive (Directive 2004/38/EC).

Similar conditions to those under the Long-term Residents Directive are in the Family Reunification Directive (Directive 2003/86/EC) (see Chapter 6 on families). When the CJEU pronounced on those requirements, it maintained that Member States' margin to manoeuvre must not be used in a manner that would undermine the objective of the latter directive ([150]).

Under Article 11 of the Long-term Residents Directive, the granting of long-term resident status leads to treatment equal to nationals in several important areas (see Chapter 8 on economic and social rights).

According to the CJEU, EU Member States cannot impose excessive and disproportionate fees for the granting of residence permits to third-country nationals who are long-term residents or to members of their families. Such fees would jeopardise the achievement of the objective pursued by the Long-term Residents Directive, depriving it of its effectiveness.

([148]) See also CJEU, C-502/10, *Staatssecretaris van Justitie v. Mangat Singh*, 18 October 2012.

([149]) CJEU, C-302/18, *X v. Belgische Staat*, 3 October 2019.

([150]) CJEU, C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010, paras 43 and 52.

Example: in *CGIL and INCA* ([151]), the CJEU considered the imposition of a fee of EUR 80 to EUR 200 for the issue or renewal of a residence permit, depending on the duration of the residence permit, in addition to a pre-existing fee of EUR 73.50 for such a permit regardless of duration. The Court pointed out that EU Member States do not enjoy unlimited discretion in levying fees on third-country nationals when issuing a residence permit and that EU Member States are not allowed to set charges that might create an obstacle to the exercise of the rights enshrined in the Long-term Residents Directive. The CJEU concluded that the fees are disproportionate to the objective pursued by the directive and can create an obstacle to the exercise of the rights under the directive.

Example: in *European Commission v. the Netherlands* ([152]), the CJEU held that the Netherlands had failed to fulfil its obligation under the Long-term Residents Directive insofar as it imposed excessive and disproportionate fees (varying from EUR 188 to EUR 830) on (i) third-country nationals seeking long-term resident status, (ii) third-country nationals who have acquired long-term resident status in another EU Member State and who seek to exercise their right to reside in the Netherlands and (iii) third-country nationals' family members seeking reunification. More specifically, the Court pointed out that EU Member States do not enjoy unlimited discretion in levying fees on third-country nationals when issuing a residence permit and that EU Member States are not allowed to set charges that might create an obstacle to the exercise of the rights enshrined in the Long-term Residents Directive.

According to the CJEU, EU Member States can impose integration requirements on third-country nationals who have acquired long-term resident status, as long as these requirements do not jeopardise the achievement of the objectives pursued by the Long-term Residents Directive ([153]).

([151]) CJEU, C-309/14, *Confederazione Generale Italiana del Lavoro (CGIL), Istituto Nazionale Confederale Assistenza (INCA) v. Presidenza del Consiglio dei Ministeri, Ministero dell'Interno, Ministero dell'Economia e delle Finanze*, 2 September 2015.

([152]) CJEU, C-508/10, *European Commission v. Kingdom of the Netherlands*, 26 April 2012.

([153]) CJEU, C-579/13, *P. and S. v. Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen*, 4 June 2015.

The CJEU has also clarified the meaning of Article 13 of the Long-term Residents Directive. It does not enable EU Member States to grant long-term resident status under more favourable conditions than those outlined in the directive, but rather allows the coexistence of national schemes ([154]).

Under the ECHR, long-term residence has generally been recognised as a factor to be taken into account if expulsion is proposed (see Section 4.4).

> Example: in *Kurić and Others v. Slovenia* ([155]), the ECtHR considered the Slovenian register of permanent residents and the 'erasure' of former citizens of the Socialist Federal Republic of Yugoslavia (SFRY) who were still permanent residents but had not requested Slovenian citizenship within a six-month time limit. The consequences of such erasure were either statelessness or loss of the permanent residents' residence rights ([156]). Foreigners who were not former citizens of the SFRY were not affected in this way. The ECtHR reiterated that there might be positive obligations inherent in effectively respecting private or family life, in particular in the case of long-term migrants, such as the applicants, who had been unlawfully erased from the permanent residence register in violation of Article 8 of the ECHR. It also found that the difference in treatment between foreigners who had not been SFRY citizens and those who had previously been citizens of the SFRY constituted discrimination in breach of Article 14 of the convention taken together with Article 8.

The CoE's 1955 European Convention on Establishment (CETS No 19) provides for an enhanced status in all member states for those individuals who are long-term residents, but only if they are nationals of states that are parties to the convention.

3.7. Turkish nationals

Under EU law, the Ankara Agreement signed in 1963 and the Additional Protocol to the Ankara Agreement added in 1970 strengthen trade and economic relations between what was then the EEC and Türkiye in light of a possible accession by the latter to the EEC. The agreement has been the subject of more than 70 judgments by

([154]) CJEU, C-469/13, *Shamim Tahir v. Ministero dell'Interno, Questura di Verona*, 17 July 2014, paras 39–44.

([155]) ECtHR, *Kurić and Others v. Slovenia* [GC], No 26828/06, 26 June 2012.

([156]) Slovenia is not a party to the 2006 CoE Convention on the Avoidance of Statelessness in Relation to State Succession (CETS No 200).

the CJEU. It has also been complemented by a number of decisions by the EEC–Turkey Association Council, some of which relate to the status of the many Turkish nationals in the territory of EU Member States. Article 6(1) of Decision No 1/80 of the EEC–Turkey Association Council provides that Turkish nationals legally employed in an EU Member State gain the right to remain in that Member State.

The Ankara Agreement does not give Turkish nationals any substantial right to enter or reside in an EU Member State; however, self-employed persons and providers of services benefit from a standstill clause (Article 41 of the Additional Protocol). This clause prevents states from imposing new and more stringent procedural or financial requirements on Turkish nationals, other than those that were already in force at the time the agreement came into being ([157]). Such rights do not apply to Turkish nationals who wish to make use of – rather than provide – services ([158]).

Example: various cases have addressed the requirements imposed on Turkish lorry drivers employed by Turkish companies in Türkiye. Such cases thus concerned the Turkish companies' right of freedom to provide services in EU Member States. In *Abatay* ([159]), the ECJ held that Germany must not impose a work permit requirement on Turkish nationals willing to provide services in its territory if such a permit was not already required when the standstill clause came into effect.

In *Essent Energie Productie BV* ([160]), Turkish nationals who were legally resident and working in Germany were posted in the Netherlands to provide services. The CJEU concluded that it is not allowed to ask for a work permit in order for these workers to be made available for work from another company because these Turkish nationals were not seeking access to the labour market in the Netherlands. Requiring a work permit would be tantamount to a new restriction on the freedom to provide services.

([157]) ECJ, C-37/98, *The Queen v. Secretary of State for the Home Department, ex parte Abdulnasir Savas*, 11 May 2000; ECJ, C-16/05, *The Queen, Veli Tum and Mehmet Dari v. Secretary of State for the Home Department*, 20 September 2007; CJEU, C-186/10, *Tural Oguz v. Secretary of State for the Home Department*, 21 July 2011.

([158]) CJEU, C-221/11, *Leyla Ecem Demirkan v. Bundesrepublik Deutschland* [GC], 24 September 2013.

([159]) ECJ, Joined Cases C-317/01 and C-369/01, *Eran Abatay and Others and Nadi Sahin v. Bundesanstalt für Arbeit*, 21 October 2003.

([160]) CJEU, C-91/13, *Essent Energie Productie BV v. Minister van Sociale Zaken en Werkgelegenheid*, 11 September 2014.

The case of *Soysal* ([161]) concerned a visa requirement. The ECJ held that Article 41 of the Additional Protocol to the Ankara Agreement precluded the introduction of a visa requirement to enter Germany for Turkish nationals who wanted to provide services on behalf of a Turkish company if no visa was required at the time of the entry into force of the protocol. According to the Court, this conclusion is not affected by the fact that the national legislation introducing the visa was an implementation of Regulation (EC) No 539/2001 (now Regulation (EU) 2018/1806) (see Chapter 1). Secondary EU law needs to be interpreted in a manner that is consistent with the international agreement containing the standstill clause.

In *Oguz* ([162]), the CJEU maintained that the standstill clause does not preclude EU Member States from using domestic law to penalise abuse relating to immigration. However, the fact that Mr Oguz had entered into self-employment in breach of national immigration law, eight years after having been granted leave to enter and remain in the country, was not considered by the CJEU to constitute an abuse.

The case of *A, B, P* ([163]) concerned two Turkish nationals, who requested a residence permit after taking up employment in the Netherlands, and a third applicant married to a Turkish-Dutch national, who applied for a family reunification residence permit. The CJEU concluded that the issuance of a residence permit to third-country nationals, including Turkish nationals, which is conditional upon the collection and retention of their biometric data, does not constitute a 'new restriction' within the meaning of Decisions No 2/76 and No 1/80 of the EEC–Turkey Association Council. The Court found that the objective to prevent and combat identity and document fraud as a matter of public interest was an overriding reason justifying it.

In relation to newer EU Member States, the relevant date for the operation of the Turkish standstill clause is the date on which they joined the EU.

([161]) ECJ, C-228/06, *Mehmet Soysal and Ibrahim Savatli v. Bundesrepublik Deutschland*, 19 February 2009.

([162]) CJEU, C-186/10, *Tural Oguz v. Secretary of State for the Home Department*, 21 July 2011, para. 46; ECJ, C-16/05, *The Queen, Veli Tum and Mehmet Dari v. Secretary of State for the Home Department*, 20 September 2007.

([163]) CJEU, C-70/18, *Staatssecretaris van Justitie en Veiligheid v. A and Others*, 3 October 2019.

The 1970 Additional Protocol to the Ankara Agreement provides for several rights, which are discussed in Chapter 8 on access to economic and social rights. With regard to status, Turkish nationals have the right to remain in the territory while exercising their social and labour market rights ([164]).

Family members, including those who are not Turkish nationals, benefit from privileged treatment under Decision No 1/80 of the EEC–Turkey Association Council (see Chapter 6 on family life) ([165]). Such rights are not subject to the conditions related to the ground on which the right of entry and of residence was originally granted to the Turkish national in the host EU Member State.

Example: in *Altun* ([166]), the ECJ held that the fact that a Turkish national had obtained the right of residence in an EU Member State and, accordingly, the right of access to the state's labour market as a refugee did not prevent a member of his family from enjoying the rights arising under Decision No 1/80 of the EEC–Turkey Association Council. In addition, in *Kahveci* ([167]), the CJEU clarified that family members of a Turkish worker could still claim the rights conferred upon them by such a decision once the worker had acquired the nationality of the host EU Member State while still retaining his Turkish nationality.

3.8. British nationals

Under EU law, after the withdrawal of the United Kingdom from the EU and following the end of the transition period on 31 December 2020, the United Kingdom is no longer bound by EU law. British nationals, including those who exercised their right to reside in an EU Member State before the end of the transition period, lost their EU citizenship ([168]) and are subject to all requirements applicable to third-country nationals and do not benefit from freedom of movement any more.

([164]) ECJ, C-337/07, *Altun v. Stadt Böblingen*, 18 December 2008, para. 21; ECJ, C-171/95, *Recep Tetik v. Land Berlin*, 23 January 1997, para. 48; CoE 1955 Convention on Establishment, Art. 2: 'each contracting party [which includes Türkiye and many EU Member States] shall, to the extent permitted by its economic and social conditions, facilitate the prolonged or permanent residence in its territory of nationals of the other parties.'

([165]) CJEU, C-451/11, *Natthaya Dülger v. Wetteraukreis*, 19 July 2012.

([166]) ECJ, C-337/07, *Altun v. Stadt Böblingen*, 18 December 2008, para. 50.

([167]) CJEU, Joined Cases C-7/10 and C-9/10, *Staatssecretaris van Justitie v. Tayfun Kahveci and Osman Inan*, 29 March 2012.

([168]) CJEU, C-673/20, *EP v. Préfet du Gers and Institut National de la Statistique et des Études Économiques*, 9 June 2022.

However, British nationals who had been living in an EU Member State before 1 January 2021 benefit, under the EU–UK Withdrawal Agreement ([169]), from a right of residence in their Member State of residence. The rules on the right to remain in the EU do not apply to Ireland. British nationals benefit from the right to move and reside freely in Ireland under the common travel area arrangement.

3.9. Third-country nationals who are family members of EEA or Swiss nationals

Under EU law, family members of EEA or Swiss nationals, of whatever nationality, and third-country nationals who are family members of EU nationals who have exercised their right to free movement, enjoy, under certain conditions, a right to entry and residence in the territory of an EU Member State in order to accompany or join the EEA, Swiss or EU citizen ([170]). This can only be refused for reasons of public policy, public security or public health. These rules have been extended to family members of British nationals who lawfully resided in the EU before 1 January 2021 ([171]).

This right also entails a right to residence documents, which are evidence of their status. Under Article 10(1) of the Free Movement Directive (Directive 2004/38/EC), the residence cards of third-country-national family members are to be issued, at the latest, within six months from the date on which they submit the application, and a certificate confirming the application for a residence card is to be issued immediately. After five consecutive years in the host Member State, family members will acquire the right of permanent residence (Article 18 of the Free Movement Directive) and be issued a permanent residence card (Article 20 of the Free Movement Directive).

Under the ECHR, a failure to deliver a residence permit to a third-country national when that permit is mandated under EU law may raise an issue under Article 8 of the ECHR.

([169]) Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384I, 12.11.2019, p. 1, ELI: http://data.europa.eu/eli/treaty/withd_2019(3)/oj).

([170]) See the agreements concluded with the EEA and with Switzerland (see Annex 1), and the Free Movement Directive (Directive 2004/38/EC).

([171]) EU–UK Withdrawal Agreement, Art. 10(1)(e), and Art. 13.

Example: in *Aristimuño Mendizabal v. France* ([172]), the ECtHR found that the applicant's rights under Article 8 of the ECHR had been violated by the French authorities' excessive delay of over 14 years in issuing her with a residence permit. The ECtHR noted that the applicant had been entitled to such a permit under both EU and French law.

3.10. Stateless persons and the loss of citizenship or documentation

Neither EU law nor the ECHR covers the acquisition of citizenship. This responsibility remains at the national level. There are, however, some limits on national action relating to the loss of citizenship.

Under EU law, EU Member States are competent to determine the rules regarding the acquisition and loss of their citizenship, which also includes EU citizenship, and the acquisition and loss of the additional rights that citizenship confers. Article 20 of the TFEU enshrines the concept of citizenship of the EU, but the benefits of EU citizenship are limited to those individuals who have national citizenship of one of the EU Member States ([173]).

Member States' powers to lay down the conditions for the grant and loss of their nationality must be exercised with due regard to EU law ([174]). Loss of citizenship may engage EU law if this also entails loss of EU rights. Article 67(2) of the TFEU establishes that stateless persons are to be treated as third-country nationals.

Example: in the *Rottmann* case ([175]), Dr Rottmann was born a citizen of Austria, moved to Germany and acquired German citizenship. This led to the automatic loss of his Austrian citizenship. When German authorities learned that the applicant was the subject of an arrest warrant, they sought to annul his naturalisation on the ground that he obtained it fraudulently. That decision,

([172]) ECtHR, *Aristimuño Mendizabal v. France*, No 51431/99, 17 January 2006.

([173]) Under Art. 20(1) of the TFEU, 'Citizenship of the Union shall be additional to and not replace national citizenship'; ECJ, C-369/90, *Mario Vicente Micheletti and Others v. Delegación del Gobierno en Cantabria*, 7 July 1992; ECJ, C-192/99, *The Queen v. Secretary of State for the Home Department, ex parte: Manjit Kaur, intervener: Justice*, 20 February 2001.

([174]) CJEU, C-181/23, *European Commission v. Malta*, 29 April 2025; ECJ, C-369/90, *Mario Vicente Micheletti and Others v. Delegación del Gobierno en Cantabria*, 7 July 1992.

([175]) CJEU, C-135/08, *Janko Rottman v. Freistaat Bayern* [GC], 2 March 2010, paras 41–45.

however, had the effect of rendering him stateless. The referring court wished to know if this was a matter that fell within the scope of EU law, as Dr Rottmann's statelessness also entailed the loss of EU citizenship. The CJEU ruled that an EU Member State's decision to deprive an individual of citizenship, insofar as it implies the loss of status of EU citizenship and deprivation of attached rights, falls within the ambit of EU law and, therefore, must be compatible with its principles. The CJEU concluded that it is legitimate for a Member State to revoke naturalisation on account of deception. Such a decision, however, must comply with the principle of proportionality, which requires a reasonable period of time to be granted for the individual to recover the citizenship of their Member State of origin.

Example: in the *Tjebbes* case ([176]), Dutch law provided for the automatic loss of nationality after 10 years of residence abroad. Following the *Rottmann* case, the CJEU determined that the decision to withdraw nationality must comply with the principle of proportionality. The CJEU held that national authorities need to conduct an individual examination to determine whether or not the consequence of losing the nationality of an EU Member State might disproportionately affect the normal development of the family and professional life of the person concerned. In addition, a remedy must be available for reinstating nationality if the measure is deemed to be disproportionate.

Example: following *JY v. Wiener Landesregierung*, the decision to revoke the assurance granting the nationality of a Member State must also comply with the principle of proportionality when such revocation leads to the loss of EU citizenship for the applicant ([177]).

Under the ECHR, there is no right to acquire citizenship of a state ([178]). The ECtHR, however, has stated that an arbitrary denial of citizenship, and the loss of citizenship, might raise an issue under Article 8 of the convention because of the impact that such a denial or loss may have on the private life of the individual and because

([176]) CJEU, C-221/17, *Tjebbes and Others v. Minister van Buitenlandse Zaken* [GC], 12 March 2019.

([177]) CJEU, C-118/20, *JY v. Wiener Landesregierung*, 18 January 2022.

([178]) European Commission of Human Rights, *Family K. and W. v. the Netherlands* (dec.), No 11278/84, 1 July 1985.

of the arbitrary nature of a decision denying or revoking citizenship ([179]). The impact and the arbitrary nature of the loss or denial of citizenship have been taken into account by the Court to establish a violation of Article 8 of the ECHR in a case involving the refusal to issue identity cards and thus to recognise the nationality of children born to refugees despite domestic law providing for their *jus soli* acquisition of nationality ([180]).

Example: in the case of *Genovese v. Malta* ([181]), the ECtHR considered the denial of Maltese citizenship to a child born out of wedlock outside Malta to a non-Maltese mother and a judicially recognised Maltese father. The refusal of citizenship itself did not give rise to a violation of Article 8 when taken alone, but the Court considered that the impact of the refusal on the applicant's social identity brought it within the general scope and ambit of Article 8 and that there had been a violation of Article 8 of the ECHR when taken together with Article 14 because of the arbitrary and discriminatory nature of the refusal.

Example: in the case of *Hoti v. Croatia* ([182]), the applicant was a stateless person born in Kosovo ([183]*), who had lived and worked in Croatia since 1979. In 2014, Croatia refused to extend his temporary residence permit because he had failed to provide a valid travel document. The ECtHR found that stateless individuals, such as the applicant, were required to fulfil requirements that, owing to their status, they were unable to fulfil, in that they needed to have a valid travel document to apply for permanent residence in Croatia. The Court also observed the Croatian authorities' insistence on the applicant obtaining a travel document from the authorities in Kosovo, although his statelessness was evident from his

([179]) ECtHR, *Karassev v. Finland* (dec.), No 31414/96, 12 January 1999; ECtHR, *Slivenko v. Latvia* [GC], No 48321/99, 9 October 2003; ECtHR, *Kuduzović v. Slovenia* (dec.), No 60723/00, 17 March 2005; ECtHR, *Ramadan v. Malta*, No 76136/12, 21 June 2016, para. 85; ECtHR, *K2 v. the United Kingdom*, No 42387/13, 7 February 2017; ECtHR, *Usmanov v. Russia*, No 43936/18, 22 December 2020; ECtHR, *Hashemi and Others v. Azerbaijan*, Nos 1480/16, 3936/16, 15835/16, 28034/16, 34491/16, 51348/16, 15904/17, 13 January 2022; ECtHR, *Emin Huseynov v. Azerbaijan (No 2)*, No 1/16, 13 July 2023; ECtHR, *El Aroud and B. S. v. Belgium*, Nos 25491/18 and 27629/18, 5 December 2024.

([180]) ECtHR, *Hashemi and Others v. Azerbaijan*, Nos 1480/16, 3936/16, 15835/16, 28034/16, 34491/16, 51348/16, 15904/17, 13 January 2022.

([181]) ECtHR, *Genovese v. Malta*, No 53124/09, 11 October 2011.

([182]) ECtHR, *Hoti v. Croatia*, No 63311/14, 26 April 2018. See also ECtHR, *Sudita Keita v. Hungary*, No 42321/15, 12 May 2020.

([183]) (*) This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

birth certificates. Consequently, Croatia had failed to comply with its positive obligation to provide an effective and accessible procedure enabling the applicant to have his status in Croatia determined with due regard to his right to private life under Article 8 of the ECHR.

Key points

- Status and documentation often allow non-nationals to access the labour market and private and public services (see Introduction to this chapter).
- The Charter expressly guarantees the right to asylum. Although the ECHR does not guarantee the right to obtain asylum, the expelling state may be required to refrain from removing an individual who is at risk of death or ill-treatment in the state of destination (see Section 3.2).
- Under EU law, asylum seekers have a right to remain in the territory of the host state while they await a final decision on their asylum application, and must be given a document allowing their stay in the Member State during the examination of the asylum application (see Section 3.1).
- Recognised refugees and beneficiaries of subsidiary protection must be given a residence permit and travel documents under EU law (see Section 3.2).
- In exceptional cases of mass influx, EU law allows for granting temporary protection to third-country nationals without individual asylum procedures (see Section 3.2).
- Victims of trafficking are entitled to residence permits to facilitate their cooperation with the police under both EU and ECHR law. EU law and the ECHR may require states to take particular measures to protect victims of trafficking (see Section 3.3).
- The Return Directive requires that EU Member States either regularise the position of third-country nationals in an irregular situation or issue a return decision to them (see Section 3.5). If return is suspended or postponed, the person concerned must receive a written certification confirming this status.
- Under the ECHR, failure to recognise a migrant's status or to issue them with documentation might raise an issue under Article 8 (see Section 3.5).
- Under EU law, third-country nationals are entitled to enhanced status (long-term residence) after legally residing in an EU Member State continuously for five years (see Section 3.6).

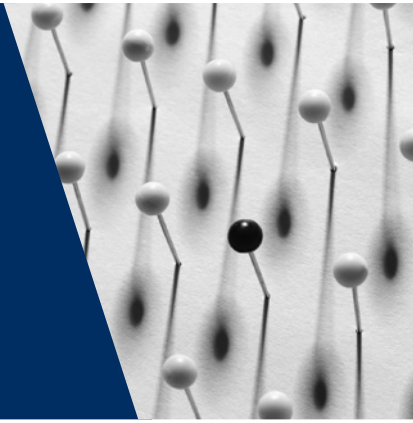
- Under EU law, Turkish nationals and their families cannot be made subject to more stringent conditions as regards self-employment or providing services than those that were in force at the time of the 1970 Additional Protocol to the Ankara Agreement. Turkish workers and their families have enhanced rights to remain (see Section 3.7).
- Under EU law, British nationals who had been living in a Member State before 1 January 2021 benefit, under the EU–UK Withdrawal Agreement, from a right of residence in their Member State of residence (see Section 3.8).
- Third-country nationals who are family members of EEA or Swiss nationals or of EU citizens exercising free movement rights are eligible for privileged status under EU law (see Section 3.9).
- Neither EU law nor the ECHR covers acquisition or loss of citizenship, but loss of citizenship may engage EU law if the citizenship loss also entails loss of EU rights (see Section 3.10).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

4

Asylum determination and barriers to removal: substantive issues



EU	Issues covered	CoE
TFEU, Article 78, and Charter of Fundamental Rights of the European Union, Article 18 (right to asylum), both referring to 1951 Geneva Convention, which enshrines this principle in its Article 33 Charter of Fundamental Rights of the European Union, Article 19 (protection in the event of removal, expulsion or extradition)	**Principle of *non-refoulement***	ECHR, Article 3 (prohibition of torture) ECHR, Article 2 (right to life) ECtHR, *Saadi v. Italy* [GC], No 37201/06, 2008 (absolute nature of prohibition of return to torture)
Qualification Regulation (Regulation (EU) 2024/1347), Article 4	**Assessment of the risk**	ECtHR, *NA. v. the United Kingdom*, No 25904/07, 2008 (assessment of the existence of a real risk in situation of generalised violence) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 2011 (assessment of the existence of a real risk in situations of indiscriminate violence and in respect of humanitarian conditions) ECtHR, *Salah Sheekh v. the Netherlands*, No 1948/04, 2007 (burden of proof for members of persecuted groups)

EU	Issues covered	CoE
		ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 2016; and ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 2016 (burden of proof for asylum claims based on an individual risk)
Asylum and Migration Management Regulation (Regulation (EU) 2024/1351), Part III CJEU, Joined Cases C-411/10 and C-493/10, *N. S. and M. E.* [GC], 2011 (Dublin transfers)	**Dublin transfers**	ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 2011 (return to a state of destitution from one EU Member State to another) ECtHR, *Tarakhel v. Switzerland* [GC], No 29217/12, 2014 (individual guarantees)
Return Directive (Directive 2008/115/EC), Articles 5 and 9 CJEU, C-562/13, *Abdida* [GC], 2014 (removal of a third-country national to a country where appropriate treatment is not available)	**Expulsion of seriously ill persons**	ECtHR, *Paposhvili v. Belgium* [GC], No 41738/10, 2016 (absence of an imminent risk of dying)
	Diplomatic assurances	ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, No 8139/09, 2012 (acceptable assurances)
Charter of Fundamental Rights of the European Union, Article 18 (right to asylum) Qualification Regulation (Regulation (EU) 2024/1347) ECJ, C-465/07, *Elgafaji* [GC], 2009 (subsidiary protection) CJEU, C-542/13, *M'Bodj* [GC], 2014 (subsidiary protection and serious illness) **Exclusion from protection** CJEU, C-573/14, *Lounani* [GC], 2017 (terrorism) CJEU, C-369/17, *Ahmed*, 2018 (subsidiary protection) CJEU, C-159/21, *GM*, 2022 (criminal conviction)	**Asylum determination (refugee status and subsidiary protection)**	

EU	Issues covered	CoE
Cessation of protection CJEU, Joined Cases C-175/08, C-176/08, C-178/08, C-179/08, *Salahadin Abdulla and Others* [GC], 2010 (cessation of refugee status) Charter of Fundamental Rights of the European Union, Article 19 (protection in the event of removal, expulsion or extradition)		
Qualification Regulation (Regulation (EU) 2024/1347), Article 8	**Internal relocation**	ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 2011 (assessment of the risk of ill-treatment in cases of relocation protection)
Charter of Fundamental Rights of the European Union, Article 19 (protection in the event of removal, expulsion or extradition)	**Prohibition of collective expulsion**	ECHR, Article 4 of Protocol No 4 (prohibition of collective expulsion of non-nationals) ECtHR, *Asady and Others v. Slovakia*, No 24917/15, 2020 (possibility of submitting arguments against removal) ECtHR, *Čonka v. Belgium*, No 51564/99, 2002 (expulsion without individual assessment) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 2020 (immediate forcible return of non-nationals following an attempted mass unauthorised border crossing)
Return Directive (Directive 2008/115/EC), Articles 5 and 9	**Barriers to expulsion on other human rights grounds**	ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], Nos 46827/99 and 46951/99, 2005 (risk of a flagrant denial of justice under Article 6 of the ECHR)
Long-term residents Long-term Residents Directive (Directive 2003/109/EC), Article 12	**Third-country nationals with a higher degree of protection from removal**	

EU	Issues covered	CoE
Third-country national family members of EEA nationals Free Movement Directive (Directive 2004/38/EC), Articles 28 and 31 CJEU, C-300/11, *ZZ* [GC], 2013 (notification duties) **Turkish nationals** Decision No 1/80 of the EEC–Turkey Association Council, Article 14(1) CJEU, C-402/21, *S, E and C*, 2023 (measures authorising limitations on rights of Turkish nationals)		

Introduction

This chapter looks at when an individual must not, or may not, be removed from a state owing to the requirements of EU law and/or the ECHR.

Under the ECHR, **absolute barriers** to removal exist at the very least where an expulsion would be in breach of the absolute rights guaranteed by Article 2 on the right to life and Article 3 on the prohibition of torture and of inhuman or degrading treatment or punishment. Article 15 of the ECHR sets out those rights that are absolute and cannot be derogated from (see Section 4.1.2).

Near absolute barriers to removal exist where there are exceptions to a general prohibition, as is the case under the 1951 Geneva Convention and under the Qualification Regulation (Regulation (EU) 2024/1347). In exceptional circumstances, both instruments allow for exceptions to the prohibition on removal of a refugee (see Section 4.1.6).

Non-absolute barriers exist to strike a balance between the individual's private interest or rights and the public or state interest, such as when removal would break up a family (see Section 4.3).

4.1. The right to asylum and the principle of *non-refoulement*

The starting point for considering asylum in Europe is the 1951 Geneva Convention and its 1967 Protocol, which are largely incorporated into EU law through the Qualification Regulation (Regulation (EU) 2024/1347). The 1951 Geneva Convention is the specialised treaty for the rights of refugees. The *non-refoulement* principle is the cornerstone of refugee protection ([184]). It means that, in principle, refugees must not be returned to a country where they have a reason to fear persecution.

> Article 33(1) of the 1951 Geneva Convention provides: 'No contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

The *non-refoulement* principle applies both to returns to the country of origin and to returns to any country where the refugee would face persecution. All Member States of the EU and member states of the CoE are parties to the 1951 Geneva Convention, but Türkiye applies the convention only in relation to refugees from Europe ([185]). The UNHCR has issued a *Handbook on procedures and criteria for determining refugee status and guidelines on international protection*, last updated in February 2019, which covers in detail the issues dealt with in Sections 4.1.1 to 4.1.8 and 5.1 ([186]).

Under EU law, Article 78 of the TFEU stipulates that the EU must provide a policy for asylum, subsidiary protection and temporary protection, 'ensuring compliance with the principle of non-refoulement'. This policy must be in accordance with the 1951 Geneva Convention and its Protocol. The CJEU underlined the fundamental role

([184]) Under international human rights law, the meaning of the *non-refoulement* principle extends beyond Art. 33(1) of the 1951 Geneva Convention, as *non-refoulement* duties also derive from Art. 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and from general international law, including Art. 7 of the ICCPR. See UNHCR, *Advisory opinion on the extraterritorial application of* non-refoulement *obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Geneva, 2007.

([185]) Türkiye maintains a geographical reservation under Art. 1(B) of the convention, which means that its obligations are restricted to people uprooted by events in Europe.

([186]) UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, Geneva, 2019.

of the 1951 Geneva Convention in international refugee protection, noting that the provisions of the Qualification Directive help Member States apply the 1951 Geneva Convention using common criteria ([187]).

Under Article 78 of the TFEU, EU asylum policies must also be in accordance with 'other relevant treaties'. These include, for example, the ECHR; the UN Convention on the Rights of the Child; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the ICCPR; the International Covenant on Economic, Social and Cultural Rights; the European Social Charter (ESC); the Convention on the Elimination of All Forms of Discrimination against Women; and the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence, hereafter the Istanbul Convention.

Several instruments constituting the EU asylum *acquis* have been adopted. The most relevant are the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351), the Qualification Regulation (Regulation (EU) 2024/1347), the Asylum Procedure Regulation (Regulation (EU) 2024/1348), the Reception Conditions Directive (Directive (EU) 2024/1346) and the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359). The Return Border Procedure Regulation (Regulation (EU) 2024/1349) complements them. Denmark and Ireland are not, or only partly, bound by the EU asylum *acquis* (see Annex 1).

The 2024 Qualification Regulation, replacing the Qualification Directive (Directive 2011/95/EU), establishes under EU law a set of common standards for the qualification of persons as refugees or those in need of international protection. It also includes the rights and duties of that protection, a key element of which is *non-refoulement* under Article 33 of the 1951 Geneva Convention.

However, Article 33 of the 1951 Geneva Convention does not absolutely prohibit such *refoulement*. The articles allow the removal of a refugee in very exceptional circumstances, namely when the person constitutes a danger to the security of the host state or when, after the commission of a serious crime, the person is a danger to the community. Article 21 of the Qualification Regulation does not prescribe such an exception and states that the principle of *non-refoulement* must be respected in accordance with EU and international law.

([187]) CJEU, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, *Aydin Salahadin Abdulla and Others v. Bundesrepublik Deutschland* [GC], 2 March 2010, para. 52.

Under the Charter of Fundamental Rights of the European Union (the Charter), Article 18 guarantees the right to asylum, which includes compliance with the *non-refoulement* principle. Article 19(2) of the Charter provides that no one may be removed, expelled or extradited to a state where they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. The explanation to the Charter states that Article 19(2) incorporates the relevant case-law of the ECtHR regarding Article 3 of the ECHR ([188]).

The CJEU concluded that refugees enjoy stronger protection from *refoulement* under EU law, since any form of removal under the EU asylum *acquis* must be in conformity with the right to asylum and the principle of *non-refoulement*, as enshrined in Articles 4 and 19(2) of the Charter ([189]).

Under the ECHR, Articles 2 and 3 absolutely prohibit any return of an individual who would face a real risk of treatment contrary to either of those provisions. This is different from a risk of persecution on one of the grounds set out in the 1951 Geneva Convention.

The ECtHR has held that Article 3 of the ECHR enshrines one of the fundamental values of a democratic society and in absolute terms prohibits torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct, however undesirable or dangerous. Under Article 3, a state's responsibility is engaged where substantial grounds have been shown for believing that the person faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which they are being returned ([190]).

Example: in *Saadi v. Italy* ([191]), the applicant was a Tunisian national who had been sentenced in Tunisia, while absent from the country, to 20 years' imprisonment for being a member of a terrorist organisation. The applicant was also

([188]) See the Explanations relating to the Charter of Fundamental Rights (OJ C 303, 14.12.2007, p. 17, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007X1214(01)); ECtHR, *Ahmed v. Austria*, No 25964/94, 17 December 1996; ECtHR, *Soering v. the United Kingdom*, No 14038/88, 7 July 1989.

([189]) CJEU, Joined Cases C-391/16, C-77/17 and C-78/17, *M v. Ministerstvo vnitra, and X and X v. Commissaire général aux réfugiés et aux apatrides* [GC], 14 May 2019, paras 94–95.

([190]) ECtHR, *M. A. v. France*, No 9373/15, 1 February 2018; ECtHR, *Salah Sheekh v. the Netherlands*, No 1948/04, 11 January 2007, para. 135; ECtHR, *Soering v. the United Kingdom*, No 14038/88, 7 July 1989; ECtHR, *Vilvarajah and Others v. the United Kingdom*, No 13163/87 and four others, 30 October 1991.

([191]) ECtHR, *Saadi v. Italy* [GC], No 37201/06, 28 February 2008. See also ECtHR, *Mannai v. Italy*, No 9961/10, 27 March 2012.

convicted in Italy of conspiracy. The ECtHR considered that the prospect of the applicant possibly posing a serious threat to the community did not diminish, in any way, the risk that he might suffer harm if removed. Furthermore, reliable human rights reporting recorded ill-treatment of prisoners in Tunisia, particularly of those convicted of terrorist offences. Diplomatic assurances, provided in this case, did not negate this risk. The Court therefore considered that there were substantial grounds for believing that there was a real risk that the applicant would be subjected to treatment contrary to Article 3 of the ECHR if he were to be removed to Tunisia.

4.1.1. The nature of the risk under EU law

Under EU law, the Qualification Regulation protects against *refoulement*. Individuals are eligible for refugee status (see Chapter 3 on status and associated documentation) if they have a well-founded fear of persecution within the meaning of Article 1(A) of the 1951 Geneva Convention. Under Article 9 of the Qualification Regulation, an act of persecution must be:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR; or

(b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as to an act referred to in point (a).

Article 9 of the Qualification Regulation also specifies that persecution can take different forms, including acts of physical or mental violence, administrative or legal measures (this could, for example, be the case for laws prohibiting homosexuality or religious freedom) and 'acts of a gender-specific or child-specific nature'. For example, victims of trafficking can be considered to be suffering from persecution. The various forms of persecution and the acts listed above must be attributable to one of the five **reasons for persecution** derived from the 1951 Geneva Convention: race, religion, nationality, membership of a particular social group and political opinion. These five reasons for persecution are enshrined in Article 10 of the Qualification Regulation, which explicitly requires due consideration of gender identity and gender expression for the purposes of determining membership of a particular social group. The preamble to the Qualification Regulation refers to disability as a potential characteristic for the purpose of defining a particular social group.

Persecution may also exist when, upon return, a person would be forced to conceal their political convictions, sexual orientation or religious beliefs and practices to avoid serious harm. According to Article 10(3) of the Qualification Regulation, applicants cannot be expected to conceal their homosexuality in the country of origin or to exercise reserve in the expression of their sexual orientation in order to avoid the risk of persecution ([192]).

Example: in *Fathi* ([193]), the CJEU reaffirmed a broad definition of 'religion', which encompasses all of its constituent components, be they public or private, collective or individual. The Court held that the definition of 'religion' in the Qualification Directive provides only a non-exhaustive list of components that may characterise the concept of religion as a reason for persecution. An applicant claiming to be at risk of persecution for reasons based on religion cannot be required to make statements or produce documents concerning each of the components covered by Article 10(1)(b) of the Qualification Directive (now Qualification Regulation) to substantiate their religious beliefs. The Court also stated that imposing the death penalty or a custodial sentence, is capable, in itself, of constituting an 'act of persecution', within the meaning of Article 9(1) of the Qualification Directive (now Qualification Regulation), provided that such penalties are actually applied in the country of origin that adopted such legislation.

Example: in *S and A* ([194]), the CJEU held that, for a fear of persecution based on political opinion to be well-founded, it is sufficient for an applicant to claim that they have expressed political opinions or thoughts even if these have not attracted the negative interest of the potential actor of persecution in the country of origin. The Court stated that Member States must consider that the political opinion could or may have attracted the negative interest of such actors.

Example: in *Intervyuirasht organ na DAB pri MS* ([195]), the CJEU interpreted the Qualification Directive consistently with the Istanbul Convention and held that women may be considered as belonging to a particular social group where

([192]) See also CJEU, Joined Cases C-199/12, C-200/12 and C-201/12, *Minister voor Immigratie en Asiel v. X and Y, and Z v. Minister voor Immigratie en Asiel*, 7 November 2013.

([193]) CJEU, C-56/17, *Bahtiyar Fathi v. Predsedatel na Darzhavna agentsia za bezhantsite*, 4 October 2018.

([194]) CJEU, C-151/22, *S and Others v. United Nations High Commissioner for Refugees (UNHCR)*, 21 September 2023.

([195]) CJEU, C-621/21, *WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 16 January 2024.

they are, on account of their gender, exposed to physical or mental violence. The Court established that gender-based violence can be considered a form of persecution. The CJEU has also recognised that persons who identify with the values of gender equality constitute a particular social group ([196]).

The protection needs of persons whose asylum claims arise while in the host country ('*sur place* refugees') are recognised; Article 5 of the Qualification Regulation specifically covers the issue of a well-founded fear of persecution or serious harm based on events that have taken place after the applicant left their country of origin.

Regarding **subsidiary protection**, the Qualification Regulation guarantees 'subsidiary protection' to those who do not qualify as refugees but, if returned to their country of origin or former habitual residence, would face a real risk of suffering serious harm, defined as the death penalty or execution (Article 15(a)), torture or inhuman or degrading treatment or punishment (Article 15(b)) or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Article 15(c)).

Example: in *M'Bodj* ([197]), the CJEU ruled that an applicant suffering from a serious illness cannot be granted subsidiary protection for that reason. The fact that removal is precluded by the absence of appropriate medical treatment in the country of origin does not mean that the applicant should be granted subsidiary protection and therefore lawful residence in the EU Member State, unless they are intentionally deprived of healthcare in their country of origin.

Example: *MP v. Secretary of State for the Home Department* ([198]) concerned the possible granting of subsidiary protection to a person who was a victim of torture in his country of origin. The CJEU ruled that EU Member States cannot expel the applicant if such expulsion would result in significant and permanent deterioration of that person's mental health disorders, particularly where such deterioration would endanger his life. However, the fact that removal is precluded by the absence of appropriate treatment does not mean that that applicant should be granted subsidiary protection under Article 15(b) of the Qualification

([196]) See CJEU, C-646/21, *K and L v. Staatssecretaris van Justitie en Veiligheid* [GC], 11 June 2024. See also CJEU, Joined Cases C-608/22 and C-609/22, *AH and FN v. Bundesamt für Fremdenwesen und Asyl*, 4 October 2024.

([197]) CJEU, C-542/13, *Mohamed M'Bodj v. État Belge* [GC], 18 December 2014.

([198]) CJEU, C-353/16, *MP v. Secretary of State for the Home Department* [GC], 24 April 2018.

Directive (now Qualification Regulation) and therefore lawful residence in the EU Member State. When deciding on the granting of subsidiary protection, the authorities should ascertain whether or not the return of the victim to the country of origin is likely to entail intentional deprivation of necessary medical treatment by the authorities, since these are the conditions under which the person is eligible for subsidiary protection.

Recital 50 of the Qualification Regulation specifies that eligibility for subsidiary protection under Article 15(c) requires showing that the applicant is affected by factors particular to their personal circumstances and/or by indiscriminate violence ([199]). The more the applicant is able to show that they are affected by specific factors particular to their personal circumstances, the lower the level of indiscriminate violence required for the applicant to be eligible for subsidiary protection under Article 15(c) ([200]). In exceptional situations, the applicant may be eligible for subsidiary protection where the degree of indiscriminate violence resulting from an international or internal armed conflict ([201]) reaches such a high level that substantial grounds are shown for believing that they may face a real risk of being subject to threat of harm based solely on account of their presence in the country or region of origin ([202]).

4.1.2. The nature of the risk under the ECHR

Under the ECHR, removal is absolutely prohibited where a state would expose an individual to a real risk of loss of life under Article 2 of the ECHR or of torture or inhuman or degrading treatment or punishment under Article 3. There is no need to show persecution for a reason as listed in the 1951 Geneva Convention. There are no exceptions to the prohibition of removal under the above ECHR provisions (see Section 4.1.7).

([199]) See also ECJ, C-465/07, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie* [GC], 17 February 2009, paras 35–39.

([200]) Qualification Regulation, recital 52.

([201]) The CJEU was also asked to define the term 'internal armed conflict' in CJEU, C-285/12, *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, 30 January 2014.

([202]) In CJEU, C-125/22, *X and Others v. Staatssecretaris van Justitie en Veiligheid*, 9 November 2023, the court differentiated between, on the one hand, exceptional situations where the existence of a risk of serious and individual threat is not conditional on the applicant being specifically affected by reason of his personal circumstances and, on the other hand, less exceptional situations.

The ECtHR tends to examine cases under Article 2 or 3 of the ECHR, depending on the particular circumstances and the treatment the individual risks if the individual is removed or extradited ([203]). The Court often either finds the issues under both articles inseparable and examines them together ([204]) or includes the complaint made under Article 2 in its examination of the main complaint under Article 3.

> Example: in *Sanchez-Sanchez v. the United Kingdom* ([205]), extradition to the United States was challenged on the basis that the possibility for the person concerned to be sentenced to life imprisonment would breach Article 3 of the ECHR. The ECtHR applied a two-step test: first, the applicant must demonstrate that, in the event of their conviction, there is a real risk of life imprisonment without parole without due consideration of all the mitigating and aggravating factors. Second, if this real risk were established, the sending state should determine whether there exists in the requesting state a mechanism of sentence review allowing for the consideration of whether continued detention can still be justified.

The ECtHR focuses on the probable consequences of removing a person to the proposed country of return. It looks at the **personal circumstances of the individual** and the general conditions in a country, such as if there is a general situation of violence or armed conflict or if there are human rights abuses. In most cases, **a situation of general violence** in a country will not breach Article 3 of the ECHR. When violence is of a sufficient level or intensity, however, the individual does not need to show that they would be worse off than other members of the group to which they belong. Sometimes the individual may have to show a combination of both personal risk factors and the risk of general violence. The sole question for the Court to consider is whether or not there is a predictable and real risk of ill-treatment contrary to Article 3 of the ECHR. Where an individual is a **member of a group subject to systematic ill-treatment** ([206]), it may not be necessary to cite evidence of personal risk factors.

([203]) For further information on persons with specific needs see Chapter 9.

([204]) ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 23 March 2016, para. 110.

([205]) ECtHR, *Sanchez-Sanchez v. the United Kingdom* [GC], No 22854/20, 3 November 2022. As regards the risk of a death sentence, see also ECtHR, *Bader and Kanbor v. Sweden*, No 13284/04, 8 November 2005 (applicant sentenced to death in Syria) and ECtHR, *Al-Saadoon and Mufdhi v. the United Kingdom*, No 61498/08, 2 March 2010 (civilians facing capital charges in Iraq).

([206]) ECtHR, *H. and B. v. the United Kingdom*, Nos 70073/10 and 44539/11, 9 April 2013, para. 91; ECtHR, *Tadzhibayev v. Russia*, No 17724/14, 1 December 2015, para. 43; ECtHR, *M. D. and Others v. Russia*, No 71321/17, 14 September 2021, paras 104–111.

Example: in *NA. v. the United Kingdom* ([207]), the ECtHR found that the level of generalised violence in Sri Lanka was not sufficient to prohibit all returns to the country; however, taken together with the personal factors specific to the applicant, his return would violate Article 3 of the ECHR. For the first time, the ECtHR accepted the possibility that a situation of generalised violence could, in itself, mean that all returns were prohibited ([208]).

Example: as regards the weight attached to the existence of generalised violence, in *Sufi and Elmi v. the United Kingdom* ([209]), the ECtHR assessed the level of violence in Mogadishu (Somalia) through the following non-exhaustive criteria: if the parties to the conflict were either employing methods and tactics of warfare that increased the risk of civilian casualties or directly targeting civilians; if the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localised or widespread; and, finally, the number of civilians killed, injured and displaced as a result of the fighting. See also *L. M. and Others v. Russia* ([210]) on the level of intensity of the conflict in Syria.

Example: in *Salah Sheekh v. the Netherlands* ([211]), the ECtHR found that members of minority clans in Somalia were 'a targeted group' at risk of prohibited ill-treatment. The relevant factor was whether or not the applicant would be able to obtain protection against and seek redress for the past acts perpetrated against him in that country. The ECtHR considered that he would not be able to obtain such protection or redress, given that there had been no significant improvement in the situation in Somalia since he had fled. The applicant and his family had been specifically targeted because they belonged to a minority group and were known to have no means of protection. The applicant could not be required to establish the existence of further special distinguishing features concerning him personally in order to show that he was, and continued to be, personally at risk. The ECtHR concluded that his expulsion would violate Article 3 of the ECHR.

([207]) ECtHR, *NA. v. the United Kingdom*, No 25904/07, 17 July 2008, paras 114–117 and para. 147.

([208]) See also ECtHR, *X. v. Switzerland*, No 16744/14, 26 January 2017.

([209]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011, paras 241–250 and para. 293.

([210]) ECtHR, *L. M. and Others v. Russia*, Nos 40081/14, 40088/14 and 40127/14, 15 October 2015, paras 119–127.

([211]) ECtHR, *Salah Sheekh v. the Netherlands*, No 1948/04, 11 January 2007.

Example: in *Khasanov and Rakhmanov v. Russia* ([212]), the ECtHR found that, because Uzbeks no longer constituted a group systematically exposed to ill-treatment, the applicants were under an obligation to demonstrate the existence of further special distinguishing features that would place them at a real risk of ill-treatment.

The ECtHR has also had to consider whether or not an individual's participation in dissident activities in the host country increased their risk of being subjected to treatment contrary to Article 3 of the ECHR upon return ([213]).

Example: in *S. F. and Others v. Sweden* ([214]), the Court held that it would violate Article 3 of the ECHR to remove an Iranian family of political dissidents who had fled Iran and taken part in significant political activities in Sweden. The Court found that the applicants' activities in Iran were not, on their own, sufficient to constitute a risk, but their activities in Sweden were important, as the evidence showed that the Iranian authorities effectively monitored internet communications and regime critics, even outside Iran. The Iranian authorities would thus easily be able to identify the applicants on return, given their activities and incidents in Iran before moving to Sweden and because the family had been forced to leave Iran irregularly without valid identity documents.

The individual to be removed may be at risk of various types of **harm** that may amount to treatment contrary to Article 3 of the ECHR, including sources of risk that **emanate not from the receiving state** itself, but rather from non-state actors and from illness or humanitarian conditions in the receiving country.

Example: *J. K. and Others v. Sweden* ([215]) concerned an Iraqi man, who had worked for American clients and operated out of a US armed forces base in Iraq, and his family, who had fled Iraq because they had been exposed to serious threats and abuse by Al-Qaeda. The ECtHR held that in that situation the Iraqi government would not be able to provide the applicants with effective

([212]) ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], Nos 28492/15 and 49975/15, 29 April 2022.

([213]) See, for example, ECtHR, *A. A. v. Switzerland*, No 58802/12, 7 January 2014; ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 23 March 2016; ECtHR, *Muminov v. Russia*, No 42502/06, 11 December 2008.

([214]) ECtHR, *S. F. and Others v. Sweden*, No 52077/10, 15 May 2012.

([215]) ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 23 August 2016.

protection against threats by Al-Qaeda or other private groups and that the applicants would thus face a real risk of continued persecution by non-state actors if returned to Iraq.

Example: in *M. I. v. Switzerland* ([216]), the ECtHR ruled on a case concerning the removal of an Iranian national to his country of origin. The ECtHR established that, due to the homosexuality of the person concerned, it was unreasonable to expect Iranian authorities to provide effective protection against prosecution perpetrated by non-state actors.

Example: *Paposhvili v. Belgium* ([217]) concerned a Georgian national suffering from leukaemia and recurrent tuberculosis and facing removal due to criminal activity in Belgium. The ECtHR clarified that, even in the absence of an imminent risk of dying, a lack of appropriate and accessible treatment in the receiving country that exposes the individual to a 'serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy' would fall under Article 3. The Court ruled that it is for the applicant to adduce evidence of a real risk of being subjected to treatment contrary to Article 3 of the ECHR and for the authorities to assess whether or not appropriate treatment is available and accessible in the receiving country so that the applicant avoids finding themselves in a situation amounting to ill-treatment. States must assess the impact of removal on the individual by comparing their health prior to removal and how it would develop after the removal. The Court found that the Belgian authorities had not examined the applicant's medical conditions in the context of his removal and had thus violated Article 3 of the ECHR.

Example: in *Aswat v. the United Kingdom* ([218]), the Court found that the proposed extradition of the applicant, a suspected terrorist suffering from a serious mental disorder, to the United States would constitute a violation of Article 3, given the uncertainty over his conditions of detention in the receiving country. His mental disorder was of sufficient severity to have necessitated his transfer from ordinary prison to a high-security psychiatric hospital in the United Kingdom. The medical evidence clearly indicated that it continued to be appropriate

([216]) ECtHR, *M. I. v. Switzerland*, No 56390/21, 12 November 2024.

([217]) ECtHR, *Paposhvili v. Belgium* [GC], No 41738/10, 13 December 2016, paras 183–191. See also ECtHR, *Savran v. Denmark* [GC], No 57467/15, 7 December 2021.

([218]) ECtHR, *Aswat v. the United Kingdom*, No 17299/12, 16 April 2013.

for him to remain there 'for his own health and safety'. Therefore, in light of the available medical evidence, there was a real risk that the applicant's extradition to a different country and to a different, and potentially more hostile, prison environment would result in a significant deterioration of his mental and physical health and that such a deterioration would be capable of reaching the Article 3 threshold.

Example: in *Sufi and Elmi v. the United Kingdom* ([219]), the Court found that the applicants, if expelled, were likely to find themselves in refugee camps in Somalia and neighbouring countries, where the dire humanitarian conditions breached Article 3 of the ECHR. The Court noted that the humanitarian situation was not solely due to naturally occurring phenomena, such as drought, but also a result of the actions or inactions of the parties to the conflict in Somalia.

While most of the removal cases examined by the ECtHR under Articles 2 or 3 of the ECHR concern removal to the country of origin of the person concerned, removals may also be ordered to another third country. In such cases, the assessment of whether the applicant, if removed, would face a real risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR often focuses on whether the applicant would be denied access to an adequate asylum procedure in the receiving state (see Section 4.1.6).

4.1.3. Assessment of risk

The principles applied under EU law and those under the ECHR have a lot in common when assessing the risk of return. This commonality may be attributed to the EU asylum *acquis* standards being largely derived from the case-law of the ECtHR and the UNHCR guidelines. These principles include the requirement that assessments be individualised and based on a consideration of all relevant, up-to-date laws, facts, documents and evidence. This includes information on the situation in the country of origin. Past harm to a person can be a strong indication of future risk. The European Union Agency for Asylum (EUAA) has developed country of origin information and country guidance that can be used in asylum procedures. The EUAA also published in 2024 a practical guide addressed to case officers on evidence and risk assessment ([220]).

([219]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011, paras 267–292.

([220]) EUAA, *Practical Guide on Evidence and Risk Assessment*, Publications Office of the European Union, Luxembourg, 2024.

Under EU law, Article 4 of the Qualification Regulation together with Article 34 of the Asylum Procedure Regulation set out detailed rules for the submission of information and assessment of facts and circumstances as well as the examination of applications for international protection. There must be an objective, impartial and individualised assessment. When a person has suffered past persecution, this may be a strong indicator of future risk on return. Eligibility officers need to consider any explanation that constitutes a genuine effort to substantiate a claim.

On the timing of an assessment, the Asylum Procedure Regulation provides in Article 34(2) that an assessment is to be carried out at the time of making a decision on the application. The Asylum Procedure Regulation requires in Article 67(3) that, in appeals procedures, the examination of facts and points of law be made at the time when the appeal is heard. The timing to assess the cessation of protection status is described in Section 4.1.8.

In the context of return procedures, a *non-refoulement* check must be carried out prior to removal (see Section 4.3).

Under ECHR law, the ECtHR has distinguished two types of asylum claims based on the nature of the risk. On the one hand, if the risk stems from a general and well-known situation, the authorities have to carry out an assessment of the risk of their own motion ([221]). On the other hand, in situations of asylum claims based on an individual risk, 'it must be for the person seeking asylum to rely on and to substantiate such a risk' ([222]). In the latter case, it is thus for the applicant to cite evidence capable of proving that there are substantial grounds for believing that, if they are removed from a member state, they will be exposed to a real risk of being subjected to treatment prohibited by Article 2 or 3 of the ECHR. Where such evidence is cited, it is for the government to dispel any doubts about it ([223]). The ECtHR has acknowledged that asylum seekers are often in a special situation, which frequently necessitates giving them the benefit of the doubt when assessing the credibility of their

([221]) ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], Nos 28492/15 and 49975/15, 29 April 2022, para. 111.

([222]) ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 23 March 2016, paras 126–127; ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 23 August 2016, para. 98.

([223]) ECtHR, *Saadi v. Italy* [GC], No 37201/06, 28 February 2008, para. 129.

statements and their submitted supporting documents ([224]). However, when information is lacking or when there is a strong reason to question the veracity of their submissions, they must provide a satisfactory explanation ([225]).

Example: in *Singh and Others v. Belgium* ([226]), the Court noted that the Belgian authorities had rejected documents submitted in support of an asylum application by Afghan nationals. The authorities had not sufficiently investigated the documentation before finding it unconvincing. In particular, they had failed to check the authenticity of copies of documents issued by the UNHCR office in New Delhi granting the applicants refugee status, although such verification would have been easy to undertake. Therefore, they had not conducted a close and rigorous scrutiny of the asylum application as required by Article 13 of the ECHR, violating that provision in conjunction with Article 3.

Example: in *A. M. A. v. the Netherlands* ([227]), which concerned a subsequent last-minute asylum applications submitted just before removal, the ECtHR ruled that the authorities had excluded the documents submitted by the applicant in his last-minute application without assessing their potential relevance.

Considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the ECHR and considering the position of vulnerability of asylum seekers, the authorities may be required to assess whether or not a risk exists of their own motion. When an applicant chooses not to rely on or disclose a specific individual ground for asylum, by deliberately refraining from mentioning it, the state concerned cannot be expected to discover this ground by itself. However, when a state is made aware of facts relating to a specific individual that could expose the individual to a risk of ill-treatment upon returning to the country in question, for instance due to membership of a group systematically exposed to ill-treatment, the authorities must carry out an assessment of that risk of their own motion ([228]).

([224]) ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 23 August 2016, para. 93; ECtHR, *M. A. v. Switzerland*, No 52589/13, 18 November 2014, para. 55; ECtHR, *Salah Sheekh v. the Netherlands*, No 1948/04, 11 January 2007, para. 148; ECtHR, *R. C. v. Sweden*, No 41827/07, 9 March 2010, para. 50; ECtHR, *M. I. v. Switzerland*, No 56390/21, 12 November 2024.

([225]) ECtHR, *Matsiukhina and Matsiukhin v. Sweden* (dec.), No 31260/04, 21 June 2005; ECtHR, *Collins and Akaziebie v. Sweden* (dec.), No 23944/05, 8 March 2007; ECtHR, *A. A. M. v. Sweden*, No 68519/10, 3 April 2014.

([226]) ECtHR, *Singh and Others v. Belgium*, No 33210/11, 2 October 2012.

([227]) ECtHR, *A. M. A. v. the Netherlands*, No 23048/19, 24 October 2023.

([228]) ECtHR, *F. G. v. Sweden* [GC], No 43611/11, 23 March 2016, para. 127.

Article 36 of the ECHR entitles a member state to intervene in a case lodged with the Court by one of its nationals against another member state. This provision – which was inserted into the ECHR to allow a state to provide diplomatic protection to its nationals – was found not to apply in cases where the applicants' complaint was based on the fear of being returned to the member state of their nationality, which allegedly would subject them to treatment contrary to Articles 2 and 3 of the convention ([229]).

Under ECtHR case-law, the risk must be assessed not only on the basis of individual factors, but cumulatively ([230]). Any assessment must be individualised, taking into account all the evidence ([231]). If a person has suffered past persecution, this may be a strong indication that they will suffer future risk ([232]). However, the absence of past persecution or ill-treatment is not a decisive factor in the evaluation of the risk of future ill-treatment ([233]).

When assessing the risk of return, the ECtHR considers evidence of the general country conditions and evidence of a particular risk to the individual. It has provided guidance on the kinds of documentation that may be relied upon when considering country conditions, such as reports by the UNHCR and international human rights organisations ([234]). It has found reports to be unreliable when the sources of information are unknown and the conclusions inconsistent with other credible reporting ([235]).

When an individual has not been expelled, the date of the ECtHR's assessment is the point in time for considering the risk ([236]). When an applicant has already been expelled, the ECtHR will look at whether or not the individual has been ill-treated,

([229]) ECtHR, *I. v. Sweden*, No 61204/09, 5 September 2013.

([230]) ECtHR, *S. F. and Others v. Sweden*, No 52077/10, 15 May 2012, paras 68–69; ECtHR, *A. M. A. v. the Netherlands*, No 23048/19, 24 October 2023, para. 68.

([231]) ECtHR, *R. C. v. Sweden*, No 41827/07, 9 March 2010, para. 51 (on a medical certificate); ECtHR, *N. v. Sweden*, No 23505/09, 20 July 2010, para. 52; ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011.

([232]) ECtHR, *R. C. v. Sweden*, No 41827/07, 9 March 2010; ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 23 August 2016, paras 99–102.

([233]) ECtHR, *T. K. and Others v. Lithuania*, No 55978/20, 22 March 2022, paras 81–82.

([234]) ECtHR, *NA. v. the United Kingdom*, No 25904/07, 17 July 2008, paras 118–122.

([235]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011, paras 230–234.

([236]) ECtHR, *Saadi v. Italy* [GC], No 37201/06, 28 February 2008; ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], Nos 28492/15 and 49975/15, 29 April 2022, para. 106.

including during the removal process ([237]), or whether or not the available evidence at the time of removal demonstrated substantial reasons for believing that the applicant would be ill-treated.

Example: in *Sufi and Elmi v. the United Kingdom* ([238]), the ECtHR looked at reports by international organisations on the conditions and levels of violence in Somalia and reports on the human rights abuses carried out by Al-Shabaab, a Somali Islamist insurgent group. The Court was unable to rely on a government fact-finding report on Somalia from Nairobi, Kenya, as it contained vague and anonymous sources and conflicted with other information in the public domain. Judging by the available evidence, the Court considered the conditions in Somalia unlikely to improve soon.

Example: in *Muminov v. Russia* ([239]), the applicant was an Uzbek national who was, on the basis of available information, apparently serving a five-year sentence of imprisonment in Uzbekistan after being extradited from Russia. The ECtHR held that, even though there was no other reliable information on the applicant's situation after his extradition, beyond his conviction, there was sufficient credible reporting on the general ill-treatment of convicts in Uzbekistan to lead the Court to find a violation of Article 3 of the ECHR.

4.1.4. Sufficiency of protection

Under international refugee law, an asylum seeker who claims to be in fear of persecution is entitled to refugee status if they can show both a well-founded fear of persecution for a reason covered by the 1951 Geneva Convention and the insufficiency of state protection. Sufficiency of state protection means both willingness and ability in the receiving state, whether on the part of state agents or other entities controlling parts of the state territory, to provide through its legal system a reasonable level of protection from the ill-treatment the asylum claimant fears.

Under EU law, when determining an individual's eligibility for refugee status or subsidiary protection, it is necessary to consider whether or not in the country of proposed return the applicant would be protected from the harm feared. Article 7 of the Qualification Regulation provides that '[o]nly the following actors can provide

([237]) ECtHR, *Thuo v. Cyprus*, No 3869/07, 4 April 2017.

([238]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011.

([239]) ECtHR, *Muminov v. Russia*, No 42502/06, 11 December 2008.

protection against persecution or serious harm, provided that they are able and willing to provide effective and non-temporary protection: … the State [or] stable, established non-State authorities, including international organisations, which control the State or a substantial part of the territory of the State'. Reasonable steps to prevent persecution or the suffering of serious harm are required, which include operating an effective legal system for detection, prosecution and punishment. The applicant must have access to such protection systems.

Example: in *Salahadin Abdulla and Others* ([240]), which concerned the cessation of refugee status, the CJEU held that, for the protection offered by the state of the refugee's nationality to be sufficient, the state or other entities providing protection under Article 7(1) of the Qualification Directive (now Qualification Regulation) must objectively have a reasonable level of capacity and the willingness to prevent acts of persecution. They must take reasonable steps to prevent persecution by, among other things, operating an effective legal system accessible to the person concerned after refugee status has ceased in order to detect, prosecute and punish acts of persecution. The state, or other entity providing protection, must meet certain concrete requirements, including having the authority, organisational structure and means, among other things, to maintain a minimum level of law and order in the refugee's country of nationality.

Example: in *OA* ([241]), the CJEU further specified under which conditions a change of circumstances in the country of origin can justify the cessation of refugee status. The CJEU set out that social and financial support provided by private actors may not be considered protection under the Qualification Directive (now Qualification Regulation) and are thus irrelevant in assessing the effectiveness or availability of the protection provided by the country of origin or in determining whether the person concerned keeps on having a well-founded fear of persecution.

A specific protection regime exists for refugees from Palestine ([242]). The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established to provide them with protection and assistance. UNRWA operates

([240]) CJEU, Joined Cases C-175/08, C-176/08, C-178/08, C-179/08, *Aydin Salahadin Abdulla and Others v. Bundesrepublik Deutschland* [GC], 2 March 2010.

([241]) CJEU, C-255/19, *Secretary of State for the Home Department v. OA*, 20 January 2021.

([242]) This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

in the West Bank, including East Jerusalem and the Gaza Strip, and in Jordan, Lebanon and Syria. Individuals who receive assistance from UNRWA are not entitled to refugee status (Article 12(1)(a) of the Qualification Regulation, which incorporates Article 1(D) of the 1951 Geneva Convention into EU law).

Example: the *Bolbol* case ([243]) concerned a stateless person of Palestinian origin who left the Gaza Strip and arrived in Hungary, where she submitted an asylum application without previously having sought protection or assistance from UNRWA. The CJEU clarified that, for the purposes of Article 12(1)(a) of the Qualification Directive (now Qualification Regulation), a person should be regarded as having received protection and assistance from a UN agency, other than the UNHCR, only when that person has actually used that protection or assistance, not merely by virtue of being theoretically entitled to it.

Example: in *El Kott* ([244]), the CJEU further clarified that persons forced to leave the UNRWA operational area for reasons unconnected to their will and beyond their control and independent volition must be automatically granted refugee status, where none of the grounds of exclusion laid down in Article 12(1)(b) or Article 12(2) and (3) of the Qualification Directive (now Qualification Regulation) apply.

Example: in *SN and LN* ([245]), the CJEU clarified the conditions under which UNRWA's protection must be considered to have ceased under the second sentence of Article 12(1)(a) of the Qualification Directive (now Qualification Regulation). The Court ruled that UNRWA's protection or assistance must be considered to have ceased when UNRWA is unable to ensure dignified living conditions to the beneficiaries of such protection and that the beneficiaries would find themselves in a state of serious insecurity if they were to return to the sector of UNRWA's operations.

([243]) CJEU, C-31/09, *Nawras Bolbol v. Bevándorlási és Állampolgársági Hivatal* [GC], 17 June 2010.

([244]) CJEU, C-364/11, *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal* [GC], 19 December 2012.

([245]) CJEU, C-563/22, *SN and LN v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, 13 June 2024.

Under the ECHR, when assessing whether the treatment an applicant risks upon return is serious enough to engage Article 3, the ECtHR considers whether the receiving country is able and willing to protect the person from ill-treatment in practice.

Example: in *Hida v. Denmark* ([246]), the applicant was a member of the Roma ethnic minority facing forced return to Kosovo during the conflict in 2004. The Court was concerned about incidents of violence and crimes against minorities and considered that the need remained for international protection of members of ethnic minority communities, such as Roma. The Court noted that the United Nations Interim Administration Mission in Kosovo (UNMIK) performed an individualised screening process prior to any forced returns proposed by the Danish National Commissioner of Police. When UNMIK had objected to some returns, the police commissioner had suspended the returns until further notice. The police commissioner had not yet contacted UNMIK regarding the applicant's case, as his forced return had not yet been planned. In these circumstances, the Court was satisfied that, should UNMIK object to his forced return, the return would likewise be suspended until further notice. The Court found that no substantial grounds had been shown for believing that the applicant, being Roma, would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment upon return to Kosovo. The Court, therefore, declared the case inadmissible for being manifestly ill founded.

In *A. D. and Others v. Sweden* ([247]), the ECtHR recognised the existence for the applicant of a risk of ill-treatment from non-state actors upon return to Albania. However, taking into account recent reports, the Court noted that the Albanian authorities' capacity to protect their people cannot be regarded as insufficient for the general public in Albania. Nor can it be regarded as generally insufficient for all persons who are targeted by criminal organisations. As a result, the applicants' removal would not violate Article 3 of the ECHR.

The ECtHR has been called upon to examine whether or not **diplomatic assurances** by the receiving state can obviate the risk of ill-treatment a person would otherwise be exposed to on return. In cases where the receiving state has provided assurances, those assurances, in themselves, are not sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether

([246]) ECtHR, *Hida v. Denmark*, No 38025/02, 19 February 2004.

([247]) ECtHR, *A. D. and Others v. Sweden*, No 22283/21, 7 May 2024.

or not the practical application of assurances provides a sufficient guarantee that the individual will be protected against the risk of ill-treatment. The weight given to assurances by the receiving state in each case depends on the circumstances prevailing at the material time.

The preliminary question for the ECtHR is whether or not the general human rights situation in the receiving state excludes accepting any assurances. It will only be in rare cases that the general situation in a country will mean that no weight at all is attached to assurances. More usually the Court will assess, first, the quality of assurances given and, second, whether or not, in light of the receiving state's practices, they are reliable. In doing so, the Court will also consider various factors outlined in the case-law ([248]).

4.1.5. Internal protection alternative

Under both EU and ECHR law, states may conclude that an individual who is at risk in their home area may be safe in another part of their home country and therefore not in need of international protection.

Under EU law, Article 8 of the Qualification Regulation sets out that, where the fear of persecution does not emanate from state actors, Member States are required to examine whether an asylum applicant can safely and legally travel to and gain admittance to a part of the country of origin. Such examination is not required where the fear of persecution emanates from state actors, as, in such circumstances, Article 8(2) of the Qualification Regulation establishes a presumption that effective protection is not available for the applicant. Various personal circumstances must be taken into account by Member States when examining the possibility for internal relocation.

([248]) ECtHR, *T. M. and Others v. Russia*, No 31189/15 and five others, 7 November 2017, para. 24; ECtHR, *Tarakhel v. Switzerland* [GC], No 29217/12, 4 November 2014, paras 120–122; ECtHR, *Gayratbek Saliev v. Russia*, No 39093/13, 17 April 2014, paras 65–67; ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, No 8139/09, 17 January 2012, para. 189; ECtHR, *Ismoilov and Others v. Russia*, No 2947/06, 24 April 2008, para. 127; ECtHR, *Saadi v. Italy* [GC], No 37201/06, 28 February 2008.

Under the ECHR, a proposed internal protection alternative by the state must undergo a detailed assessment from the point of return to the destination site. This includes considering if the point of return is safe, if the route contains roadblocks and if certain areas are safe for the individual to pass to reach the destination site. An assessment of individual circumstances is also required ([249]).

> Example: in *Sufi and Elmi v. the United Kingdom* ([250]), the ECtHR held that Article 3 of the ECHR, in principle, did not preclude the member states from relying on the possibility of internal relocation, provided that the returnee could safely avoid exposure to a real risk of ill-treatment when travelling to, gaining admittance to and settling in the area in question. In that case, the Court considered that there may be parts of southern and central Somalia where a returnee would not necessarily be at real risk of ill-treatment solely on account of the situation of general violence. If the returnees had to travel to or through an area under the control of Al-Shabaab, they would probably be exposed to a risk of treatment contrary to Article 3, unless it could be demonstrated that the applicant had recent experience of living in Somalia and could therefore avoid drawing Al-Shabaab's attention. In the applicants' case, the Court held that for a number of reasons the applicants would be at real risk of being exposed to treatment in breach of Article 3 ([251]).

4.1.6. Safe third countries

Under EU law, an EU Member State may be permitted, for international protection reasons, to return an applicant to another country for the examination of the individual's application, provided that that country is considered safe and that certain safeguards are respected. This section explains when this is possible. The applicable procedural safeguards for adults are described in Section 5.2 and those for unaccompanied children in Section 9.1.

A country can be considered safe if it fulfils a set of requirements listed in Article 59 of the Asylum Procedure Regulation, as amended by the Safe Third Countries Regulation (EU) 2024/463. Among these, the asylum seeker has to be admitted by the **safe third country**, have the possibility of seeking 'effective protection' (Article 57)

([249]) ECtHR, *A. A. M. v. Sweden*, No 68519/10, 3 April 2014, para. 73; ECtHR, *J. K. and Others v. Sweden* [GC], No 59166/12, 23 August 2016, para. 96.

([250]) ECtHR, *Sufi and Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011.

([251]) See also ECtHR, *M. Y. H. v. Sweden*, No 50859/10, 27 June 2013.

and, if found to be in need of international protection, be treated in accordance with the 1951 Geneva Convention. It is particularly important that states ensure that a returnee would not face onward *refoulement* to an unsafe country. A third country may be designated safe, even if parts of the country are not safe. Also, the 'safe third country' concept requires fulfilling one of the following three preconditions: the existence of a link between the applicant and the third country; transit through the territory of the third country concerned; or an agreement or arrangement was concluded with the third country which meets certain safeguards. Rules relating to safe third countries do not apply for transfers to another EU Member State, Iceland, Liechtenstein, Norway and Switzerland, as the Dublin procedure applies to them (see Section 5.2).

Safe third countries are to be distinguished from **safe countries of origin**. Member States may designate certain countries of origin as safe, if they fulfil the strict requirements listed in Article 61 of the Asylum Procedure Regulation, as amended by the Safe Countries of Origin Regulation (EU) 2024/464. The assessment of the merits of applicants coming from a safe country of origin can be accelerated (see Section 5.1.4).

> Example: in *Alace* ([252]), the CJEU ruled that the designation by Member States of third countries as safe may be the result of a legislative act as long as such designation is open to judicial review of the compliance of such designation with the material conditions established under EU law. For that purpose, the information on the basis of which a third country is designated as safe should be accessible to the applicant and the competent judicial authority.

The Asylum Procedure Regulation sets out the establishment of common EU lists of safe third countries (Article 60) and of safe countries of origin (Article 62). The Safe Countries of Origin Regulation establishes a common EU list of safe countries of origin, which includes all EU candidate countries fulfilling certain criteria together with several other countries set out in Annex II.

Under the ECHR, and particularly Article 3, the ECtHR will consider, among the various elements before it, credible human rights reporting in order to assess the likely consequences of proposed removal to third countries. The removing state has a duty to verify the risk, particularly when human rights reports on a country show that

([252]) CJEU, Joined Cases C-758/24 and C-759/24, *LC and CP v. Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma*, 1 August 2025.

the removing state knew or ought to have known of the risks of the removed person's being exposed to conditions of detention or living circumstances that amount to degrading treatment. The ECtHR also requires removing states to ensure that individuals will have effective access to asylum procedure in the receiving country ([253]).

> Example: in *Ilias and Ahmed v. Hungary* ([254]), the ECtHR concluded that Hungary violated Article 3 of the ECHR by expelling two Bangladeshi asylum seekers to Serbia from a transit zone located at the border. The authorities had not properly assessed if the applicants would have effective access to asylum in that country or if they would be at risk of chain *refoulement* to North Macedonia or to Greece, where the reception conditions for asylum seekers were in breach of convention standards.

4.1.7. Exclusion from international protection

Under EU law, Articles 12 and 17 of the Qualification Regulation, which build on Article 1(F) of the 1951 Geneva Convention, contain provisions that exclude international protection for those persons who do not deserve it. These are individuals for whom there are serious grounds to suspect the commission of at least one of the following acts:

- a crime against peace, a war crime or a crime against humanity;
- a serious non-political crime outside the country of refuge prior to their admission;
- an act contrary to the purposes and principles of the UN ([255]).

Once it is established that one or more of the grounds listed in Article 12 (for refugee status) or Article 17 (for subsidiary protection) of the Qualification Regulation apply, the asylum authority must exclude the applicant from international protection.

([253]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, paras 338–359 and paras 366–367.

([254]) ECtHR, *Ilias and Ahmed v. Hungary* [GC], No 47287/15, 21 November 2019.

([255]) See also recitals 43–47 of the Qualification Regulation and CJEU, C-573/14, *Commissaire général aux réfugiés et aux apatrides v. Mostafa Lounani* [GC], 31 January 2017.

The EUAA publication *Exclusion: Articles 12 and 17 Qualification Directive – Judicial analysis* (published under the agency's previous designation, the European Asylum Support Office or EASO) provides a judicial analysis that serves as a tool for courts dealing with potential cases of exclusion from international protection ([256]).

Example: in *B and D* ([257]), the CJEU provided guidance on how to apply the exclusion clauses. The fact that the person concerned in this case was a member of an organisation and actively supported the armed struggle waged by the organisation did not automatically constitute a serious basis for considering his acts 'a serious non-political crime' or 'acts contrary to the purposes and principles of the UN'. Both provisions would exclude him from refugee protection. A case-by-case assessment of the specific facts must be the basis for finding whether or not there are serious reasons for considering the person guilty of such acts or crimes. This should be done with a view to determining if the acts committed by the organisation meet the conditions of those provisions and if the individual responsibility for carrying out those acts can be attributed to the person, accounting for the standard of proof required under Article 12(2) of the Qualification Directive (now Qualification Regulation). The Court also added that the basis for exclusion from refugee status is not conditional on the person posing an ongoing threat to the host EU Member State or on an assessment of proportionality in relation to the particular case ([258]).

Example: in *Ahmed* ([259]), the CJEU affirmed that the grounds for exclusion regarding subsidiary protection under Article 17(1) should be considered in light of the Court's interpretation of Article 12(2)(b) and (c) of the Qualification Directive (now Qualification Regulation) relating to exclusion from refugee status.

([256]) EASO, *Exclusion: Articles 12 and 17 Qualification Directive – Judicial analysis*, 2nd edition, Publications Office of the European Union, Luxembourg, 2020.

([257]) CJEU, Joined Cases C-57/09 and C-101/09, *Bundesrepublik Deutschland v. B and D* [GC], 9 November 2010.

([258]) See also CJEU, C-373/13, *H. T. v. Land Baden-Württemberg*, 24 June 2015.

([259]) CJEU, C-369/17, *Shajin Ahmed v. Bevándorlási és Menekültügyi Hivatal*, 13 September 2018.

Example: in *GM* ([260]), the CJEU ruled that EU law does not preclude exclusion from subsidiary protection on the basis of a criminal conviction of which national authorities were aware when the applicant had been granted refugee status. As regards exclusion from international protection due to previous criminal convictions, see also *Galte* ([261]), in which the applicant had served his sentence.

Under the ECHR, since the prohibition of torture and inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct, the nature of the applicant's alleged offence is irrelevant for the purposes of assessing Article 3 of the ECHR. Consequently, the applicant's conduct, however undesirable or dangerous, cannot be taken into account.

Example: in *Saadi v. Italy* ([262]), the Court reconfirmed the absolute nature of the prohibition of torture under Article 3. The applicant was prosecuted in Italy for participation in international terrorism and ordered to be removed to Tunisia. The ECtHR found that he would run a real risk of being subjected to treatment in breach of Article 3 if returned to Tunisia. His conduct and the severity of charges against him were irrelevant to the assessment under Article 3.

Example: by contrast, in *A. M. v. the Netherlands* ([263]), the ECtHR considered that the applicant failed to demonstrate that there were substantial risks that he would be subjected to treatment contrary to Article 3 of the ECHR if he were removed to Afghanistan.

([260]) CJEU, C-159/21, *GM v. Országos Idegenrendészeti Főigazgatóság and Others*, 22 September 2022.

([261]) CJEU, C-63/24 [Galte], *K. L. v. Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*, 30 April 2025.

([262]) ECtHR, *Saadi v. Italy* [GC], No 37201/06, 28 February 2008, para. 138. See also ECtHR, *Ismoilov and Others v. Russia*, No 2947/06, 24 April 2008, para. 127; ECtHR, *Ryabikin v. Russia*, No 8320/04, 19 June 2008; ECtHR, *U. v. France*, No 53254/20, 15 February 2024; ECtHR, *K. I. v. France*, No 5560/19, 15 April 2021 (in this case the ECtHR specified that the *ex nunc* assessment of whether the individual would run a real risk of treatment contrary to Article 3 remains applicable even if the refugee status of the person concerned has been revoked).

([263]) ECtHR, *A. M. v. the Netherlands*, No 29094/09, 5 July 2016.

4.1.8. Cessation of international protection

Under EU law, when the risk situation in a third country has improved, Articles 11 and 16 of the Qualification Regulation allow international protection to come to an end, mirroring the cessation clauses under Article 1(C) of the 1951 Geneva Convention.

Example: the case of *Salahadin Abdulla and Others* ([264]) concerned the cessation of refugee status of certain Iraqi nationals to whom Germany had granted refugee status. The basis of the cessation of refugee status was that the conditions in their country of origin had improved. The CJEU held that refugee status ceases to exist when there has been a significant and non-temporary change of circumstances in the third country concerned and the basis for fear, on which the refugee status was granted, no longer exists and the person has no other reason to fear being persecuted. In assessing a change of circumstances, states must consider the refugee's individual situation while verifying if the actor or actors of protection has or have taken reasonable steps to prevent persecution and if, among other things, they operate an effective legal system for the detection, prosecution and punishment of acts constituting persecution. This protection must also be accessible to the individual concerned if they cease to have refugee status.

Example: in *OA* ([265]), the CJEU further clarified that the ability of the country of origin to provide protection from acts of persecution is key in assessing whether the conditions for the refugee status are still met. Social and financial support provided by private actors may not be considered irrelevant in assessing the effectiveness or availability of the protection provided by the country of origin.

Example: the case of *M, X and X* ([266]) concerned three applicants, who either had had their refugee status revoked or had been refused that status because they represented a danger to the security of the host EU Member State or because of a conviction for serious crime. The CJEU specified that third-country nationals with a well-founded fear of persecution must be classified as refugees for the purposes of the Qualification Directive (now Qualification Regulation)

([264]) CJEU, Joined Cases C-175/08, C-176/08, C-178/08, C-179/08, *Aydin Salahadin Abdulla and Others v. Bundesrepublik Deutschland* [GC], 2 March 2010.

([265]) CJEU, C-255/19, *Secretary of State for the Home Department v. OA*, 20 January 2021.

([266]) CJEU, Joined Cases C-391/16, C-77/17 and C-78/17, *M v. Ministerstvo vnitra, and X and X v. Commissaire général aux réfugiés et aux apatrides* [GC], 14 May 2019.

and the 1951 Geneva Convention, whether or not they have been formally granted refugee status as defined in the directive. Although such persons will not, or will no longer, be entitled to all the rights and benefits that the directive reserves for persons granted refugee status, they continue to be entitled to the limited number of rights laid down in the 1951 Geneva Convention for refugees without lawful stay.

The CJEU further clarified that the revocation of refugee status must constitute a proportionate measure to the threat posed by the third-country national and that the existence of a danger to the community cannot be established only by the fact that the third-country national has been convicted of a particularly serious crime ([267]).

The status of refugees and beneficiaries of subsidiary protection who have been subject to very serious harm in the past will not cease in cases of changed circumstances, if they can invoke compelling reasons for refusing to avail themselves of the protection of their country of origin (Qualification Regulation, Articles 11 and 16).

If a refugee or a beneficiary of subsidiary protection has ceased to be eligible, should have never been granted or should no longer be granted refugee status or subsidiary protection, Articles 14 and 19 of the Qualification Regulation provide that the authority that granted refugee status or subsidiary protection must withdraw the refugee status or the subsidiary protection.

Example: in *A.* ([268]), the CJEU established that a third-country national who has been granted refugee status in one Member State cannot be extradited to his country of origin by another Member State unless his refugee status has first been revoked by the Member State that granted it. Even if the refugee status is revoked or withdrawn, the requested Member State should examine whether the third-country national concerned does not qualify as a refugee any more and if extradition does not lead to the risk of the person concerned being subject to death penalty, torture, inhuman or degrading treatment or punishment in the country of origin.

([267]) See CJEU, C-663/21, *Bundesamt für Fremdenwesen und Asyl v. AA*, 6 July 2023; and CJEU, C-402/22, *Staatssecretaris van Justitie en Veiligheid v. M. A.*, 6 July 2023.

([268]) CJEU, C-352/22, A. v. Generalstaatsanwaltschaft Hamm, 18 June 2024.

Under the ECHR, there are no specific cessation clauses. Instead, the ECtHR will examine the expected consequences of an intended removal. The receiving state's past conditions may be relevant for shedding light on its current situation, but it is the present conditions that are relevant when assessing the risk ([269]).

> Example: the ECtHR has made various assessments of the risk young Tamil men would face on their return to Sri Lanka. Such assessments have been made at various times throughout the long conflict and also following the cessation of hostilities. In *Vilvarajah and Others v. the United Kingdom* and *NA. v. the United Kingdom*, the ECtHR considered the evolving overall conditions in the country and examined the country-related risk factors that could affect the particular individuals at the proposed time of removal ([270]).

4.2. Collective expulsion

Under both EU and ECHR law, collective expulsions are prohibited. A collective expulsion is any measure that compels individuals, regardless of their legal situation ([271]), to leave a territory or country as a group and where this decision has not been based on a reasonable and objective examination of each individual's particular case ([272]). The prohibition of collective expulsion does not outlaw removals by group charter flights ([273]).

Under EU law, collective expulsions are at odds with Article 78 of the TFEU, which requires the asylum *acquis* to be in accordance with 'other relevant treaties', and are prohibited by Article 19 of the Charter.

([269]) ECtHR, *Tomic v. the United Kingdom* (dec.), No 17837/03, 14 October 2003; ECtHR, *Hida v. Denmark*, No 38025/02, 19 February 2004.

([270]) ECtHR, *Vilvarajah and Others v. the United Kingdom*, No 13163/87 and four others, 30 October 1991; ECtHR, *NA. v. the United Kingdom*, No 25904/07, 17 July 2008.

([271]) ECtHR, *Georgia v. Russia (I)* [GC], No 13255/07, 3 July 2014, paras 168–170.

([272]) For more information, see ECtHR, *Collective Expulsions of Aliens*, 2024. This document is available at www.echr.coe.int/home under 'Case-law', 'Factsheets', 'Expulsion/Extradition'.

([273]) ECtHR, *Sultani v. France*, No 45223/05, 20 September 2007.

Under the ECHR, Article 4 of Protocol No 4 prohibits collective expulsions. This prohibition also applies on the high seas ([274]) and in the context of non-admission and rejection at the border ([275]). The term 'expulsion' refers to any forcible removal of a foreigner from the territory, irrespective of the lawfulness and length of stay, the location of apprehension and the person's status or conduct ([276]). In its case-law, the ECtHR developed specific criteria to determine whether a removal classifies as a collective expulsion prohibited under Article 4 of Protocol No 4.

The ECtHR has held that the safeguards against collective expulsion apply regardless of the size of the group expelled ([277]) and even when a state expels one individual separately, provided that the person belongs to a broader group of non-nationals subject to expulsion. In determining whether an expulsion is collective, the Court considers the nature of the measure itself to be decisive, rather than the manner in which it is executed ([278]).

For individuals **granted legal stay** and against whom an **expulsion order is adopted**, the decisive criterion for an expulsion to be characterised as 'collective' is the absence of a reasonable and objective examination of the particular case of each individual within the group. The persons concerned must have the opportunity to put forward their arguments to the competent authorities on an individual basis, for children via their parents or a primary caregiver ([279]). This requirement applies to all cases regardless of whether the individuals subject to the expulsion order have entered the state territory in an unauthorised manner ([280]) or through a point of legal entry ([281]).

([274]) ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No 27765/09, 23 February 2012.

([275]) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 13 February 2020, paras 185 and 187; ECtHR, *M. K. and Others v. Poland*, Nos 40503/17, 42902/17 and 43643/17, 23 July 2020, paras 200 and 204.

([276]) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 13 February 2020, para. 185. See also ECtHR, *Asady and Others v. Slovakia*, No 24917/15, 24 March 2020, para. 60.

([277]) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 13 February 2020, paras 193–194 and 202–203.

([278]) ECtHR, *H. Q. and Others v. Hungary*, No 46084/21 and two others, 24 June 2025, para. 113.

([279]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 133–137.

([280]) ECtHR, *Asady and Others v. Slovakia*, No 24917/15, 24 March 2020.

([281]) For cases involving legal entry at a land border checkpoint see ECtHR, *M. A. and Others v. Latvia*, No 25564/18, 29 March 2022; ECtHR, *M. K. and Others v. Poland*, Nos 40503/17, 42902/17 and 43643/17, 23 July 2020. For cases involving legal entry at an airport see ECtHR, *S. S. and Others v. Hungary*, Nos 56417/19 and 44245/20, 12 October 2023.

Example: in *Čonka v. Belgium* ([282]), the ECtHR found that the removal of a group of Roma asylum seekers had violated Article 4 of Protocol No 4 to the ECHR. The Court ruled that individual circumstances were not properly considered, as identical expulsion orders were issued, all applicants were summoned simultaneously and expulsions were politically pre-announced. In addition, the applicants lacked access to lawyers and their asylum procedures had not been completed.

Example: in *Khlaifia and Others v. Italy* ([283]), the ECtHR examined the case of three Tunisian nationals intercepted at sea by the Italian coastguard, detained in a reception centre and on board ships and then returned to Tunisia after the issuing of individual expulsion orders drafted in identical terms. The Court ruled that the fact that several individuals were subject to similar decisions did not in itself lead to the conclusion that there had been a collective expulsion. Article 4 of Protocol No 4 does not guarantee the right to an individual interview in all circumstances. The Court concluded that the applicants had had a genuine and effective opportunity to raise arguments against their expulsion during their identification and at the moment of the establishment of their nationality.

Example: in *Asady and Others v. Slovakia* ([284]), which concerned the situation where expulsion decisions were almost identical but the applicants had been individually interviewed and afforded an effective possibility of submitting arguments against their expulsion, the ECtHR found no violation of Article 4 of Protocol No 4 to the ECHR. In contrast, in *J. A. and Others v. Italy* ([285]), the Court found that the applicants were not given enough time before signing their removal order to be able to appeal the decision and were not presented with the information regarding the removal order in an understandable manner.

Example: *S. S. and Others v. Hungary* ([286]) concerned yet another scenario: two migrant families attempted to enter Hungary through an airport border-crossing point and presented themselves to border officers, but were removed to the outer side of the border fence at the land border with Serbia. The authorities did not examine the applicants' arguments and the needs of children, who were

([282]) (280) ECtHR, *Čonka v. Belgium*, No 51564/99, 5 February 2002.

([283]) ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016, paras 237–254.

([284]) ECtHR, *Asady and Others v. Slovakia*, No 24917/15, 24 March 2020.

([285]) ECtHR, *J. A. and Others v. Italy*, No 21329/18, 30 March 2023.

([286]) ECtHR, *S. S. and Others v. Hungary*, Nos 56417/19 and 44245/20, 12 October 2023.

particularly vulnerable. The ECtHR found that their removal was of a collective nature, as they were not afforded an effective opportunity to submit arguments against it.

When individuals crossed a border in an **unauthorised manner** and were expelled summarily **without the adoption of a formal expulsion decision**, the ECtHR assessed whether the state had provided genuine and effective access to means of legal entry and, if so, whether the applicants had cogent reasons to enter the state irregularly. According to the case-law of the ECtHR, the applicant's own conduct is a relevant factor in assessing the protection to be afforded under Article 4 of Protocol No 4 to the ECHR. The Court considers that there is no violation of Article 4 of Protocol No 4 if the lack of an individual expulsion decision can be attributed to the applicant's own culpable conduct ([287]).

Example: in *N. D. and N. T. v. Spain* ([288]), the ECtHR reviewed the removal of two sub-Saharan Africans who entered the Spanish enclave of Melilla as part of a larger group, which stormed and climbed the border fence. The Spanish authorities apprehended the applicants and handed them over to Morocco without carrying out individual procedures or giving them the opportunity to seek asylum. The ECtHR noted that the applicants – who, the Court had already established, had no arguable claim under Article 3 of the ECHR – did not make use of means to seek legal entry into Spain. In particular, they did not provide convincing evidence that they were prevented from physically reaching the nearby official border-crossing point where the Spanish authorities had set up an office to register asylum claims. The ECtHR concluded that the lack of individual removal decisions was a consequence of the applicants' own conduct and, therefore, did not find any violation of Article 4 of Protocol No 4 to the ECHR. The ECtHR did not apply the test established in *N. D. and N. T. v. Spain* in a case involving applicants arriving at an international airport with counterfeited documents ([289]).

([287]) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 13 February 2020, para. 200; ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016, para. 240; ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No 27765/09, 23 February 2012, para. 184; ECtHR, *M. A. v. Cyprus*, No 41872/10, 23 July 2013, para. 247.

([288]) ECtHR, *N. D. and N. T. v. Spain* [GC], Nos 8675/15 and 8697/15, 13 February 2020; ECtHR, *A. A. and Others v. North Macedonia*, No 55798/16, 5 April 2022.

([289]) ECtHR, *S. S. and Others v. Hungary*, Nos 56417/19 and 44245/20, 12 October 2023.

Example: in *Shahzad v. Hungary* ([290]), the ECtHR found that the applicant had a cogent reason to enter the state irregularly due to the lack of realistic chance of having access to means of legal entry. As regards a case where no genuine and effective access to legal entry was provided, see *M. H. and Others v. Croatia* ([291]).

Collective expulsions are also contrary to the **ESC** and its Article 19(8) on safeguards against expulsion.

Example: in its decision in *European Roma and Travellers Forum v. France* ([292]), the ECSR held that the administrative decisions, during the period under consideration, ordering Roma of Bulgarian and Romanian origin to leave French territory, where they were resident, were incompatible with the ESC. The decisions were not based on an examination of the personal circumstances of the Roma, and they did not respect the proportionality principle; by targeting the Roma community, they were also discriminatory in nature. The committee found this to be in breach of Article E on non-discrimination read in conjunction with Article 19(8) of the ESC.

4.3. Barriers to expulsion based on other human rights grounds

Both EU law and the ECHR recognise that there may be barriers to removal based on human rights grounds that are not absolute, but where a balance has to be struck between the public interests and the interests of the individual concerned. The most common barrier would be the right to private or family life, which may include considerations of a person's health (including physical and moral integrity), the best interests of children, the need to preserve family unity or specific needs of vulnerable persons.

([290]) ECtHR, *Shahzad v. Hungary*, No 12625/17, 8 July 2021. The court concluded that the expulsion was collective and thus that Article 4 of Protocol No 4 had been violated.

([291]) ECtHR, *M. H. and Others v. Croatia*, Nos 15670/18 and 43115/18, 18 November 2021. The court concluded that the expulsion was collective and thus that Article 4 of Protocol No 4 had been violated.

([292]) ECSR, *European Roma and Travellers Forum v. France*, Complaint No 64/2011, merits, 24 January 2012.

Under EU law, return procedures have to be implemented while taking into account the best interests of the child, family life and the state of health of the person concerned and the principle of *non-refoulement* (Article 5 of the Return Directive ([293])). See also Section 6.3 on family reunification.

> Example: in *Abdida* ([294]), the CJEU affirmed that removing a third-country national suffering from a serious illness to a country where appropriate treatment is not available, which results in a serious risk of inhuman or degrading treatment, violates Article 5 of the Return Directive. The Court ruled that national legislation that does not grant suspensive effect to an appeal challenging a return decision, and may expose the applicant to a serious risk of grave and irreversible deterioration in their state of health, is incompatible with the directive ([295]).
>
> Example: in *Ararat* ([296]), the CJEU set out the requirement for Member States' judicial authorities to carry out an updated assessment of the risks faced by third-country nationals of being subjected to treatment prohibited under Article 19(2) and Article 4 of the Charter prior to their actual removal.

Under the ECHR, states have the right, as a matter of well-established international law and subject to their treaty obligations, including the ECHR, to control the entry, residence and expulsion of non-nationals. However, apart from the absolute rights, there is extensive case-law on the circumstances in which qualified rights – such as Articles 8 to 11 of the ECHR – may act as a barrier to removal. The right to respect for private and family life under Article 8 of the ECHR is often invoked as a shield against expulsion in cases not involving the risk of inhuman or degrading treatment contrary to Article 3. This aspect will be considered in Sections 6.2 and 6.4.

([293]) As at June 2026, a regulation repealing and replacing the Return Directive was under negotiation.

([294]) CJEU, C-562/13, *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v. Moussa Abdida* [GC], 18 December 2014.

([295]) For other examples where the CJEU ruled that no decision could be adopted to return a third-country national suffering from a serious illness to a third country where their treatment was not available, see CJEU, C-69/21, *X v. Staatssecretaris van Justitie en Veiligheid*, 22 November 2022, and CJEU, C-233/19, *B. v. Centre public d'action sociale de Liège*, 30 September 2020.

([296]) CJEU, C-156/23 [Ararat], *K, L, M, N v. Staatssecretaris van Justitie en Veiligheid*, 17 October 2024. For considerations of the best interests of the child and the right to respect for family life, see CJEU, C-313/25 PPU [Adrar], *GB v. Minister van Asiel en Migratie*, 4 September 2025.

Example: in *Savran v. Denmark* ([297]), the Court found that the applicant's return to Türkiye, his country of nationality, and the entry ban issued against him were in violation of Article 8 of the ECHR. The Court held that the domestic authorities had failed to take into account and to properly balance the interests at stake in his case. In this regard, the Court noted that, while the applicant was convicted of assault, he was exempted from punishment due to his mental health, which limited the extent to which Denmark could legitimately rely on the applicant's criminal acts as the basis for his expulsion and entry ban. Other factors that should have been properly considered included the time elapsed during the lengthy expulsion procedure, during which the applicant underwent treatment and made positive changes, and the applicant's ties to Denmark, a country where he had lived since the age of six.

Barriers to removal may also be considered in respect of an allegedly flagrant breach of Articles 5 or 6 of the ECHR in the receiving country, such as if a person risks being subjected to arbitrary detention without being brought to trial, if they risk being imprisoned for a substantial period after being convicted at a flagrantly unfair trial or if they risk a flagrant denial of justice when awaiting trial. The burden of proof for the applicant is high and a flagrant breach of Article 5 needs to be established ([298]).

Example: in *Mamatkulov and Askarov v. Turkey* ([299]), the ECtHR considered whether or not the applicants' extradition to Uzbekistan resulted in their facing a real risk of a flagrant denial of justice in breach of Article 6 of the ECHR.

Example: in *Othman (Abu Qatada) v. the United Kingdom* ([300]), the ECtHR found, under Article 6 of the ECHR, that the applicant could not be removed to Jordan on the basis that evidence obtained from torture of third persons would most likely be used in a retrial against him.

Under the ESC, Article 19(8) prohibits the expulsion of migrant workers lawfully residing within the territory of a State Party, except where they endanger national security or offend against public interest or morality.

([297]) ECtHR, *Savran v. Denmark* [GC], No 57467/15, 7 December 2021.

([298]) ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, No 8139/09, 17 January 2012, para. 233.

([299]) ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], Nos 46827/99 and 46951/99, 4 February 2005. See also ECtHR, *M. E. v. Denmark*, No 58363/10, 8 July 2014.

([300]) ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, No 8139/09, 17 January 2012.

The ECSR has notably held that, if a state has conferred the right of residence on a migrant worker's spouse and/or children, the loss of the migrant worker's own right of residence cannot affect their family members' independent rights of residence for as long as those family members hold a right of residence.

Foreign nationals who have been resident in a state for a sufficient amount of time, either legally or with the authorities' tacit acceptance of their irregular status in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from removal ([301]).

4.4. Third-country nationals who enjoy a higher degree of protection from removal

Under EU law, there are certain categories of third-country nationals, other than those in need of international protection, who enjoy a higher degree of protection from removal. These include, among others, long-term resident status holders, third-country nationals who are family members of EU/EEA or Swiss nationals who have exercised their right to freedom of movement and Turkish nationals.

4.4.1. Long-term residents

Under EU law, long-term residents enjoy enhanced protection against expulsion. A decision to expel a long-term resident must be based on conduct that constitutes an actual and sufficiently serious threat to public policy or public security (Article 12 of the Long-term Residents Directive) and cannot be ordered automatically following a criminal conviction, but requires a case-by-case assessment ([302]).

4.4.2. Third-country-national family members of EEA and Swiss nationals

Under EU law, individuals of any nationality who are family members of EEA nationals (including EU citizens) having exercised free movement rights, have a right to residence that derives from EU free movement provisions. Under the Free

([301]) ECSR, *Statement of Interpretation on Article 19(8)*, 2011.

([302]) CJEU, C-636/16, *Wilber López Pastuzano v. Delegación del Gobierno en Navarra*, 7 December 2017.

Movement Directive (Directive 2004/38/EC), third-country nationals who have such family relations enjoy a higher level of protection from expulsion than other categories of third-country nationals. According to Article 28 of the directive, they can only be expelled on grounds of public policy or public security ([303]). In the case of permanent residents, the grounds for expulsion must reach the level of 'serious grounds of public policy or public security'. As stated in Article 27(2) of the directive, these measures must comply with the principle of proportionality and be based exclusively on the personal conduct of the individual concerned, and the individual must also represent a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' ([304]). States must notify the person concerned of their decisions, including the grounds on which they are based (Article 30) ([305]). Family members have a right to appeal against any decision made against them (Article 31).

Example: in *ZZ* ([306]), the CJEU dealt with the meaning of Article 30(2) of the Free Movement Directive, which requires the authorities to inform the persons concerned of the grounds on which a decision to refuse the right of residence is based, unless this is contrary to the interests of state security. In determining whether the authorities can refrain from disclosing certain information on grounds of state security, the CJEU noted that there is a need to balance state security with the requirements of the right to effective judicial protection stemming from Article 47 of the Charter. It concluded that the national court reviewing the authorities' choice not to disclose, precisely and in full, the grounds on which a refusal is based must have jurisdiction to ensure that the lack of

([303]) See the following cases in which the court has interpreted the notion of 'imperative grounds of public security' under Art. 28(3): CJEU, Joined Cases C-331/16 and 366/16, *K. v. Staatssecretaris van Veiligheid en Justitie and H. F. v. Belgische Staat* [GC], 2 May 2018, paras 39–56; CJEU, C-348/09, *P. I. v. Oberbürgermeisterin der Stadt Remscheid* [GC], 22 May 2012, paras 20–35; CJEU, C-145/09, *Land Baden-Württemberg v. Panagiotis Tsakouridis* [GC], 23 November 2010, paras 39–56.

([304]) For case-law on Art. 27 of the Free Movement Directive (Directive 2004/38/EC), with regard to the notion of 'public policy', see CJEU, C-434/10, *Petar Aladzhov v. Zamestnik director na Stolichna direktsia na vatreshnite raboti kam Ministerstvo na vatreshnite raboti*, 17 November 2011; CJEU, C-430/10, *Hristo Gaydarov v. Director na Glavna direktsia 'Ohranitelna politsia' pri Ministerstvo na vatreshnite raboti*, 17 November 2011. With regard to the notion of a 'genuine present and sufficiently serious threat affecting one of the fundamental interests of society', see ECJ, Joined Cases C-482/01 and C-493/01, *Georgios Orfanopoulos and Others and Raffaele Oliveri v. Land Baden-Württemberg*, 29 April 2004, paras 65–71.

([305]) See also FRA, 'Restrictions of right to move and reside freely on grounds of public policy or public security', in: *Making EU Citizens' Rights a Reality: National courts enforcing freedom of movement and related rights*, Publications Office of the European Union, Luxembourg, 2018, pp. 43–46.

([306]) CJEU, C-300/11, *ZZ v. Secretary of State for the Home Department* [GC], 4 June 2013.

disclosure is limited to what is strictly necessary. In any event, the person concerned must be informed of the essence of the grounds on which the decision was based, in a manner that takes due account of the necessary confidentiality of the evidence.

For Swiss nationals, the legal basis for protection from expulsion is found in Article 5 of Annex I to the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons. According to that provision, the rights granted under the agreement may only be restricted on grounds of public order, public security or public health ([307]).

There is protection for family members in the event of the death, divorce or departure of the EEA national who exercised free movement rights (Articles 12 and 13 of the Free Movement Directive). In specific situations, third-country nationals may also be protected against expulsion by virtue of Article 20 of the TFEU (see Section 6.2) ([308]).

4.4.3. Turkish nationals

Under EU law, Article 14(1) of Decision No 1/80 of the EEC–Turkey Association Council provides that Turkish nationals exercising rights under the Ankara Agreement can only be expelled on grounds of public policy, public security or public health. The Court has emphasised that the same criteria as those used for EEA nationals should apply when considering the proposed expulsion of Turkish nationals who have established and secured residence in one of the EU Member States. EU law precludes the expulsion of a Turkish national when that expulsion is exclusively based on general preventative grounds, such as deterring other foreign nationals, or when it automatically follows a criminal conviction; according to well-established case-law,

([307]) Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6, ELI: http://data.europa.eu/eli/agree_internation/2002/309(1)/oj). The agreement was signed in Luxembourg on 21 June 1999 and entered into force on 1 June 2002.

([308]) For information on a case with protection granted, see CJEU, C-34/09, *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)* [GC], 8 March 2011. For information on a case in which protection was not granted, see CJEU, C-256/11, *Murat Dereci and Others v. Bundesministerium für Inneres* [GC], 15 November 2011; and CJEU, C-87/12, *Kreshnik Ymeraga and Others v. Ministre du Travail, de l'Emploi et de l'Immigration*, 8 May 2013; see also CJEU, C-40/11, *Yoshikazu Iida v. Stadt Ulm*, 8 November 2012.

derogations from the fundamental principle of freedom of movement for persons, including public policy, must be interpreted strictly so that their scope cannot be unilaterally determined by the EU Member States ([309]).

Example: in *Nazli* ([310]), the ECJ found that a Turkish national could not be expelled as a measure of general deterrence to other third-country nationals, but that the expulsion must be predicated on the same criteria as the expulsion of EEA nationals. The Court drew an analogy with the principles laid down in the field of freedom of movement for workers who are nationals of an EU Member State. Without minimising the threat to public order constituted by the use of drugs, the Court concluded from those principles that the expulsion, following a criminal conviction, of a Turkish national who enjoys a right granted by the decision of the EEC–Turkey Association Council can only be justified where the personal conduct of the person concerned is liable to give reasons to consider that the individual will commit other serious offences prejudicial to the public interest in the host EU Member State.

Example: in *S, E and C* ([311]), the CJEU ruled that measures authorising limitations on the rights conferred to Turkish nationals based on Article 14 of Decision No 1/80 of the EEC–Turkey Association Council must be adopted following a prior and individual assessment of the current situation of the Turkish worker concerned. This is required to assess whether the principle of proportionality and the individual's fundamental rights are complied with.

([309]) ECJ, C-36/75, *Roland Rutili v. Ministre de l'intérieur*, 28 October 1985, para. 27; ECJ, Joined Cases C-482/01 and C-493/01, *Georgios Orfanopoulos and Others and Raffaele Oliveri v. Land Baden-Württemberg*, 29 April 2004, para. 67.

([310]) ECJ, C-340/97, *Ömer Nazli, Caglar Nazli and Melike Nazli v. Stadt Nürnberg*, 10 February 2000.

([311]) CJEU, C-402/21, *Staatssecretaris van Justitie en Veiligheid v. S and E, C v. Staatssecretaris van Justitie en Veiligheid*, 9 February 2023.

Key points

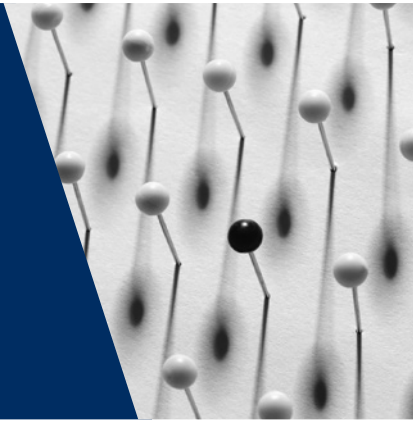
- There are absolute, near absolute and non-absolute barriers to removal (see Introduction to this chapter).
- The *non-refoulement* principle under the 1951 Geneva Convention prohibits the return of people to situations where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion (see Section 4.1).
- Under EU law, any action taken by EU Member States under the EU asylum *acquis* or under the Return Directive, including under the Asylum and Migration Management Regulation, must be in conformity with the right to asylum and the principle of *non-refoulement* (see Section 4.1).
- Prohibition of ill-treatment under Article 3 of the ECHR is absolute. Persons who face a real risk of treatment contrary to Article 3 in their country of destination must not be returned, irrespective of their behaviour or the gravity of charges against them. The authorities must assess this risk independently of whether or not the individual may be excluded from protection under the Qualification Regulation or the 1951 Geneva Convention (see Sections 4.1.2 and 4.1.7).
- In assessing if there is a real risk, the ECtHR focuses on the anticipated consequences of the removal of the person to the proposed country of return, looking at the personal circumstances of the individual and the general conditions of the country (see Sections 4.1.3 and 4.3).
- Under the ECHR, the asylum seeker needs, in principle, to corroborate their claim, and it is frequently necessary to give the asylum seeker the benefit of the doubt when assessing the credibility of their statements. However, if substantiation is lacking or information is presented that gives strong reason to question the veracity of the asylum seeker's submissions, the individual must provide a satisfactory explanation for this (see Section 4.1.3).
- An individual may risk treatment prohibited by EU law or the ECHR in the receiving state, which may emanate not necessarily from the receiving state itself but from non-state actors, illness or humanitarian conditions in that country (see Section 4.1.2).
- An individual who would risk treatment prohibited by EU law or the ECHR if returned to their home area in the receiving country may be safe in another part of the country (internal protection) (see Section 4.1.5). Alternatively, the receiving state may be able to protect the individual against such a risk (sufficiency of protection). In such cases, the expelling state may conclude that the individual is not in need of international protection (see Section 4.1.4).

- Both EU law and the ECHR prohibit collective expulsions (see Section 4.2).
- Under EU law, qualifying third-country-national family members of EEA nationals can only be expelled on grounds of public policy or public security. These derogations are to be interpreted strictly and their assessment must be based exclusively on the personal conduct of the individual involved (see Section 4.4.2).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

5 Procedural safeguards and legal support in asylum and return cases



EU	Issues covered	CoE
Asylum Procedure Regulation (Regulation (EU) 2024/1348)	**Asylum procedures**	
Charter of Fundamental Rights of the European Union, Article 47 (right to an effective remedy before a tribunal and to a fair trial)	**Right to an effective remedy**	ECHR, Article 13 (right to an effective remedy) ECtHR, *Abdolkhani and Karimnia v. Turkey*, No 30471/08, 2009 (domestic remedy needs to deal with the substance of the claim) ECtHR, *A. M. v. the Netherlands*, No 29094/09, 2016 (effective remedy requires independent and rigorous scrutiny of the claim)
Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 68	**Suspensive effect**	ECtHR, *Gebremedhin v. France*, No 25389/05, 2007 (suspensive effect of domestic remedy for asylum claims in transit zone) ECtHR, *De Souza Ribeiro v. France* [GC], No 22689/07, 2012 (no automatic suspensive effect in certain expulsion cases)
Asylum Procedure Regulation (Regulation (EU) 2024/1348), Articles 42 to 45	**Accelerated and border asylum procedures**	ECtHR, *I. M. v. France*, No 9152/09, 2012 (procedural safeguards for accelerated asylum procedures)

EU	Issues covered	CoE
Asylum and Migration Management Regulation (Regulation (EU) 2024/1351), Part III CJEU, Joined Cases C-411/10 and C-493/10, *N. S. and M. E.* [GC], 2011 CJEU, C-245/11, *K* [GC], 2012 CJEU, C-578/16, *C. K. and Others v. Slovenia*, 2017 CJEU, C-646/16, *Jafari* [GC], 2017 CJEU, C-490/16, *A. S. v. Slovenia* [GC], 2017 CJEU, C-163/17, *Jawo* [GC], 2019	**Dublin procedure**	ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 2011 (transfer under the Dublin procedure raising risk of degrading treatment)
Return Directive (Directive 2008/115/EC) Return Border Procedure Regulation (Regulation (EU) 2024/1349) European Border and Coast Guard Regulation (Regulation (EU) 2019/1896), Section 8 (action by the agency in the area of return) Council Decision 2004/573/EC, on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders	**Return procedure**	ECHR, Article 13 (right to an effective remedy) ECHR, Article 1 of Protocol No 7 (procedural safeguards relating to expulsion of non-nationals) ECtHR, *Muhammad and Muhammad v. Romania* [GC], No 80982/12, 2020 (lack of procedural safeguards in removal proceedings) CoE Committee of Ministers, *Twenty Guidelines on Forced Return*, 2005
Charter of Fundamental Rights of the European Union, Article 47 (right to an effective remedy and to a fair trial)	**Legal assistance**	ECHR, Article 13 (right to an effective remedy) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 2011 (ineffective legal aid scheme)
Asylum Procedure Regulation (Regulation (EU) 2024/1348), Articles 15 to 17	**Legal assistance in asylum procedures**	CoE Committee of Ministers, *Guidelines on human rights protection in the context of accelerated asylum procedures*, 2009
Return Directive (Directive 2008/115/EC), Article 13 (remedies)	**Legal assistance in return procedures**	CoE Committee of Ministers, *Twenty Guidelines on Forced Return*, 2005

Introduction

This chapter looks at the procedure for examining applications for international protection (asylum procedures) and procedures for return. It touches on procedural requirements imposed on those responsible for making asylum or return decisions and examines the right to an effective judicial remedy against such decisions, listing the main elements that are required for a remedy to be effective. It also presents the responsibility-sharing procedures that exist in EU law and addresses the way removal is performed. Finally, the chapter addresses issues concerning legal assistance.

ECtHR case-law requires states to exercise independent and rigorous scrutiny of claims that raise substantive grounds for fearing a real risk of torture, inhuman or degrading treatment or punishment upon return. Some of the requirements set out in the Court's case-law have been included in the Asylum Procedure Regulation.

Throughout this chapter, the right to an effective remedy as included in Article 13 of the ECHR will be compared with the broader scope of the right to an effective judicial remedy as found in Article 47 of the Charter of Fundamental Rights of the European Union (the Charter).

5.1. Asylum procedures

Under both EU law and the ECHR, asylum seekers must have access to effective asylum procedures, including remedies capable of suspending a removal during the appeal process.

Under EU law, the Asylum Procedure Regulation (Regulation (EU) 2024/1348) sets out very detailed rules on common procedures for granting and withdrawing international protection. The regulation applies to asylum claims made in the territory of EU Member States bound by the regulation, including at borders, in territorial waters and in transit zones (Article 2).

During the asylum procedure, asylum applicants also have a right to certain **reception conditions**, as specified by the Reception Conditions Directive (Directive (EU) 2024/1346). Under this directive, within three days of making an asylum application, the applicant must receive standard information relating to reception conditions as set out in the directive (Article 5). Information on the legal assistance or help available also needs to be provided. The information is to be provided in a language that the individual understands or is reasonably presumed to understand.

Material reception conditions can be reduced or withdrawn in specific cases prescribed in the Reception Conditions Directive. However, Member States must ensure that all applicants have access to healthcare and a standard of living in accordance with EU law, including the Charter (Article 23) ([312]), and reducing material reception conditions cannot lead to depriving the applicant of the most basic needs, such as housing, food or clothing ([313]).

Asylum applicants have the right to appeal against decisions of the authorities not to grant, to reduce or to withdraw benefits (Reception Conditions Directive, Article 29). In case of an appeal or a review, EU Member States must ensure free legal assistance and representation insofar as such aid is requested and if it is necessary to ensure effective access to justice.

Member States' failure to comply with obligations under the Reception Conditions Directive may be actionable as a breach of EU law giving rise to *Francovich* damages (see the Introduction to this handbook and Section 7.10) and/or may result in a breach of Article 3 of the ECHR and Article 4 of the Charter ([314]).

> Example: both the ECtHR and the CJEU have held – in *M. S. S. v. Belgium and Greece* and in *N. S. and M. E.*, respectively – that systemic flaws in the asylum procedure and the reception conditions for asylum seekers resulted in inhuman and degrading treatment contrary to Article 3 of the ECHR or Article 4 of the Charter ([315]).

Under the ECHR, no specific rules concerning the reception conditions of asylum seekers are provided. However, the ECtHR has decided on cases regarding the reception of asylum seekers under EU law in light of the ECHR.

([312]) See also CJEU, C-422/21, *Ministero dell'Interno v. TO*, 1 August 2022.

([313]) CJEU, C-184/24 [Sidi Bouzid], *AF, acting on his own behalf and in his capacity as person with parental responsibility for the minor child BF, v. Ministero dell'Interno – U.T.G. – Prefettura di Milano*, 18 December 2025.

([314]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011; ECtHR, *N. H. and Others v. France*, Nos 28820/13, 75547/13 and 13114/15, 2 July 2020.

([315]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [GC], 21 December 2011, para. 86.

Example: the ECtHR found in *Camara v. Belgium* that the fact that a state did not provide accommodation and material support to an asylum seeker even after its national courts ordered the state to do so constituted a violation of the right to a fair trial, prescribed in Article 6 of the ECHR ([316]).

5.1.1. Interviews, examination procedures and initial decision-making

Under EU law, asylum seekers and their dependants need to have access to asylum procedures (Article 8 of the Asylum Procedure Regulation) (see also Section 1.8). They are allowed to remain in an EU Member State until a decision is made on their application (Article 10) or pending judicial review in the event of appeal (Article 68). Exceptions to the right to remain can be made in the event of certain repeat applications (Article 10(4) and Article 56), in extradition cases and in cases of danger to public order and national security (Article 10(4)). Extradition under Council Framework Decision 2002/584/JHA on the European arrest warrant has its own procedural safeguards ([317]).

Applicants need to be given a **personal interview** (Articles 11 to 13 of the Asylum Procedure Regulation) ([318]). The interview must take place in a private and confidential setting. It must be carried out by a person who is competent to take into account the circumstances surrounding the application, including the applicant's cultural origin, age, gender, sexual orientation, gender identity or vulnerability. Interviews must be recorded and a corresponding written report or transcript must be drafted and made accessible to the applicant (Article 14). A personal interview can be omitted in cases where a positive decision can be made without an interview, where the asylum applicant was granted protection in another EU Member State, where the asylum applicant is considered unfit or unable to be interviewed, or in cases of inadmissible repeat applications (Article 13(11)).

EU Member States must give the applicant an opportunity to make comments on the report or transcript before the responsible authority makes a decision on the application (Article 14(3)). According to Article 22(3), interviews with children must

([316]) ECtHR, *Camara v. Belgium*, No 49255/22, 18 July 2023.

([317]) ECJ, C-388/08 PPU, *Criminal proceedings against Artur Leymann and Aleksei Pustovarov*, 1 December 2008.

([318]) See also CJEU, C-277/11, *M. M. v. Minister for Justice, Equality and Law Reform and Others*, 22 November 2012.

be conducted in a child-sensitive and context-appropriate manner. Unaccompanied children have specific guarantees, including the right to a representative (Article 23). The best interests of the child must be a primary consideration (Article 22(1)) (see also Chapter 9). For more information on legal assistance, see Section 5.5.

The **examination of an application** must comply with the procedural requirements of the Asylum Procedure Regulation and the requirements for assessing evidence of an application under the Qualification Regulation (Regulation (EU) 2024/1347, Article 4). It must be carried out individually, objectively and impartially, using up-to-date information (Article 34 of the Asylum Procedure Regulation). Article 8 of the Asylum Procedure Regulation provides that asylum applicants must be informed of the right to lodge an individual application and the time frame of the procedure. The Asylum Procedure Regulation further stipulates that asylum applicants must be informed of their rights and obligations in a language they understand or may reasonably be supposed to understand, receive the services of an interpreter (whenever necessary), be allowed to communicate with UNHCR or with organisations providing legal advice, be given access to the evidence used to make a decision on their application and be given notice of the decision in writing as soon as possible (where an applicant is represented by a legal adviser, notice may be given to the legal adviser instead).

Under Article 9 of the regulation, applicants have a duty to cooperate with the authorities. At the same time, recital 42 of the Qualification Regulation provides that the assessment of an applicant's credibility should be done in a manner that respects the applicant's rights under the Charter and the ECHR, in particular the rights to human dignity and respect for private and family life. In cases concerning sexual orientation and gender identity, applicants should not be submitted to detailed questioning or tests regarding their sexual practices ([319]).

Article 7 of the Asylum Procedure Regulation requires EU Member States to respect the confidentiality of any information obtained. It further provides guarantees of non-disclosure of information to alleged persecutors during the procedure for international protection and after a final decision has been made. Recital 98 of the Asylum Procedure Regulation also clarifies that the GDPR applies to the processing of personal data by the Member States in this context.

([319]) See also CJEU, C-148/13 to C-150/13, *A, B and C v. Staatssecretaris van Veiligheid en Justitie* [GC], 2 December 2014.

Asylum seekers are entitled to **withdraw** their asylum claims. The procedures for withdrawal include the requirement that the asylum seeker submits a written withdrawal and that the competent authority adopts a decision declaring that the application has been withdrawn (Article 44 of the Asylum Procedure Regulation). When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned their application (e.g. the person refused to provide biometrics or provide required information or has not appeared for a personal interview), the asylum authorities will decide that the application has been implicitly withdrawn. That decision must be communicated to the asylum applicant, when the applicant is present (Article 41 of the Asylum Procedure Regulation).

Decisions on asylum applications must be made by the responsible authority as soon as possible and not later than six months after the application is lodged, save in the circumstances listed in Article 35(5) and (7) of the Asylum Procedure Regulation, in which the review can be extended to a maximum of 21 months. Basic guarantees laid down in Chapter II of the regulation must be respected during the examination of the claim. Decisions must be in writing and must give information on how they can be challenged (Article 36 of the Asylum Procedure Regulation).

Under Article 38 of the Asylum Procedure Regulation, EU Member States can declare **applications inadmissible**, for example if a non-EU country is deemed to be a safe third country for the applicant or if repeat applications contain no new elements (see Section 4.1.6). The CJEU found that an application cannot be considered a repeat application (and consequently inadmissible) when the first application was made in a third country, even when that third country participates in the common European asylum system ([320]). A personal interview needs to be conducted (Article 11) ([321]), except for cases where the asylum applicant was granted protection in another EU Member State or in cases of inadmissible repeat applications (Article 13(11)). Decisions on admissibility must be made as soon as possible and not later than two months after the application is lodged (Article 35(1)), save in the circumstances listed in Article 35(2), in which the time limit can be extended by another two months.

When a decision rejecting an asylum application is made, a return decision must be issued by the Member State that rejected the application (Article 37 of the Asylum Procedure Regulation) (see also Section 5.3 for applicable safeguards).

([320]) CJEU, C-8/20, *L. R. v. Bundesrepublik Deutschland*, 20 May 2021.

([321]) See also CJEU, C-517/17, *Milkiyas Addis v. Bundesrepublik Deutschland*, 16 July 2020.

Under the ECHR, the Court has held that individuals need access to the asylum procedure and to adequate information concerning the procedure to be followed. The authorities are also required to avoid excessively long delays in deciding asylum claims ([322]). In assessing the effectiveness of examining asylum claims at first-instance jurisdiction, the ECtHR has also considered other factors, such as the availability of interpreters, access to legal aid and the existence of a reliable system of communication between the authorities and the asylum seekers ([323]). In terms of risk examination, Article 13 requires independent and rigorous scrutiny by a national authority of any claim where there exist substantial grounds for fearing a real risk of being treated in a manner contrary to Article 3 (or Article 2) in the event of an applicant's expulsion ([324]).

5.1.2. Right to an effective remedy

Individuals must have access to a practical and effective remedy against a refusal of asylum or of a residence permit, or for any other complaint alleging a breach of their human rights. In this context, both EU law and the ECHR recognise that procedural safeguards need to be complied with in order for individual cases to be examined effectively and speedily. To this end, detailed procedural requirements have been developed both under EU law and by the ECtHR.

Under EU law, Article 47 of the Charter provides a 'right to an effective remedy and to a fair trial' ([325]). The first paragraph of Article 47 of the Charter is based on Article 13 of the ECHR, which ensures the right to an 'effective remedy before a national authority'. The Charter, however, requires that the review be done by a tribunal, whereas Article 13 of the ECHR only requires a review before a national authority ([326]).

([322]) ECtHR, *B. A. C. v. Greece*, No 11981/15, 13 October 2016; ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011; ECtHR, *Abdolkhani and Karimnia v. Turkey*, No 30471/08, 22 September 2009.

([323]) For more information, see ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 301.

([324]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 293.

([325]) See FRA and CoE, 'Right to an effective remedy', in: *Handbook on European Law Relating to Access to Justice*, Publications Office of the European Union, Luxembourg, 2016, pp. 91–109.

([326]) Explanations relating to the Charter of Fundamental Rights (OJ C 303, 14.12.2007, p. 17, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007X1214%2801%29).

The second paragraph of Article 47 of the Charter is based on Article 6 of the ECHR, which guarantees the right to a fair trial but only in the determination of civil rights or obligations or any criminal charge. This has precluded the application of Article 6 of the ECHR to immigration and asylum cases, since they do not involve the determination of a civil right or obligation ([327]). Article 47 of the Charter makes no such distinction.

Article 67 of the Asylum Procedure Regulation provides for the right to an effective remedy against a decision rejecting international protection, a decision to withdraw international protection or a return decision issued in accordance with Article 37 of the regulation together with the rejection of the application. It must include a full and *ex nunc* examination of both facts and points of law. EU Member States have to determine the time limits to submit an appeal, which must be between a minimum of 5 and a maximum of 10 days in cases of inadmissible or implicitly withdrawn applications and between a minimum of two weeks and a maximum of one month in all other situations (Article 67(7)).

Under the ECHR, Article 13, which guarantees the right to an effective remedy before a national authority, is applicable to immigration cases when invoked together with other substantive provisions, such as Article 3 of the ECHR. Article 3 and Article 8 of the ECHR have also been held to include inherent procedural safeguards (briefly described in Section 5.5). The ECtHR has often noted that the prohibition of arbitrariness is inherent in all convention rights, and thus it provides an important safeguard in asylum or immigration cases as well ([328]). However, Article 6 of the ECHR, which guarantees the right to a fair hearing before a court, is not applicable to asylum and immigration cases (see Section 5.5). For remedies against unlawful or arbitrary deprivation of liberty, see Chapter 7 (Section 7.10).

The ECtHR has laid down general principles about what constitutes an effective remedy in cases concerning the expulsion of asylum seekers. Applicants must have a remedy at the national level capable of addressing the substance of any 'arguable complaint' under the ECHR and, if necessary, granting appropriate relief ([329]).

([327]) ECtHR, *Maaouia v. France* [GC], No 39652/98, 5 October 2000, paras 38–39.

([328]) ECtHR, *C. G. and Others v. Bulgaria*, No 1365/07, 24 April 2008, para. 49.

([329]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 288; ECtHR, *Kudła v. Poland* [GC], No 30210/96, 26 October 2000, para. 157.

As a remedy must be effective in practice as well as in law, the ECtHR may need to consider, among other elements, whether or not an asylum seeker was afforded sufficient time to file an appeal.

> Example: in *Abdolkhani and Karimnia v. Turkey* ([330]), both the administrative and judicial authorities remained passive regarding the applicants' serious allegations of a risk of ill-treatment if they were returned to Iraq or Iran. Moreover, the national authorities failed to consider their requests for temporary asylum, to notify them of the reasons thereof and to authorise them to have access to legal assistance, despite their explicit request for a lawyer while in police detention. These failures by the national authorities prevented the applicants from raising their allegations under Article 3 of the ECHR within the relevant legislative framework. Furthermore, the applicants could not apply to the authorities for annulment of the decision to remove them, as they had not been served with the removal orders or notified of the reasons for their removal. Judicial review in removal cases in Türkiye could not be regarded as an effective remedy, since an application for annulment of a removal order did not have suspensive effect unless the administrative Court specifically ordered a stay of execution. The applicants had therefore not been provided with an effective and accessible remedy in relation to their complaints based on Article 3 of the ECHR.

Even if a single remedy alone does not entirely satisfy the requirements of Article 13 of the ECHR, the aggregate of remedies provided for under domestic law may do so ([331]).

5.1.3. Appeals with automatic suspensive effect

Under EU law, Article 67 of the Asylum Procedure Regulation provides the right to an effective remedy before a court or tribunal. This follows the wording of Article 47 of the Charter. The regulation requires EU Member States to allow applicants to remain in their territory until the time limit to lodge an appeal has expired and pending the outcome of an appeal (Article 68(2)). According to Article 68(3) of the regulation, there is no automatic right to stay for certain types of inadmissible applications, for applications processed in the border procedure, for implicitly withdrawn applications or for decisions to withdraw international protection on certain specified grounds.

([330]) ECtHR, *Abdolkhani and Karimnia v. Turkey*, No 30471/08, 22 September 2009, paras 111–117.

([331]) ECtHR, *Kudła v. Poland* [GC], No 30210/96, 26 October 2000.

In these cases, the appeals body must be given the power to rule on whether or not the applicant may remain in the territory during the time required to review the appeal (Article 68(4)).

Under the ECHR, the Court has held that, when an individual appeals against a refusal of their asylum claim, the appeal must have an automatic suspensive effect if the implementation of a return measure against the individual might have potentially irreversible effects contrary to Article 2 and/or Article 3 of the ECHR.

Example: in *Gebremedhin v. France* ([332]), the ECtHR considered that, given the importance of Article 3 of the ECHR and the irreversible nature of the harm caused by torture or ill-treatment, Article 13, taken in conjunction with Article 3, of the ECHR requires that non-nationals have access to a remedy with suspensive effect against a decision to remove them to a country where there is real reason to believe that they run the risk of being subjected to ill-treatment contrary to Article 3. The case concerned an Eritrean national who, upon arriving at a French airport, asked to enter the French territory to apply for asylum. He was then moved to a 'waiting area' while that request was considered. As it was deemed that he was not credible, he was denied leave to enter the territory and was thus at risk of being returned to Eritrea, where he claimed to be at risk of ill-treatment. Even though he could challenge the decision in court, the remedies available to him while in the 'waiting area' did not have suspensive effect. As the applicant did not have access to such a remedy while in the 'waiting area', Article 13 of the ECHR, read in conjunction with Article 3, had been breached.

Example: in *A. M. v. the Netherlands* ([333]), the Court reaffirmed that, when Article 13 of the ECHR is invoked together with Article 3, an effective remedy must have a suspensive effect. In that case, the person was within the territory of the Netherlands and not in a 'waiting area' or border zone.

Example: in *M. S. S. v. Belgium and Greece* ([334]), the Court found that Greece had violated Article 13 of the ECHR in conjunction with Article 3 because of its authorities' deficiencies in examining the applicant's asylum request and the

([332]) ECtHR, *Gebremedhin [Gaberamadhien] v. France*, No 25389/05, 26 April 2007.

([333]) ECtHR, *A. M. v. the Netherlands*, No 29094/09, 5 July 2016.

([334]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 293.

risk he faced of being directly or indirectly returned to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy.

When a person does not claim that their return would lead to a violation of Articles 2 and/or 3, the ECtHR found that Article 13 of the ECHR does not require the domestic remedy to have an automatic suspensive effect. This is the case, for example, when the person concerned claims that their return would violate Article 13 of the ECHR in conjunction with Article 8 of the ECHR or Article 4 of Protocol No 4 to the ECHR.

Example: in *De Souza Ribeiro v. France* ([335]), the applicant, a Brazilian national, had resided in French Guiana (a French overseas territory) with his family since the age of seven. Following his administrative detention for failing to show a valid residence permit, the authorities ordered his removal. He was removed the next day, approximately 50 minutes after having lodged his appeal against the removal order. The ECtHR GC considered that, when expulsion is challenged because of alleged interference with private and family life, it is not imperative to provide for an automatic suspensive effect for the remedy to be effective. However, the Court concluded that the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible, in breach of Article 13 in conjunction with Article 8 of the ECHR.

Example: the case of *Khlaifia and Others v. Italy* ([336]) concerned the return of Tunisian nationals from Italy, who claimed that their return constituted a collective expulsion prohibited by Article 4 of Protocol No 4 to the ECHR. The Court held that in the absence of a risk of irreversible harm flowing from a violation of Articles 2 or 3 of the ECHR, Italy was not obliged to provide a remedy with an automatic suspensive effect as long as it offered an effective possibility of challenging the return decision.

([335]) ECtHR, *De Souza Ribeiro v. France* [GC], No 22689/07, 13 December 2012, para. 83.

([336]) ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016, paras 272–281.

5.1.4. Accelerated and border asylum procedures

Under EU law, Article 42(1) of the Asylum Procedure Regulation lists 10 situations in which asylum applications must be examined in an **accelerated procedure**, such as when a claim is considered unfounded because the applicant is from a safe country of origin or when the applicant is a national or a stateless habitual resident of a third country with a recognition rate of 20 % or below, according to annual Eurostat data.

Article 43 of the Asylum Procedure Regulation, in turn, lists four situations in which Member States may apply **border procedures** if the asylum applicant does not fulfil the conditions for entry into the territory of the Member State. These include when an asylum applicant makes an application on a border-crossing point or transit zone (see Sections 1.7 and 1.8) or when they have disembarked in a Member State after a search and rescue operation at sea (see Section 1.9).

In 3 of the 10 situations for which an accelerated procedure is prescribed, the Asylum Procedure Regulation also prescribes the **mandatory** application of the **border procedure** for applicants who were not yet authorised to enter a Member State and do not fulfil the entry conditions (Article 45). These are cases where:

- the asylum applicant intentionally misled the authorities or acted in bad faith;
- the applicant is considered a danger to national security or public order; or
- the applicant comes from a third country with a recognition rate lower than 20 %.

Article 11 of the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359) allows Member States to process applicants from a third country with an EU-wide recognition rate of up to 50 % in the border procedure ([337]).

While the basic principles and guarantees set forth in the Asylum Procedure Regulation remain applicable to accelerated procedures and border procedures, an appeal will not have automatic suspensive effect: the right to stay during the appeal procedure must be specifically requested and/or granted on a case-by-case basis (Article 68(3)(a) and Article 68(4)) (see also Section 5.1.3). Accelerated procedures and border asylum procedures are also examined faster and have shorter deadlines by

([337]) The definition of 'a situation of crisis' can be found in Art. 1(4) of the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359).

which to appeal against a negative decision. EU Member States must determine the time limits for asylum applicants to submit an appeal in accelerated procedures, which must be between 5 and 10 days (Article 67(7)(a) of the Asylum Procedure Regulation). Decisions in accelerated procedures must be made as soon as possible and not later than three months after the application was lodged (Article 35(3)). Border procedures must not last more than 12 weeks (Article 51(2)), and this can be extended up to 16 weeks when the applicant has been relocated via a Dublin procedure (see Section 5.2) or to 18 weeks in case of crisis (Article 11(1) of the Crisis and *Force Majeure* Regulation).

Under the ECHR, the Court has held that there is a need for independent and rigorous scrutiny of every asylum claim. Where this was not the case, the Court has found breaches of Article 13 of the ECHR taken in conjunction with Article 3.

Example: in *I. M. v. France* ([338]), the applicant, who claimed to be at risk of ill-treatment if returned to Sudan, attempted to apply for asylum in France. The authorities had taken the view that his asylum application had been based on 'deliberate fraud' or constituted 'abuse of the asylum procedure' because it had been submitted after the issuance of his removal order. The first and only examination of his asylum application was therefore automatically processed under an accelerated procedure, which lacked sufficient safeguards. For instance, the time limit for lodging the application had been reduced from 21 to 5 days. This very short application period imposed particular constraints, as the applicant was expected to submit a comprehensive application in French, with supporting documents, meeting the same application requirements as those submitted under the normal procedure by persons not in detention. Although the applicant could have applied to the administrative Court to challenge his removal order, he only had 48 hours to do so, as opposed to two months under the ordinary procedure. The applicant's asylum application was thus rejected without the domestic system, as a whole, offering him an effective remedy to assert his complaint under Article 3 of the ECHR. The Court, therefore, found a violation of Article 13 in conjunction with Article 3 of the ECHR.

([338]) ECtHR, *I. M. v. France*, No 9152/09, 2 February 2012, paras 136–160. See also ECtHR, *A. M. A. v. the Netherlands*, No 23048/19, 24 October 2023, paras 66–80.

5.2. Responsibility determination procedures

Under EU law, the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351) requires that EU Member States examine any application for international protection lodged by a third-country national or a stateless person and that the application be examined by one single Member State (Article 16(1)). The regulation determines which state is responsible for examining an asylum application.

There is a hierarchy of applicable criteria to allocate responsibility for examining applications lodged in one EU Member State by individuals who then travelled to another. Based on the criteria established by the Asylum and Migration Management Regulation, if another state is responsible for examining the application, the regulation sets forth the procedure for transfer to that state. This procedure is known as the 'Dublin procedure', as it was first prescribed by the 1990 Dublin Convention ([339]), which was replaced by the now repealed 2003 Dublin Regulation.

A rebuttable presumption implies that all states applying the Asylum and Migration Management Regulation are safe and comply with the Charter and the ECHR.

The Asylum and Migration Management Regulation obliges asylum seekers to apply for asylum in the Member State of first entry unless the applicant is in possession of a valid residence document or a valid visa from another Member State (Article 17). Among the various criteria listed in the Asylum and Migration Management Regulation, the state responsible for allowing the applicant to enter the common area is typically also the state responsible for reviewing the application (Part III of the Asylum and Migration Management Regulation).

To determine through which state a person entered, the individual's biometric data are taken upon arrival and recorded in the Eurodac database (see Eurodac Regulation), which all countries bound by the Asylum and Migration Management Regulation can access. For example, if an asylum seeker arrives in country A and lodges an application for asylum, they will have their biometric data taken. If the asylum seeker then travels to country B, the biometric data in country B will be matched with those taken in country A. Country B will then have to apply the Dublin criteria to determine whether it or country A has responsibility for the examination of the application for asylum.

([339]) Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities – Dublin Convention (OJ C 254, 19.08.1997, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_1997_254_R_0001_01).

The Dublin criteria also apply when an unusually large number of persons have crossed the border during an exceptional situation.

> Example: in the *Jafari* and *A. S. v. Slovenia* cases ([340]), Austrian and Slovenian courts requested clarification of whether tolerating or facilitating mass border crossings during an exceptional situation constitutes 'irregular crossing' under the Dublin Regulation. The CJEU confirmed this interpretation, irrespective of the mass nature of border crossings, as such persons did not satisfy the entry conditions when, after crossing the border, they moved on to another Member State.

An EU Member State, even where it is not responsible under the Dublin procedure criteria, may nevertheless decide to examine an application (the **sovereignty clause** under Article 35(1) of the Asylum and Migration Management Regulation) ([341]).

States must ensure that individuals are not returned to EU Member States where their transfer would result in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter. A Dublin transfer must be ruled out where there are substantial grounds for believing that the applicant would face a real risk of being subjected to pushbacks ([342]). In such a case, this may lead to states having to examine an application, even if it is not their responsibility to do so under the Asylum and Migration Management Regulation.

> Example: in the *N. S.* and *M. E.* joined cases ([343]), the CJEU gave a preliminary ruling on whether or not under certain circumstances a state may be obliged to examine an application under the sovereignty clause even if, according to the Dublin criteria, responsibility lies with another EU Member State. The Court clarified that EU Member States must act in accordance with the fundamental rights and principles recognised by the Charter when exercising their discretionary power. Therefore, Member States may not transfer an asylum seeker to the Member State responsible when the evidence shows – and the Member

([340]) CJEU, C-646/16, *Khadija Jafari and Zainab Jafari v. Bundesamt für Fremdenwesen und Asyl* [GC], 26 July 2017; and CJEU, C-490/16, *A. S. v. Republika Slovenija* [GC], 26 July 2017.

([341]) See also CJEU, C-528/11, *Zuheyr Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 30 May 2013; CJEU, C-661/17, *M. A. and Others v. The International Protection Appeals Tribunal and Others*, 23 January 2019; CJEU, C-359/22, *AHY v. Minister for Justice*, 18 April 2024.

([342]) In CJEU, C-392/22, *X v. Staatssecretaris van Justitie en Veiligheid*, 29 February 2024.

([343]) CJEU, Joined Cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [GC], 21 December 2011.

State cannot be unaware of – systemic deficiencies in the asylum procedure and reception conditions that could amount to a breach of Article 4 of the Charter (prohibition on torture).

Example: in the *C. K. and Others v. Slovenia* case ([344]), the CJEU ruled that a Dublin transfer has to be suspended if the medical condition of the applicant is so serious as to provide substantial grounds for believing that the transfer would result in a real risk of inhuman or degrading treatment under Article 4 of the Charter.

Example: in the *Jawo* case ([345]) CJEU concluded that the Dublin transfer of an applicant to another Member State is inhuman and degrading if it exposes the person to a situation of extreme material poverty that 'does not allow him to meet his most basic needs' ([346]).

In **Dublin procedures**, the Asylum and Migration Management Regulation provides time frames for states to comply with requests to take back or take charge of asylum seekers (Articles 39, 40, 41 and 46), which may be extended in case of crisis ([347]). It also stipulates the need for the state to gather certain evidence before transferring an applicant (Article 40), the need to ensure confidentiality of personal information (Article 73) and the need to inform the individual of the Dublin procedure in general (Article 19) ([348]) and of the intended Dublin transfer and legal remedies available (Article 42). Article 22 of the regulation also normally requires a personal interview to be conducted with each applicant. There are evidential requirements in terms of administrative cooperation (Article 51) and safeguards in terms of cessation of responsibility (Article 37).

([344]) CJEU, C-578/16, *C. K. and Others v. Slovenia*, 16 February 2017.

([345]) CJEU, C-163/17, *Abubacarr Jawo v. Bundesrepublik Deutschland* [GC], 19 March 2019.

([346]) See also CJEU, Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, *Bashar Ibrahim, Mahmud Ibrahim and Others, Nisreen Sharqawi and Others v. Bundesrepublik Deutschland and Bundesrepublik Deutschland v. Taus Magamadov* [GC], 19 March 2019.

([347]) See Art. 12 of the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359).

([348]) See CJEU, Joined Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, *Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino and Others v. CZA and Others*, 30 November 2023.

Dublin transferees have the right to an effective remedy (Article 43) ([349]). EU Member States have to determine time limits to submit an appeal, which must be between one and three weeks. The appeal does not have automatic suspensive effect to the implementation of the transfer, but applicants must be able to request the suspension of the transfer pending a decision.

> Example: the cases of *Ghezelbash* and *Karim* ([350]) relate to the scope of effective remedies in the Dublin procedure. In *Ghezelbash*, the CJEU ruled that the applicant had the right, in an appeal against a transfer decision, to plead the incorrect application of one of the criteria determining responsibility under the Dublin procedure, specifically the criteria relating to the granting of a visa. In *Karim*, the CJEU concluded that an applicant challenging the transfer decision may invoke an infringement of the rule that a Member State is no longer responsible for the asylum application if the applicant has left its territory for the period of time indicated in the rules regulating cessation of responsibilities.

The Dublin procedure includes procedural safeguards for unaccompanied children (see Section 9.1 for more details) and provisions to uphold family unity. Articles 25 to 28 and 34 of the regulation contain criteria for determining the Member State responsible for core family members (as defined in Article 2(8) of the regulation). In addition, a Member State may ask another EU Member State to examine an application in order to bring together other family members (Article 35(2), 'humanitarian clause'). Where there are indications that the applicant has family members in a Member State, Article 22 requires EU Member States to give the applicant a template to be filled in with all the relevant information to determine the Member State responsible.

Where serious humanitarian issues are concerned, an EU Member State may, in some circumstances, become responsible for examining an asylum application when one person is dependent on another person, provided that family ties exist between the two.

([349]) In this regard, the CJEU found that the court or tribunal examining the appeal should not be precluded from considering facts that took place after the transfer decision, which are decisive for the correct application of the Dublin procedure. See CJEU, C-194/19, *H. A. v. État belge*, 15 April 2021.

([350]) CJEU, C-63/15, *Mehrdad Ghezelbash v. Staatssecretaris van Veiligheid en Justitie* [GC], 7 June 2016; CJEU, C-155/15, *George Karim v. Migrationsverket* [GC], 7 June 2016. See also Art. 43(1)(b) of the Asylum and Migration Management Regulation.

Example: the *K* case ([351]) concerned the proposed transfer from Austria to Poland of a woman whose daughter-in-law had a newborn baby. The daughter-in-law was furthermore suffering from serious illness and a disability, following a traumatic experience in a third country. If what happened to her were to become known, the daughter-in-law would probably be at risk of violent treatment by male family members on account of cultural traditions seeking to re-establish family honour. In these circumstances the CJEU held that, where the conditions stated in Article 15(2) (of the 2003 version of the Dublin Regulation, which is now Article 34(1) of the Asylum and Migration Management Regulation) are satisfied, the Member State that, on the humanitarian grounds referred to in that provision, is obliged to take charge of an asylum seeker becomes the Member State responsible for the examination of the application for asylum.

Asylum applicants are required to cooperate with authorities during the Dublin procedure, for example by providing all information that may be relevant to determine the Member State responsible and by staying there or in the one where the Dublin procedures are ongoing (Article 17). Applicants not complying with their obligations and moving to another Member State will lose some of the reception conditions in that Member State, but their standard of living must be maintained in accordance with EU law, including the Charter (Articles 1 and 18) (see also Section 5.1).

Besides regulating the Dublin procedure, Part IV of the Asylum and Migration Management Regulation establishes mandatory **solidarity measures** to support EU Member States facing migratory pressure. These measures can take the form of:

- relocation of asylum applicants and beneficiaries of international protection;
- financial contributions; or
- alternative solidarity measures, such as providing operational support, capacity building, services, staff support, facilities and technical equipment.

Under the ECHR, it is not the role of the ECtHR to interpret the rules of the Dublin procedure. However, as shown by the Court's case-law, Articles 3 and 13 can also be applicable safeguards in the context of Dublin transfers ([352]).

([351]) CJEU, C-245/11, *K v. Bundesasylamt* [GC], 6 November 2012.

([352]) ECtHR, *Mohammed Hussein and Others v. the Netherlands and Italy* (dec.), No 27725/10, 2 April 2013; ECtHR, *Mohammed v. Austria*, No 2283/12, 6 June 2013.

Example: in *M. S. S. v. Belgium and Greece* ([353]), the ECtHR found violations by both Greece and Belgium in respect of the applicant's right to an effective remedy under Article 13 of the ECHR taken in conjunction with its Article 3. The Court concluded that, owing to Greece's failure to apply the asylum legislation and the major structural deficiencies in access to the asylum procedure and remedies, there were no effective guarantees protecting the applicant from onward arbitrary removal to Afghanistan, where he risked ill-treatment. Regarding Belgium, the procedure for challenging a Dublin transfer to Greece did not meet the ECtHR case-law requirements of close and rigorous scrutiny of a complaint in cases where expulsion to another country might expose an individual to treatment prohibited by Article 3.

Example: in *Tarakhel v. Switzerland* ([354]), the ECtHR ruled that, even in the absence of 'systematic deficiencies' in the Italian reception arrangements, there would be a violation of Article 3 of the ECHR if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.

5.3. Return procedures

Under EU law, two instruments regulate returns from Member States to third countries: the Return Directive (Directive 2008/115/EC) – which, as at June 2026, was to be replaced by a regulation – and the Return Border Procedure Regulation (Regulation (EU) 2024/1349).

The **Return Directive** applies to third-country nationals who do not have the right to stay in a Member State (Article 2(1)). It provides for certain safeguards on the issuance of return decisions (Articles 6, 12 and 13) and prioritises the use of voluntary departures over forced returns (removals) (Article 7).

According to Article 12 of the Return Directive, return decisions and re-entry ban decisions must be in writing in a language that the individual can understand or may reasonably be presumed to understand, including information on available legal remedies. Article 13 of the Return Directive provides that third-country nationals

([353]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011.

([354]) ECtHR, *Tarakhel v. Switzerland* [GC], No 29217/12, 4 November 2014.

must be afforded the right to an appeal or the review of a removal decision before a competent judicial or administrative authority or other competent independent body with the power to suspend removal temporarily while any such review is pending. The third-country national should have the possibility of obtaining legal advice, representation and, if necessary, linguistic assistance – free of charge – in accordance with rules set down in national law.

Example: *FMS and Others* ([355]) concerned Afghan and Iranian rejected asylum seekers detained in a transit zone in Hungary, located at the country's southern border with Serbia. After their asylum applications were dismissed as inadmissible pursuant to Hungarian law, they were issued with return decisions, requiring them to go back to Serbia. However, Serbia refused to readmit them on the ground that the conditions set out in the agreement between the European Community and the Republic of Serbia on readmission were not met (the applicants had entered Hungary from Serbia via the transit zones and not irregularly). After that, the Hungarian authorities amended the country of destination in the initial return decisions, replacing it with the individuals' respective countries of origin. The CJEU clarified that amending the country of destination in the initial return decision is so substantial that it must be regarded as a new return decision. Effective judicial review needs to be available against such a decision. More generally, the CJEU also held that, although Member States may make provision for return decisions to be challenged before non-judicial authorities (Article 13(1) of the Return Directive), a person subject to a return decision must, at a certain stage of the procedure, be able to challenge its lawfulness before at least one judicial body, in accordance with the right to an effective remedy before a tribunal guaranteed by Article 47 of the Charter. In the absence of national rules providing for such a judicial review, the national court is entitled to hear an action seeking to challenge the return decision.

The Return Directive states that forced returns must be carried out with due respect for the dignity and the physical integrity of the person concerned (Article 8(4)). Also, an effective monitoring system for forced returns has to be established (Article 8(6)) ([356]) (see Chapter 10). The annex to Council Decision 2004/573/EC on the

([355]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 110–123 and 124–130.

([356]) For more information on EU Member State practices, see FRA, *Forced Return Monitoring Systems – 2025 update*, Publications Office of the European Union, Luxembourg, 2025.

organisation of joint removal flights provides guidance on, among other things, medical issues, the training and conduct of escort officers and the use of coercive measures ([357]).

The Return Directive requires that the individual's state of health be taken into account in the removal process (Article 5). In the case of return by air, this typically requires medical staff to certify that the person is fit to travel. The person's physical and mental health condition may also be the reason for a possible postponement of the removal (Article 9). Domestic legislation and policy may also address specific health concerns, such as those of women in a late stage of pregnancy. Due account must be given to the right to family life when implementing removals (Article 5), and unaccompanied children can only be returned to family members, a nominated guardian or adequate reception facilities (Article 10) ([358]) (see also Section 9.1.1).

Article 9 of the Return Directive also provides that removal decisions have to be postponed if they would breach the *non-refoulement* principle ([359]) and persons are pursuing a remedy with suspensive effect. Removal may, furthermore, be postponed for reasons specific to the person and because of technical obstacles to removal. If removal is postponed, EU Member States need to provide written confirmation that the enforcement action is postponed (Article 14) ([360]).

The Return Directive does not apply to third-country nationals who are family members of EU nationals who have moved to another EU Member State or of other EEA/Swiss nationals whose situation is regulated by the Free Movement Directive (Directive 2004/38/EC). The Free Movement Directive establishes procedural safeguards in the context of restrictions on entry and residence on the grounds of public policy, public security or public health. There must be access to judicial and, where appropriate, administrative procedures when such decisions are made (Articles 27, 28 and 31). Individuals must be given written notification of decisions and must be able to

([357]) Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28, ELI: http://data.europa.eu/eli/dec/2004/573/oj). See also Frontex, *Code of Conduct: For return operations and return interventions coordinated or organised by Frontex*, Warsaw, 2021.

([358]) FRA, *Returning Unaccompanied Children: Fundamental rights considerations*, Publications Office of the European Union, Luxembourg, 2019; CJEU, C-441/19, *TQ v. Staatssecretaris van Justitie en Veiligheid*, 14 January 2021; CJEU, C-484/22, *Bundesrepublik Deutschland v. GS*, 15 February 2023.

([359]) See CJEU, C-156/23 [Ararat], *K, L, M, N v. Staatssecretaris van Justitie en Veiligheid*, 17 October 2024.

([360]) See CJEU, C-352/23 [Changu], *LF v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, 12 September 2024.

comprehend the content and the implications. The notification must specify procedural aspects concerning the lodging of appeals and the time frames involved (Article 30). Turkish nationals enjoy comparable protection ([361]).

The **Return Border Procedure Regulation** applies to those third-country nationals whose asylum application has been rejected in the context of the asylum border procedure (Article 1) (see also Section 5.1.4). The regulation establishes that these people are not legally authorised to enter the territory of the Member State concerned (Article 4(1)). As a consequence, during the return border procedure, they are required to reside in a location near or at the external border or transit zones (Article 4(2)). Those in a return border procedure may be detained as a measure of last resort in the situations prescribed in the regulation (Article 5) (see also Section 7.3).

The return border procedure can last up to 12 weeks (Article 4(4)), which can be extended by 6 weeks in a situation of crisis (Article 6(1)(a)) ([362]). During this period, a number of provisions of the Return Directive continue to apply (Article 4(3)). These include the requirement to take due account of the best interests of the child, family life, the state of health of the person concerned and the principle of *non-refoulement*; the requirement to postpone removal in specific situations, including when removal would violate the prohibition of *refoulement*; and respect for the principles of family unity, emergency healthcare and essential treatment of illnesses, for children's access to basic education and for the special needs of vulnerable persons during the period for voluntary departure granted and during periods where the removal is postponed. If the maximum time limit for a return border procedure is reached and return has not taken place, the return border procedure ends and the ordinary return procedure continues in accordance with the Return Directive, which then applies in full (Article 4(4) of the Return Border Procedure Regulation).

Under the ECHR, in addition to considerations relating to Article 13 of the ECHR, specific safeguards are set forth in Article 1 of Protocol No 7 to the convention that need to be respected in cases of the expulsion of **lawfully** residing non-nationals. Furthermore, the ECtHR has held that Article 8 of the ECHR contains procedural safeguards to prevent arbitrary interference with the right to private and family life. This can be relevant to individuals who have been in a certain country for some time and may have developed private and family life there or who may be involved in

([361]) See Decision No 1/80 of the EEC–Turkey Association Council.

([362]) The definition of 'crisis' can be found in Art. 1(4) of the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359).

court proceedings in that state. Defects in the procedural aspects of decision-making under Article 8 may result in a breach of Article 8(2) on the basis that the decision was not in accordance with the law.

Example: *Muhammad and Muhammad v. Romania* ([363]) concerned two Pakistani nationals living in Romania on student visas who were removed for reasons of national security on the basis of classified documents. The applicants neither had access to the classified documents on which the removal decision was based nor were provided with any specific information regarding the underlying facts and grounds for the removal; they could therefore not meaningfully challenge the decision. The ECtHR found a violation of Article 1(1) of Protocol No 7 to the ECHR, holding that this provision in principle required that expelled non-nationals be informed of the relevant factual elements that have led the competent domestic authorities to consider that they represent a threat to national security, and that they be given access to the content of the documents and the information on which those authorities relied when deciding on their expulsion.

Example: in *Anayo* and *Saleck Bardi* ([364]), both cases concerned the return of third-country nationals in which children were involved. The ECtHR found a breach of Article 8 of the ECHR in that there were defects in the decision-making process, such as a failure to consider the best interests of the child or a lack of coordination between the authorities in determining such interests.

A breach of the confidentiality principle may also raise issues within the scope of Article 8 of the ECHR and, where a breach would lead to a risk of ill-treatment upon return, it may fall within the purview of Article 3 of the ECHR. The ECtHR found a breach of confidentiality in the removal process to be against Article 3 of the ECHR, as the disclosure of information that the returnee was a terrorist suspect might lead to a risk of ill-treatment ([365]).

([363]) ECtHR, *Muhammad and Muhammad v. Romania* [GC], No 80982/12, 15 October 2020. See also ECtHR, *Trapitsyna and Isaeva v. Hungary*, No 5488/22, 19 September 2024; ECtHR, *C. G. and Others v. Bulgaria*, No 1365/07, 24 April 2008.

([364]) ECtHR, *Anayo v. Germany*, No 20578/07, 21 December 2010; ECtHR, *Saleck Bardi v. Spain*, No 66167/09, 24 May 2011.

([365]) ECtHR, *X v. Sweden*, No 36417/16, 9 January 2018, paras 55–61.

The CoE Committee of Ministers' *Twenty Guidelines on Forced Return* also addresses the respect for restrictions imposed on the processing of personal data and the prohibition of sharing information related to asylum applications (guideline 12).

Hastily implemented removal, which essentially precludes the judicial examination of the lawfulness of a removal measure owing to the excessively short time frame, renders existing remedies ineffective and unavailable, thus violating Article 13 of the ECHR ([366]).

Also, when returning someone, the individual's particular vulnerabilities, such as those deriving from age, pregnancy or mental health concerns, have to be taken into account ([367]). Migrants in an irregular situation subject to removal need to be attested as 'fit to travel' ([368]).

5.4. Use of force and restraint measures during the removal process

Whether they are removed by air, land or sea, individuals should be returned in a safe, dignified and humane manner. There have been incidents of returnees dying in the removal process because of asphyxiation or suffering serious injury. Deaths have also occurred in detention centres before the removal could take place. The removal process may also increase the risk of self-harm or suicide, either during detention before removal or during the removal itself.

Under domestic law, state agents, such as custody officers or escort staff, may be empowered to use force in the exercise of their functions. Both EU law and the ECHR stipulate that such force must be reasonable, necessary and proportionate.

([366]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 156–164.

([367]) ECtHR, *Shioshvili and Others v. Russia*, No 19356/07, 20 December 2016, paras 85–86; ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011; ECtHR, *Darraj v. France*, No 34588/07, 4 November 2010; ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006; ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 68–70.

([368]) ECtHR, *Al-Zawatia v. Sweden* (dec.), No 50068/08, 22 June 2010, para. 58. See also ECtHR, *Khachaturov v. Armenia*, No 59687/17, 24 June 2021 (the transfer of an individual whose state of health is particularly poor may, in itself, result in the individual concerned facing a real risk of being subjected to ill-treatment).

EU law and the ECHR set down common standards applicable to cases of death in custody. The right to life is guaranteed under Article 2 of both the Charter and the ECHR. Article 2 is one of the most important rights, from which no derogation is provided for under Article 15 of the ECHR. The ECHR does set out, however, that the use of force, particularly lethal force, is not in violation of Article 2 if the use of force is 'absolutely necessary' and is 'strictly proportionate' ([369]).

Under EU law, the Return Directive sets out rules on coercive measures. Such measures are to be used as a last resort and must be proportionate and not exceed reasonable force. They must be implemented with due respect for the dignity and physical integrity of the person concerned (Article 8(4)). The annex to Council Decision 2004/573/EC offers further operational details on using restraint measures in joint removal fights.

Under the ECHR, the primary duty of states under Article 2 of the ECHR within the context of the use of force by state agents entails putting in place an appropriate legal framework defining the limited circumstances in which law enforcement may use force. The case-law relating to Article 2 of the ECHR requires a legislative, regulatory and administrative framework governing the use of force by state agents in order to protect against arbitrariness, abuse and loss of life, including avoidable accidents. The personnel structure, channels of communication and guidelines on the use of force need to be clearly and adequately set out within such a framework ([370]). Where state agents exceed the amount of force they are reasonably entitled to use and this leads to harm, or even death, the member state may be held accountable. There needs to be an effective, independent investigation into what happened that is capable of leading to a prosecution ([371]), and the relevant authorities must apply stringent scrutiny to the investigation ([372]).

([369]) ECtHR, *McCann and Others v. the United Kingdom* [GC], No 18984/91, 27 September 1995, paras 148–149; ECtHR, *Yüksel Erdoğan and Others v. Turkey*, No 57049/00, 15 February 2007, para. 86; ECtHR, *Ramsahai and Others v. the Netherlands* [GC], No 52391/99, 15 May 2007, para. 286; ECtHR, *Giuliani and Gaggio v. Italy* [GC], No 23458/02, 24 March 2011, paras 175–176.

([370]) ECtHR, *Makaratzis v. Greece* [GC], No 50385/99, 20 December 2004, para. 58; ECtHR, *Nachova and Others v. Bulgaria* [GC], Nos 43577/98 and 43579/98, 6 July 2005, para. 96; ECtHR, *Giuliani and Gaggio v. Italy* [GC], No 23458/02, 24 March 2011, para. 209.

([371]) ECtHR, *McCann and Others v. the United Kingdom* [GC], No 18984/91, 27 September 1995, para. 161; ECtHR, *Velikova v. Bulgaria*, No 41488/98, 18 May 2000, para. 80.

([372]) ECtHR, *Enukidze and Girgvliani v. Georgia*, No 25091/07, 26 April 2011, para. 277; ECtHR, *Armani Da Silva v. the United Kingdom* [GC], No 5878/08, 30 March 2016, para. 229.

The ECtHR has held that member states do not only have negative obligations not to harm individuals, but also positive obligations to protect individuals against loss of life or serious injury, including from third parties or from themselves, and to provide access to medical services. The member state's obligation to protect an individual also encompasses a duty to establish legal provisions and appropriate procedures, including criminal provisions, with accompanying sanctions to prevent and deter the commission of offences resulting in loss of life or serious injury ([373]). The question is whether or not the authorities have done all that could reasonably be expected of them in order to avoid a real and immediate risk to life of which they knew or ought to have known ([374]).

In considering the legality of the use of force, the ECtHR has looked at several factors, including the nature of the aim pursued and the bodily danger and danger to life inherent in the situation. The Court looks at the circumstances of a particular use of force, including whether it was deliberate or unintentional, and whether or not there was adequate planning and control of the operation.

> Example: in *Kaya v. Turkey* ([375]), the ECtHR reiterated that the state must consider the force employed and the degree of risk that it may result in the loss of life.

The use of restraint may raise issues not only under Article 2, when such use involves a loss of life or a near-death situation, such as attempted suicide that causes lasting harm, but also under Articles 3 and 8 of the ECHR in situations where the individual is harmed or injured through the use of restraint that falls short of unlawful killing.

([373]) ECtHR, *Osman v. the United Kingdom*, No 23452/94, 28 October 1998; ECtHR, *Mastromatteo v. Italy* [GC], No 37703/97, 24 October 2002, paras 72–73; ECtHR, *Finogenov and Others v. Russia*, Nos 18299/03 and 27311/03, 20 December 2011, para. 209.

([374]) ECtHR, *Branko Tomašić and Others v. Croatia*, No 46598/06, 15 January 2009, para. 51.

([375]) ECtHR, *Kaya v. Turkey*, No 158/1996/777/978, 19 February 1998.

The Court held that there is a breach of Article 3 of the ECHR when an individual suffers brain damage as a result of the use of excessive force upon arrest ([376]), when detainees are slapped in the face by state agents during their detention at a police station ([377]) or when there is a failure by the authorities to effectively investigate the applicants' complaints about alleged ill-treatment during removal ([378]).

The ECtHR has expressed concerns about incidents involving police or other officers taking part in 'interventions' against individuals in the context of Article 8 of the ECHR. Individuals must be protected from the risk of undue police intrusion into their homes ([379]). Safeguards should be in place to avoid any possible abuse and to protect human dignity. These might include requiring the state to conduct an effective investigation if that is the only legal means of looking into allegations of unlawful searches of property ([380]).

Death or injury may be caused by coercive restraint techniques or by the member state's failure to prevent loss of life, including from self-harm or for medical reasons ([381]). In this regard, the CoE Committee of Ministers' *Twenty Guidelines on Forced Return* bans restraint measures likely to obstruct the airways, partially or wholly, or forcing the returnee into positions in which they risk asphyxia (guideline 19).

([376]) ECtHR, *İlhan v. Turkey* [GC], No 22277/93, 27 June 2000, paras 77–87.

([377]) ECtHR, *Bouyid v. Belgium* [GC], No 23380/09, 28 September 2015.

([378]) ECtHR, *Thuo v. Cyprus*, No 3869/07, 4 April 2017; ECtHR, *Shahzad v. Hungary (No 2)*, No 37967/18, 5 October 2023.

([379]) ECtHR, *Kučera v. Slovakia*, No 48666/99, 17 July 2007, paras 119 and 122–124; ECtHR, *Rachwalski and Ferenc v. Poland*, No 47709/99, 28 July 2009, paras 58–63.

([380]) ECtHR, *Vasylchuk v. Ukraine*, No 24402/07, 13 June 2013, para. 84.

([381]) See, for example, the United Kingdom, *FGP v. Serco Plc & Anor* [2012] EWHC 1804 (Admin), 5 July 2012.

5.5. Legal and linguistic assistance in asylum and return procedures

Access to legal assistance is a cornerstone of access to justice. Without access to justice, the rights of individuals cannot be effectively protected ([382]). Legal and linguistic support are particularly important in asylum and return proceedings, where language barriers may make it difficult for the persons concerned to understand the often complex or rapidly implemented procedures.

Under the ECHR, the right of access to court is derived from the right to a fair trial guaranteed under Article 6 ECHR, a right that holds a prominent position in any democracy ([383]). Article 6 has been held inapplicable to asylum and immigration proceedings because the proceedings do not concern the determination of one's civil rights or obligations or a criminal charge ([384]). However, the principles of access to court that the ECtHR has developed under Article 6 may be relevant to the assessment of a complaint under Article 13 of the ECHR. In terms of procedural guarantees, the requirements of Article 13 are less stringent than those of Article 6, but the very essence of a remedy for the purposes of Article 13 is that it should involve an accessible procedure.

Example: in *G. R. v. the Netherlands* ([385]), the Court found a violation of Article 13 of the ECHR on the issue of the effective access to the administrative procedure for obtaining a residence permit. It noted that, although available in law, the administrative procedure for obtaining a residence permit and the exemption from paying the statutory charges had not been available in practice, because the administrative charge was disproportionate to the actual income of the applicant's family. The Court also underlined the formalistic attitude of the competent minister, who did not fully examine the indigence of the applicant. It reiterated that the principles of access to court developed under Article 6 were also relevant to Article 13, which in turn required an accessible procedure.

([382]) For more information, see FRA, *Access to Effective Remedies: The asylum-seeker perspective*, Vienna, 2010; FRA and CoE, 'Legal aid', in: *Handbook on European law relating to access to justice*, Publications Office of the European Union, Luxembourg, 2016, pp. 57–71; and FRA and CoE, 'Right to be advised, defended and represented', in: *Handbook on European law relating to access to justice*, Publications Office of the European Union, Luxembourg, 2016, pp. 73–90.

([383]) ECtHR, *Airey v. Ireland*, No 6289/73, 9 October 1979.

([384]) ECtHR, *Maaouia v. France* [GC], No 39652/98, 5 October 2000, para. 38.

([385]) ECtHR, *G. R. v. the Netherlands*, No 22251/07, 10 January 2012, paras 49–50.

In its case-law, the ECtHR has referred to CoE recommendations on legal aid to facilitate access to justice, in particular for the very poor ([386]).

> Example: in *M. S. S. v. Belgium and Greece* ([387]), the ECtHR held that the applicant lacked the practical means to pay a lawyer in Greece, where he had been returned; he had not received information concerning access to organisations offering legal advice and guidance. Compounded by the shortage of legal aid lawyers, this had rendered the Greek legal aid system as a whole ineffective in practice. The ECtHR concluded that there had been a violation of Article 13 of the ECHR taken in conjunction with Article 3.

Under EU law, the Charter marks a staging post in the development of the right to legal aid and assistance. Article 47 of the Charter provides that '[e]veryone shall have the possibility of being advised, defended and represented' and that '[l]egal 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'.

The right to a fair hearing under EU law applies to asylum and immigration cases, which is not the case under the ECHR. The inclusion of legal aid in Article 47 of the Charter reflects its historical and constitutional significance. The explanation on Article 47 in regard to its legal aid provision mentions Strasbourg case-law – specifically the *Airey* case ([388]). Legal aid in asylum and immigration cases is an essential part of the need for an effective remedy and the need for a fair hearing.

5.5.1. Legal and linguistic assistance in asylum procedures

Under EU law, Article 15(1) of the Asylum Procedure Regulation entitles applicants to consult with a legal adviser on matters relating to their application (legal counselling), which must be available free of charge in the administrative procedure (Article 16). Pursuant to Article 17 of the regulation, in the case of a negative decision by the administration, EU Member States must ensure that free legal assistance and representation be granted to applicants in order to lodge an appeal and for the

([386]) CoE Committee of Ministers, Recommendation No R(81)7 on measures facilitating access to justice, 1981; ECtHR, *Siałkowska v. Poland*, No 8932/05, 22 March 2007.

([387]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 319.

([388]) ECtHR, *Airey v. Ireland*, No 6289/73, 9 October 1979.

appeal hearing. Free legal assistance and/or representation may not be granted in certain situations specified in the regulation, including, for example, if the applicant has sufficient resources to afford legal assistance and/or representation or if the appeal has no tangible prospects of success (Article 17(2)). EU Member States may impose certain conditions for the provision of free legal assistance and representation, such as monetary limits or time limits (Article 19).

Article 18 of the regulation also makes provision for the scope of legal assistance and representation, including allowing the legal adviser to access the applicant's file information, in addition to practical access to the client if held or detained in a closed area, such as a detention facility or transit zone. Applicants are allowed to bring their legal adviser to the personal asylum interview (Article 13(4)).

Multiple provisions of the Asylum Procedure Regulation ensure that applicants receive linguistic assistance as needed. Article 8 requires that applicants have access to the services of an interpreter for registering and lodging an asylum application and during the personal interview if appropriate communication cannot be ensured otherwise (see also Article 13). Where needed, an interpreter must also assist during the assessment of special procedural guarantees (Article 20).

Under the ECHR, when assessing the application of Article 13 of the ECHR, the ECtHR highlighted the importance of interpretation to ensure access to asylum procedures where individuals wish to express fear of harm in relation to Article 3 of the ECHR in case of removal ([389]).

The **CoE** Committee of Ministers' *Guidelines on human rights protection in the context of accelerated asylum procedures* ([390]) also recognises the right to legal aid and assistance (points IV.1.f and XI.6).

([389]) ECtHR, *D v. Bulgaria*, No 29447/17, 20 July 2021.

([390]) CoE Committee of Ministers, *Guidelines on human rights protection in the context of accelerated asylum procedures*, 2009.

5.5.2. Legal and linguistic assistance in return procedures

Under EU law, the provision of legal assistance is not limited to asylum procedures but is also included in return procedures ([391]). This is notable because it allows individuals to seek judicial review of a removal decision. Some individuals who are recipients of a return decision made under the Return Directive may never have had an appeal or any judicial consideration of their claims. Some of these individuals may have formed families during their time in the EU Member State and will require access to a court to determine the compatibility of the return decision with human rights. Given this, Article 13(4) of the Return Directive states that EU Member States 'shall ensure that the necessary legal assistance and/or representation is granted on request free of charge' in accordance with relevant national legislation and within the terms of Article 15(3) to (6) of Council Directive 2005/85/EC ([392]) (see Section 5.5.1).

These provisions note that legal aid should be made available on request. This entails individuals being informed about the provision of legal aid in clear and simple terms and in a language that they understand, as otherwise the rules would be rendered meaningless and hamper effective access to justice.

The **CoE** Committee of Ministers' *Twenty Guidelines on Forced Return* also provides for legal assistance in the context of return (guideline 9) ([393]).

Key points

- EU law requires fair and efficient procedures in the context of both examining an asylum application and examining returns (see Sections 5.1.1 and 5.3). Procedural safeguards are provided for all procedures, including border procedures (see Sections 5.1.4, 5.2 and 5.3).
- There are procedural safeguards under EU law in respect of entitlement to and the withdrawal of support and benefits for asylum seekers (see Section 5.1).

([391]) See CJEU, C-249/13, *Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques*, 11 December 2014.

([392]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13, ELI: http://data.europa.eu/eli/dir/2005/85/oj).

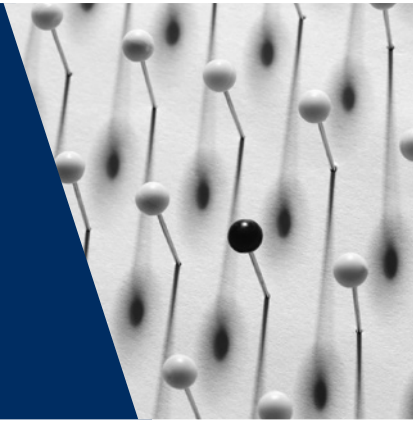
([393]) CoE Committee of Ministers, *Twenty Guidelines on Forced Return*, 2005.

- Article 13 of the ECHR requires an effective remedy before a national authority, in respect of any arguable complaint under any substantive provision of the ECHR or its protocols. In the immigration context, it requires independent and rigorous scrutiny of any claim that there are substantial grounds for fearing a real risk of treatment contrary to Article 2 or Article 3 of the ECHR in the event of an individual's expulsion or extradition (see Section 5.1.2).
- Article 13 of the ECHR requires a remedy with automatic suspensive effect where an individual alleges that the implementation of a return measure might expose them to a real risk of violation of Article 2 or 3 of the ECHR, on account of the irreversible nature of the harm that might occur. In cases where there is no risk of such harm, the ECHR requires that the individual should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of their complaints carried out by an independent and impartial domestic court (see Section 5.1.3).
- Article 47 of the Charter requires a judicial remedy and contains more extensive fairness safeguards than Article 13 of the ECHR (see Section 5.1.2).
- Removals have to be carried out safely and humanely and must protect the dignity of the individual (see Section 5.4).
- Individuals should be fit to travel, having regard to their physical and mental health (see Section 5.4).
- Lack of legal assistance may raise an issue under Article 13 of the ECHR and Article 47 of the Charter (see Section 5.5).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

6 Family life and the right to marry



EU	Issues covered	CoE
Charter of Fundamental Rights of the European Union, Article 9 (right to marry and right to found a family) Council Resolution (1997) on measures to be adopted on the combating of marriages of convenience	**The right to marry and to found a family**	ECHR, Article 12 (right to marry) ECtHR, *Schembri v. Malta* (dec.), No 66297/13, 2017 (marriage considered not genuine)
Charter of Fundamental Rights of the European Union, Article 7 (respect for private and family life) **Family members of EU, EEA and Swiss nationals exercising free movement rights:** Free Movement Directive (Directive 2004/38/EC) CJEU, C-673/16, *Coman* [GC], 2018 (same-sex marriages) ECJ, C-127/08, *Metock* [GC], 2008 (previous lawful stay of third-country-national family member in Member States is not required) **Family members dependent on EU citizens who did not exercise free movement rights:** ECJ, C-60/00, *Carpenter*, 2002 (third-country-national spouse can remain with the children in spouse's home country when husband moves to another Member State)	**Family members already in the EU**	ECHR, Article 8 (right to respect for private and family life) ECtHR, *Martinez Alvarado v. the Netherlands*, No 4470/21, 2024 (dependency and family life between adult relatives) ECtHR, *Jeunesse v. the Netherlands* [GC], No 12738/10, 2014 (best interests of the child) ECtHR, *Nunez v. Norway*, No 55597/09, 2011 (family life in Norway)

EU	Issues covered	CoE
ECJ, C-59/85, *State of the Netherlands v. Reed*, 1986 (unmarried companions) CJEU, C-34/09, *Zambrano* [GC], 2011 (children at risk of losing the benefits of EU citizenship) CJEU, C-624/20, *E. K.*, 2022 (derived residence rights and long-term status for dependent family members) **Family members of settled immigrants:** Family Reunification Directive (Directive 2003/86/EC) (the family member normally has to apply from outside the Member State)		
Family members of EU, EEA and Swiss nationals exercising free movement rights: Free Movement Directive (Directive 2004/38/EC) **Family members of settled immigrants:** Family Reunification Directive (Directive 2003/86/EC) CJEU, C-338/13, *Noorzia*, 2014 (minimum age to lodge an application for family reunification) CJEU, C-578/08, *Chakroun*, 2010 (it does not matter whether the family was created before or after the third-country national arrived)	Family reunification	ECHR, Article 14 (protection from discrimination) in conjunction with Article 8 (right to respect for private and family life) ECtHR, *Biao v. Denmark* [GC], No 38590/10, 2016 (indirect discrimination) ECtHR, *B.F. and Others v. Switzerland*, Nos 13258/18 and 3 others, 2023 (family reunion of refugees) ECtHR, *Tuquabo-Tekle and Others v. the Netherlands*, No 60665/00, 2006 (children left behind) ECtHR, *M. A. v. Denmark* [GC], No 6697/18, 2021 (three-year waiting period before application for family reunification) European Social Charter, Article 19(6) (family reunion of foreign workers)
Charter of Fundamental Rights of the European Union, Article 7 (respect for private and family life)	**Safeguards concerning expulsion of family members**	ECHR, Article 8 (right to respect for private and family life)

EU	Issues covered	CoE
Family members of EU, EEA and Swiss nationals exercising free movement rights: Free Movement Directive (Directive 2004/38/EC), Article 13 **Family members of settled immigrants:** Family Reunification Directive (Directive 2003/86/EC), Article 15	*Relationship breakdown cases*	
Family members of EU, EEA and Swiss nationals exercising free movement rights: Free Movement Directive (Directive 2004/38/EC), Articles 27 to 33 **Family members of settled immigrants:** Family Reunification Directive (Directive 2003/86/EC), Article 6(2)	*Criminal conviction cases*	ECtHR, *Unuane v. the United Kingdom*, No 80343/17, 2020 (criteria to assess proportionality of expulsion) ECtHR, *Üner v. the Netherlands* [GC], No 46410/99, 2006 (criteria to assess barriers deriving from the right to family and private life)

Introduction

This chapter looks at the right to respect for private and family life and the right to marry and to found a family. It examines the regularisation of third-country-national family members already present in the EU and the reunification with family members outside the EU. Finally, it presents applicable safeguards when deciding whether to expel a family member.

The structure of the chapter follows the different regimes that apply depending on whether the individual who wishes to be accompanied or joined by their family members is an EU, EEA or Swiss national or whether such 'sponsors' are settled immigrants from third countries. In the context of the ECHR, this distinction is not relevant.

Under the ECHR, Article 8(1) guarantees the right to respect for 'private and family life'. Article 8(2) permits interferences that are 'in accordance with the law' and 'necessary in a democratic society' for one of the legitimate aims exhaustively listed: public safety or the economic well-being of the country, national security, prevention of disorder or crime, protection of health or morals, and the rights and freedoms of others.

Article 8 of the ECHR covers the physical and psychological integrity of a person, the right to personal development and the right to establish and develop relationships with other human beings and the outside world ([394]). Aside from possibly disrupting 'family life', the expulsion of a settled migrant might constitute an interference with their right to respect for 'private life', which may or may not be justified, depending on the facts of the case. Whether it is appropriate for the court to focus on the 'family life' rather than the 'private life' aspect will depend on the circumstances of each particular case ([395]).

Example: in *Omojudi v. the United Kingdom* ([396]), the ECtHR reaffirmed that Article 8 of the ECHR also protected the right to establish and develop relationships with other human beings and the outside world, and could also embrace aspects of an individual's social identity. It must be accepted that the totality of social ties between settled migrants and the community in which they were living constituted part of the concept of 'private life' within the meaning of Article 8, regardless of the existence of a 'family life'.

Under Article 8 of the ECHR, the existence of 'family life' is a factual question depending upon the existence of close personal ties. It is normally limited to the core family but can be extended to adult relatives (e.g. adult children or adult siblings) when there are additional elements of dependence ([397]). In immigration cases, Article 8 may be interfered with in expulsion cases, that is, where an individual's right of residence is withdrawn and their expulsion is ordered (discussed in Section 6.4), and in cases of regularisation, that is, where an individual requests a permit to allow them to lawfully reside in a country (discussed in Section 6.2).

Under EU law, the Charter of Fundamental Rights of the European Union (the Charter) enshrines the right to respect for private and family life (Article 7) and also protects the rights of the child (Article 24), particularly the right to maintain contact with both parents (Article 24(3)).

([394]) ECtHR, *Pretty v. the United Kingdom*, No 2346/02, 29 April 2002, para. 61.

([395]) ECtHR, *A. A. v. the United Kingdom*, No 8000/08, 20 September 2011; ECtHR, *Maslov v. Austria* [GC], No 1638/03, 23 June 2008; ECtHR, *Üner v. the Netherlands* [GC], No 46410/99, 18 October 2006.

([396]) ECtHR, *Omojudi v. the United Kingdom*, No 1820/08, 24 November 2009, para. 37.

([397]) ECtHR, *Martinez Alvarado v. the Netherlands*, No 4470/21, 10 December 2024, paras 35–36.

In relation to migration, the first measure on the free movement of workers, adopted over 50 years ago (Regulation (EEC) No 1612/68, repealed and replaced by Regulation (EU) No 492/2011), included the express right of European workers to be accompanied by their families. The nationality of family members is immaterial to this right.

Articles 20 and 21 of the TFEU confer directly on every EU citizen (and, by virtue of TFEU, Articles 45 to 48, on workers, including the self-employed) a right to move and reside freely in another Member State. A corollary of that right, crystallised in the Free Movement Directive (Directive 2004/38/EC), is the right of family members to accompany or join an EU citizen who exercises free movement rights. Similar rules apply to EEA nationals other than EU citizens (i.e. those from Iceland, Liechtenstein and Norway) and to Swiss nationals who live in the EU.

Family reunification for EU nationals who have not made use of free movement rights is regulated by national law, which remains more restrictive in some Member States.

Where the sponsors are third-country nationals, family reunion rests primarily on the Family Reunification Directive (Directive 2003/86/EC). For settled immigrants from third countries, family reunification is a qualified statutory entitlement, not a treaty right.

There are also special provisions for the family members of Turkish nationals under Article 7 of Decision No 1/80 adopted under the Ankara Agreement. The adoption at the EU level of the Long-term Residents Directive (Directive 2003/109/EC) and the Family Reunification Directive has expanded EU action in this field.

Finally, refugees have long been accorded special family reunion privileges in European states, based on the impossibility of returning to their country of origin to continue their family life. In this respect, special provisions for refugees are contained in Chapter V of the Family Reunification Directive.

6.1. The right to marry and to found a family

The right to marry is enshrined in Article 12 of the ECHR and in EU law in Article 9 of the Charter. It concerns the right to form a marital relationship and a family. This is quite distinct from the right to respect for family life, which requires an existing family relationship when seeking immigration authorisation.

European states have put in place restrictions on the right to marry, since marriages of convenience are seen as a device for circumventing immigration controls. A **marriage of convenience** (or sham marriage) is a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in an EU Member State ([398]), without any intention of cohabiting or sharing the other social characteristics of marriage. Facilitating a marriage of convenience is a criminal offence in many jurisdictions.

Forced marriages occur when one (or both) of the spouses is an unwilling party to the marriage. Forced marriage is internationally recognised as a form of gender-based violence ([399]).

Under the ECHR, Article 12 guarantees the right to marry. Unlike Article 8, Article 12 does not provide an exhaustive list of legitimate aims that could justify an interference with this right. It follows from ECtHR case-law that a state may properly impose reasonable conditions on the right of a third-country national to marry, in order to ascertain if the proposed marriage is one of convenience and, if so, to prevent it. Consequently, a state is not necessarily in violation of Article 12 of the ECHR if it subjects marriages involving foreign nationals to scrutiny in order to establish whether they are marriages of convenience. This may include requiring foreign nationals to notify the authorities of an intended marriage and, if necessary, asking them to submit information relevant to their immigration status and to the genuineness of the marriage. However, such scrutiny cannot amount to a blanket prohibition on the exercise of the right to marry on all persons belonging to a specified group (e.g. those without a valid immigration status), regardless of whether the proposed marriage was one of convenience or not. Consequently, when examining a case

([398]) Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (OJ C 382, 16.12.1997, p. 1), Art. 1; Family Reunification Directive (Directive 2003/86/EC), Art. 16(2)(b).

([399]) See the Gender-based Violence Directive (Directive 2024/1385), recital 16 and Art. 4; and CoE, Istanbul Convention, CETS No 210, Istanbul, 2011. See also FRA, *Addressing Forced Marriage in the EU: Legal provisions and promising practices*, Publications Office of the European Union, Luxembourg, 2014.

under Article 12, the court is to determine whether, regard being had to the state's margin of appreciation, the interference to the right to marry has been arbitrary or disproportionate ([400]).

> Example: *Schembri v. Malta* ([401]) concerned a Maltese national who met a Pakistani citizen of Afghan origin after he was released from immigration detention, where he had been kept for irregular entry. He moved unlawfully to Italy. The two kept in contact and got married. The husband applied for a visa at the Maltese embassy in Rome. Malta rejected his application because he had lied about the status of his stay in Italy. It later transpired that the authorities suspected a marriage of convenience. The ECtHR rejected the applicant's argument that there was a breach of Article 8 of the ECHR, as this provision does not protect marriages of convenience. The Court concluded that the marriage was not genuine and that there was not a committed relationship for the purpose of the applicability of Article 8.

Under EU law, the Charter enshrines the right to marry and to found a family (Article 9). This Charter right confers upon national authorities a certain discretion on how to govern the exercise of the right to marry at the national level, but the leeway it grants them is limited. When a Member State suspects the existence of a marriage of convenience, Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience requires the Member State to check the genuineness of the marriage before issuing a residence permit. Further practical guidance is provided by the 2014 European Commission Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of freedom of movement ([402]).

([400]) ECtHR, *O'Donoghue and Others v. the United Kingdom*, No 34848/07, 14 December 2010, para. 84.

([401]) ECtHR, *Schembri v. Malta* (dec.), No 66297/13, 19 September 2017.

([402]) Communication from the Commission to the European Parliament and the Council – Helping national authorities fight abuses of the right to free movement: Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens, COM(2014) 0604 final.

6.2. Family members who are already in the EU

This section deals with those situations where the third-country-national family members are already living in the EU.

Under the ECHR, a considerable number of cases have been brought before the ECtHR, raising issues relating to the refusal to regularise the spouses or other family members of member states' own citizens or settled migrants. When deciding if the member state's refusal was justified, the factors the ECtHR takes into account are described in *Jeunesse v. the Netherlands* ([403]):

- the extent to which family life is effectively ruptured,
- the extent of the ties in the member state,
- whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them ([404]),
- whether there are factors of immigration control (e.g. a history of breaches of immigration law) or considerations of public order,
- whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the member state would from the outset be precarious,
- the best interests of children involved.

The Court's case-law in this area is closely tied to the particular features and facts of each case.

([403]) ECtHR, *Jeunesse v. the Netherlands* [GC], No 12738/10, 3 October 2014, paras 107–109.

([404]) See ECtHR, *Darren Omoregie and Others v. Norway*, No 265/07, 31 July 2008.

Example: in *Jeunesse v. the Netherlands* ([405]), the Court found that, even though the applicant's family life was created at a time when she was in an irregular situation, viewing several factors cumulatively, the circumstances of the applicant's case were indeed exceptional. She was born a Dutch national but lost that nationality involuntarily when Suriname became independent, her husband and three children were Dutch nationals, her presence in the Netherlands was tolerated for 16 years, she had no criminal record and settling in Suriname would entail hardship for her family, including her minor children. Taking this into account, denying her a residence permit was a violation of Article 8.

Example: in the case of *Nunez v. Norway* ([406]), the applicant entered Norway contrary to a re-entry ban after having previously committed a criminal offence there under a different name. The applicant then married a Norwegian national and had two daughters. The Court found that Norway would violate Article 8 if it expelled the applicant.

The ECtHR clarified that, while family life is generally presumed to exist between spouses and minor children, this is not automatically the case for relationships involving adult family members. Whether or not such relationships fall within the scope of Article 8 of the ECHR depends on the presence of additional elements of dependency, going beyond normal emotional ties. These may include factors such as material support, health-related needs or other circumstances demonstrating a particular reliance between the individuals concerned. The existence of family life in such cases must be assessed on the basis of the specific circumstances.

Example: in *Martinez Alvarado v. the Netherlands* ([407]), a Peruvian national with cognitive disabilities (meaning that he functioned at the level of an eight-year-old child) applied for a residence permit to live with his four sisters in the Netherlands, who were all long-term residents or Dutch nationals. The Dutch authorities rejected the application on the grounds that there was no 'family life' within the meaning of Article 8 of the ECHR between adult siblings. The ECtHR disagreed, finding that the applicant was wholly dependent on his sisters for daily care and support. The Court clarified that, in such

([405]) ECtHR, *Jeunesse v. the Netherlands* [GC], No 12738/10, 3 October 2014, paras 107–109.

([406]) ECtHR, *Nunez v. Norway*, No 55597/09, 28 June 2011.

([407]) ECtHR, *Martinez Alvarado v. the Netherlands*, No 4470/21, 10 December 2024.

cases, the existence of family life must be assessed on the basis of individual circumstances and that additional elements of dependency – beyond ordinary emotional ties – may establish a protected relationship under Article 8. The ECtHR found that the authorities had failed to conduct an adequate assessment of this dependency and ruled that there had been a violation of Article 8.

There are also situations where there may be an indirect interference with the right to respect for family life, even if there is not an outright refusal to authorise a stay.

Example: the case of *G. R. v. the Netherlands* ([408]) looked at the interference caused by charging excessively high fees for the regularisation of the immigration situation of a foreign spouse. The Court decided to consider the matter under Article 13 of the ECHR because the complaint related to the applicant's inability to challenge the refusal of his residence permit, since his application was rejected purely on the basis that he had failed to pay the necessary fees ([409]).

6.2.1. Family members of EU, European Economic Area and Swiss nationals exercising free movement rights

Under EU law, the rules set out in the Free Movement Directive apply to third-country nationals who are family members of EU nationals, and who have exercised their right to free movement. The qualifying family members are spouses, children under the age of 21 years, dependent children aged over 21 years, dependent direct relatives in the ascending line and those of the spouse or partner (Article 2(2)) and, in specific circumstances, 'other family members' (Article 3(2)). Pursuant to the EEA Agreement and the EU–Swiss Agreement, the right to free movement extends to the whole geographical area covered by the two agreements. However, the category of qualifying family members is somewhat more restrictive, as illustrated in Table 7.

([408]) ECtHR, *G. R. v. the Netherlands*, No 22251/07, 10 January 2012.

([409]) ECtHR, *Anakomba Yula v. Belgium*, No 45413/07, 10 March 2009.

Table 7: Third-country-national family members of EEA and Swiss nationals

Legal instrument	Third-country-national family members covered
Free Movement Directive (Article 2)	Spouse (including of the same sex) Registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage Direct descendants of the EU national who are under the age of 21 years or are dependants and those of the spouse or registered partner Dependent direct relatives in the ascending line and those of the spouse or registered partner
EEA Agreement, (Annex V) (*)	Spouse or civil partner Direct descendants of the EEA national, or of the spouse or civil partner, who are either under the age of 21 years or dependent on the EEA national or the spouse or civil partner Dependent direct relatives in the ascending line of the EEA national or their spouse or civil partner
EU–Swiss Agreement, (Annex I, Article 3)	The spouse or registered unmarried partner of an EU or EFTA citizen A direct descendant under the age of 21 years of an EU or EFTA citizen and their spouse or registered unmarried partner A relative in an ascending line of an EU or EFTA citizen and their spouse or registered unmarried partner

(*) *Decision No 158/2007 (7 December 2007) of the EEA Joint Committee incorporated the Free Movement Directive into the framework of the EEA Agreement.*

The CJEU has provided clarification concerning 'spouse' and 'other family members'.

Example: the *Coman* ([410]) case concerned Mr Coman, a Romanian national, and Mr Hamilton, a US national, who cohabited for four years in the United States before marrying in Belgium. Based on the Free Movement Directive, they asked the Romanian authorities to issue them with the necessary documents to enable the couple to work and reside permanently in Romania. However, the Romanian authorities refused to grant Mr Hamilton that right of residence on the ground that in Romania – which does not recognise same-sex marriage – he was not considered the 'spouse' of an EU citizen. The CJEU concluded that, while Member States have freedom regarding whether to authorise marriage between persons of the same sex, they may not obstruct the freedom of residence of an EU citizen by refusing to grant their same-sex spouse (here a third-country national) a derived right of residence in their territory. The Court

([410]) CJEU, C-673/16, *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [GC], 5 June 2018.

recognised that same-sex marriages must be treated in the same way as opposite-sex marriages for a specific legal purpose, that is, family reunification rights of EU citizens who exercise EU free movement rights.

Example: in *Rahman* ([411]), the CJEU clarified that Article 3(2) of the Free Movement Directive not only makes it possible but also obliges Member States to confer a certain advantage on applications for entry and residence submitted by those other family members of an EU citizen who are dependent and can demonstrate that their dependence existed at the time they sought entry ([412]). In order to meet that obligation, Member States must ensure that their legislation contains measures that enable the persons concerned to have their application for entry and residence duly and extensively examined and to obtain, in the event of refusal, a reasoned denial, which they are entitled to have reviewed before a judicial authority.

Third-country-national family members of EEA nationals who have exercised free movement rights are often in a privileged situation compared with those third-country-nationals who are family members of nationals of the country who have not exercised the right of free movement, as their status is regulated purely by national law. The right of third-country-national family members to enter and reside exists irrespective of when and how they entered the host country. It applies also to persons who entered in an irregular manner.

Example: the case of *Metock* ([413]) concerned the third-country-national spouses of non-Irish EU citizen residents in Ireland. The Irish government argued that, in order to benefit from the Free Movement Directive, the third-country-national spouse had to have previously been lawfully resident in another EU Member State, and that the right of entry and residence should not be granted to those who entered the host Member State before becoming spouses of EU citizens. The Court held that Member States could not make the right to live together

([411]) CJEU, C-83/11, *Secretary of State for the Home Department v. Rahman and Others* [GC], 5 September 2012. See also CJEU, C-22/21, *SRS, AA v. Minister for Justice and Equality*, 15 September 2022.

([412]) On the concept of 'dependant', see CJEU, C-423/12, *Flora May Reyes v. Migrationsverket*, 16 January 2014.

([413]) ECJ, C-127/08, *Metock and Others v. Minister for Equality, Justice and Law Reform* [GC], 25 July 2008, paras 53–54 and 58. *Metock* was followed by the Swiss Federal Supreme Court in its decision *BGE 136 II 5*, 29 September 2009.

under the Free Movement Directive conditional on matters such as when and where the marriage had taken place or on the fact that the third-country national had previously been lawfully resident in another Member State.

Example: in the case of *MRAX* ([414]), the ECJ held that a Member State cannot refuse residence to a third-country-national spouse who entered the Member State without a valid visa or after lawful stay had lapsed, because the right of residence flows directly from marriage to EU citizens who have exercised their free movement rights.

Over time, the CJEU has clarified the scope of application of the rights and freedoms deriving from the EU treaties to EU nationals, by granting, under certain conditions, derived rights to their third-country-national family members.

Example: the case of *Carpenter* ([415]) concerned a third-country-national wife of a national of the United Kingdom whose business consisted of providing services, for remuneration, in other EU Member States. It was argued successfully that, if his wife was not permitted to remain with him in the United Kingdom and to look after his children while he was away, he would be restricted in the exercise of his freedom to provide services across the EU. In this case, the Court used the freedom to provide services recognised by Article 56 of the TFEU to acknowledge the family rights of an EU citizen who had never lived abroad but who pursued cross-border economic activity. The ECJ also referred to the fundamental right to respect for family life as enshrined in Article 8 of the ECHR.

Article 2(2) of the Free Movement Directive includes 'registered partners' among the category of family members, provided this is consistent with the national law of the host Member State. In certain circumstances, unregistered partners may also be granted the right to join a citizen or settled migrant.

([414]) ECJ, C-459/99, *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v. Belgian State*, 25 July 2002, para. 80.

([415]) ECJ, C-60/00, *Mary Carpenter v. Secretary of State for the Home Department*, 11 July 2002, paras 36–46. See also ECJ, C-370/90, *The Queen v. Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department*, 7 July 1992, concerning the possibility to claim such rights for EU nationals returning to their home country.

Example: in *State of Netherlands v. Reed* ([416]), the ECJ ruled that, as Dutch law permitted the stable partners of Dutch citizens to reside with them in the Netherlands, the same advantage must be given to Ms Reed, who was in a stable relationship with a worker from the United Kingdom exercising treaty rights in the Netherlands. Permission for the unmarried companion to reside, the Court held, could assist integration into the host state and thus contribute to the achievement of the free movement of workers. Its denial amounted to discrimination.

6.2.2. Family members dependent on EU citizens who did not exercise free movement rights

The CJEU has progressively recognised that Article 20 of the TFEU may, in exceptional circumstances, give rise to derived residence rights for third-country-national family members of EU citizens who have never exercised free movement rights. This case-law centres on the idea that denying residence to a family member may effectively force the EU citizen to leave the EU, thereby depriving them of the genuine enjoyment of the substance of their rights as EU citizens. However, the desirability, for economic or family reasons, of keeping the family together is not sufficient in itself to conclude that the EU citizen will be forced to leave the EU ([417]). The Court has clarified that these situations must involve a relationship of dependency and that such dependency must be assessed in light of individual circumstances.

Example: in *Zambrano* ([418]), the CJEU held that the third-country-national parents of two Belgian children – who were born and raised in Belgium and had never exercised free movement rights (hence Article 3(1) of the Free Movement Directive was not applicable) – could not be denied residence and work permits, since it would have the effect of depriving the EU-citizen children the genuine enjoyment of the substance of the rights conferred upon them by their status as EU citizens (TFEU, Article 20).

([416]) ECJ, C-59/85, *State of Netherlands v. Ann Florence Reed*, 17 April 1986, paras 28–30.

([417]) CJEU, C-256/11, *Murat Dereci and Others v. Bundesministerium für Inneres* [GC], 15 November 2011, para. 68. See also CJEU, C-165/16, *Toufik Lounes v. Secretary of State for the Home Department* [GC], 14 November 2017.

([418]) CJEU, C-34/09, *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)* [GC], 8 March 2011; ECJ, C-200/02, *Zhu and Chen v. Secretary of State for the Home Department*, 19 October 2004, paras 42–47.

Where an EU citizen can in practice exercise the right to reside in another Member State and thereby obtain immediate family reunion for third-country-national relatives under the Free Movement Directive, the Zambrano principle will normally not apply.

Example: in *McCarthy* ([419]), the CJEU ruled that the refusal to grant a UK residence permit to the third-country-national husband of a woman with dual Irish/UK nationality did not deprive her of the substance of her EU citizenship rights. A child who is an EU citizen must be legally, financially or emotionally dependent on the third-country-national who is refused a right of residence, as it is that dependency that would lead to the EU citizen being obliged to leave not only the territory of the Member State of which they are a national but also that of the EU as a whole ([420]).

Derived residence rights for third-country-national family members are contingent upon a comprehensive assessment of a dependency relationship and potential national security concerns.

Example: in *Iida v. Ulm* ([421]), a Japanese citizen applied for a residence card as a family member of an EU citizen after his German wife (from whom he was permanently separated) and underage daughter moved to Austria. The residence card was refused by the German authorities. In these circumstances, the CJEU noted that a third-country-national family member of an EU citizen who has exercised free movement rights can only benefit from the Free Movement Directive if they install themselves in the host Member State where their EU-citizen family member resides. The CJEU also noted that Mr Iida's daughter cannot claim residence rights for her father, as Article 2(2)(d) of the directive only applies to direct relatives in the ascending line who are dependent on the child and not to situations where a child is dependent on the parent.

([419]) CJEU, C-434/09, *Shirley McCarthy v. Secretary of State for the Home Department*, 5 May 2011, paras 49 and 54–56.

([420]) CJEU, Joined Cases C-356/11 and C-357/11, *O. and S. v. Maahanmuuttovirasto and Maahanmuuttovirasto v. L.*, 6 December 2012, para. 56.

([421]) CJEU, C-40/11, *Yoshikazu Iida v. Stadt Ulm*, 8 November 2012.

Example: in *NW and PQ* ([422]), two third-country nationals living in Hungary with their Hungarian family members had their residence permits refused or withdrawn for reasons of national security. These reasons, however, were not disclosed to them, as the reasons were considered classified information. In these circumstances, the CJEU concluded that a decision to reject or withdraw a residence permit on national security grounds requires a rigorous examination of all the individual circumstances of the third-country nationals concerned and of the proportionality of the decision. The Court also found that EU law did not authorise national law to establish that third-country nationals or their representatives may have access to classified information only after having obtained an authorisation, without being informed of the substance of the grounds on which the decisions are based and without being able to use the information to which they might have had access in the relevant proceedings.

Even where a third-country national's presence is initially derived from their status as the parent of an EU-citizen child, that residence may qualify as stable for the purposes of long-term residence.

Example: in *E. K.* ([423]), a Ghanaian national residing in the Netherlands had a derived right of residence based on her relationship with her minor Dutch child, under Article 20 of the TFEU. She applied for long-term resident status under the Long-term Residents Directive, which was refused on the grounds that her residence was considered temporary. The CJEU held that a derived right of residence granted in such circumstances cannot be automatically classified as temporary. The Court emphasised that, where the presence of a third-country national is necessary to prevent an EU citizen, particularly a child, from being compelled to leave the EU, such residence must be regarded as sufficiently stable to qualify for long-term resident status.

An entry ban on the third-country national does not automatically preclude a residence permit based on family grounds.

([422]) CJEU, C-420/22, *NW and PQ v. Országos Idegenrendészeti Főigazgatóság and Miniszterelnöki Kabinetirodát vezető miniszter*, 25 April 2024. See also CJEU, C-528/21, *MD*, 27 April 2023.

([423]) CJEU, C-624/20, *E. K. v. Staatssecretaris van Justitie en Veiligheid*, 7 September 2022.

Example: in *K. A. and Others* ([424]), several third-country nationals in an irregular situation were ordered to return to their countries and banned from entering Belgium, some of them on grounds of a threat to public policy. While still in Belgium, they submitted applications for residence permits, on the basis of family reunification with Belgian nationals. The Belgian authorities refused to examine their applications solely on the ground that the third-country nationals were subject to an entry ban. The CJEU noted the existence of a relationship of dependency, which would compel the EU citizen, in practice, to accompany the third-country-national family member and, therefore, leave the EU until the authorities decided whether or not to lift the entry ban and issue a residence permit to the third-country national. The CJEU concluded that Article 20 of the TFEU requires that requests for family reunification must be examined even if there is an entry ban on a third-country national. Whether or not there exists a dependency between the third-country national and the EU citizen and whether or not public policy grounds justify the entry ban must be assessed on a case-by-case basis.

6.2.3. Family members of settled immigrants

The Family Reunification Directive regulates the situation of the spouses and unmarried minor children of third-country nationals settled in the EU ('sponsors'). Article 5(3) of the directive requires that a family reunification application be submitted and examined while the family member is still outside the Member State's territory where the sponsor resides. Member States can derogate from this provision and accept an application submitted when the family members are already in its territory. The rules are the same as for family reunification for family members who are in a third country (see Section 6.3).

6.3. Family reunification

Family reunification describes situations where the person who is resident in an EU Member State or a CoE member state wishes to be joined by family members left behind when he or she migrated.

([424]) CJEU, C-82/16, *K. A. and Others v. Belgische Staat* [GC], 8 May 2018.

Under the ECHR, the ECtHR has considered a number of cases that concerned the refusal to grant visas to spouses, children or elderly relatives left behind and with whom the applicant had previously enjoyed family life abroad ([425]).

Member states are not obliged to respect the choice of married couples to reside in a certain country, or to accept non-national spouses for settlement. Given this, spouses who are resident in CoE member states and have contracted marriages with partners who are abroad may be expected to relocate abroad unless they can demonstrate that there are serious obstacles to this, particularly if they should have known about the restrictive immigration rules. However, other factors, such as the extent to which family life is effectively ruptured and the extent of the ties in the member state, must also be considered (see Section 6.2). Furthermore, if a member state decides to enact legislation conferring on certain categories of immigrants the right to be joined by spouses, it must do so in a manner compatible with the principle of non-discrimination enshrined in Article 14 of the ECHR ([426]).

Example: the case of *Biao v. Denmark* ([427]) concerned a naturalised Danish national of Togolese origin (the first applicant) who married a Ghanaian national (the second applicant). The applicants lived in Sweden and had a son who gained Danish citizenship thanks to his father's nationality. When the second applicant applied for family reunification permit in Denmark, her request was refused on the grounds that the applicants did not comply with the 'attachment' requirement under the Aliens Act that a couple applying for family reunification must not have stronger ties with another country – Ghana in the applicants' case – than with Denmark. The attachment requirement was lifted for persons who had held Danish citizenship for at least 28 years and for non-Danish nationals who were born in Denmark and had lawfully resided there for at least 28 years. The applicants claimed to have been subjected to indirect discrimination due to the attachment requirements. The ECtHR held that the government had 'failed to show that there were compelling or very weighty reasons unrelated to ethnic origin to justify the indirect discriminatory effect of the 28-year rule'. The Court thus found a violation of Article 14 of the ECHR in conjunction with Article 8.

([425]) See, for example, ECtHR, *B. F. and Others v. Switzerland*, Nos 13258/18 and three others, 4 July 2023.

([426]) ECtHR, *Biao v. Denmark* [GC], No 38590/10, 24 May 2016, para. 138; ECtHR, *Hode and Abdi v. the United Kingdom*, No 22341/09, 6 November 2012, paras 43–55; ECtHR, *Jeunesse v. the Netherlands* [GC], No 12738/10, 3 October 2014, paras 121–122.

([427]) ECtHR, *Biao v. Denmark* [GC], No 38590/10, 24 May 2016.

Example: in *M. A. v. Denmark* ([428]), the ECtHR held that Denmark's automatic three-year waiting period before refugees with temporary protection could apply for family reunification breached Article 8 of the ECHR. By refusing a Syrian refugee's request to join his wife solely on that rule, the authorities ignored the need for an individual assessment. The Court distilled the main factors to balance as follows: (i) each person's status and ties in the host state; (ii) whether family life was created when residence was secure or precarious; (iii) any insurmountable obstacles to the family living elsewhere; (iv) the presence of children; and (v) the sponsor's ability to support the family without welfare.

The ECtHR has acknowledged that family reunification procedures may be subject to certain conditions under national law, such as requirements relating to income or housing. However, when such conditions are applied to refugees, they must take into account refugees' specific vulnerabilities and the principle that refugees are to be granted more favourable treatment. The Court has stressed that these requirements must be implemented with flexibility and in a manner that allows for an individualised assessment of the applicants' situations, including when refusal is based on financial criteria ([429]).

Example: in *B. F. and Others v. Switzerland* ([430]), the ECtHR examined whether making family reunification for recognised refugees conditional on not receiving social assistance violated Article 8 of the ECHR. The applicants had been denied the right to be joined by close family members because they received social assistance. The Court referred to the European consensus that refugees should benefit from more favourable family reunification procedures than other third-country nationals. It found that applying a strict self-sufficiency requirement to refugees, without sufficient flexibility, failed to reflect their specific situation. The Swiss authorities had not carried out an adequate individual assessment; hence, the Court found a violation of Article 8 ([431]). In this regard, the Court noted that the following elements should have been taken into account: (i) if family life was created at a time when the persons involved were aware that their immigration status was such that the persistence of that family life within

([428]) ECtHR, *M. A. v. Denmark* [GC], No 6697/18, 9 July 2021; see also ECtHR, *M. T. and Others v. Sweden*, No 22105/18, 20 October 2022.

([429]) ECtHR, *Dabo v. Sweden*, No 12510/18, 18 January 2024.

([430]) ECtHR, *B. F. and Others v. Switzerland*, Nos 13258/18 and three others, 4 July 2023.

([431]) See also ECtHR, *M. T. and Others v. Sweden*, No 22105/18, 20 October 2022.

the host state would, from the outset, be precarious; (ii) the ties to the host country of the person requesting family reunification; (iii) whether there were insurmountable obstacles in the way of the family living elsewhere; and (iv) whether the person requesting family reunification had sufficient independent and lasting income.

Parents migrating to establish themselves in a host country may have to leave their children behind until they have legally, socially and economically established and secured themselves enough to be able to bring their children to join them. The ECtHR's approach in this type of case largely depends on the specific circumstances of each particular situation.

Example: the case of *Tuquabo-Tekle and Others v. the Netherlands* ([432]) involved a family reunification claim of a mother, her husband and three of her children living in the Netherlands, to be joined by a daughter residing in Eritrea. The mother had first obtained the right to reside in Norway and to bring her children on humanitarian grounds. Only her eldest son came to join her in Norway one year later, while her other two children remained living in Eritrea and were to join her at a later stage. Her marriage to a refugee living in the Netherlands led the whole family to settle in the Netherlands, where two further children were born. Subsequently, Ms Tekle and her husband acquired Dutch nationality. They applied for a provisional residence visa for her 14-year-old daughter, who was still residing in Eritrea. The Dutch authorities rejected the request on the basis that the close family ties between the mother and her child had meanwhile ceased to exist. When assessing such cases, the Court first asks whether the parents irrevocably decided to leave their children in the country of origin, abandoning any idea of a future family reunion. Second, the Court asks whether allowing the children to enter the member state would be the most adequate means for them to develop their family life with the parents. Considering that the mother had always intended her daughter to join her and that the applicants had established strong bonds in the Netherlands and maintained only loose ties to their country of origin, the best way to develop family life, according to the ECtHR, was to grant the daughter the right to settle ([433]).

([432]) ECtHR, *Tuquabo-Tekle and Others v. the Netherlands*, No 60665/00, 1 March 2006.

([433]) ECtHR, *El Ghatet v. Switzerland*, No 56971/10, 8 November 2016.

Under the European Social Charter (ESC), Article 19(6) guarantees the right of migrant workers to be joined by their families. In its case-law, the ECSR clarified that conditions relating to public health, housing, minimum residence, income or integration tests are acceptable only if they do not render family reunion excessively difficult ([434]). According to the ECSR, refugees are to enjoy to the full extent the right to family reunification under the ESC. While facilitating family reunification, states have to respond to the specific needs of refugees and asylum seekers ([435]).

6.3.1. Family members of EU, European Economic Area and Swiss nationals exercising free movement rights

Under EU law, the Free Movement Directive's provisions relating to the family members of EEA nationals exercising treaty rights make no distinction between family regularisation and reunification; it is the relationship between the family member and the EU citizen sponsor that is determinative (see also Table 7).

In relation to family members who are not part of the core family, the CJEU held that Member States have wide discretion, subject to proportionality and fundamental rights considerations, in selecting the factors to be considered when examining the entry and residence applications of the persons envisaged in Article 3(2) of the Free Movement Directive. Member States are therefore entitled to lay down in their legislation particular requirements about the nature and duration of dependence. The CJEU has, however, also specified that those requirements must be consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2) of the directive and cannot deprive that provision of its effectiveness ([436]).

([434]) ECSR, Complaint No 14/2003, *International Federation of Human Rights Leagues (FIDH) v. France*, 4 July 2012. See also ECSR, Complaint No 86/2012, *European Federation of National Organisations working with the Homeless (Feantsa) v. the Netherlands*, 3 March 2003; ECSR, *Statement of Interpretation on Article 19(6)*, 2011; ECSR, *Statement of Interpretation on Article 19(6)*, 2015.

([435]) ECSR, *Statement of interpretation on the rights of refugees under the Charter,* 2015

([436]) CJEU, C-83/11, *Secretary of State for the Home Department v. Rahman and Others*, 5 September 2012, paras 22, 36–40. See also CJEU, C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010; CJEU, C-423/12, *Flora May Reyes v. Migrationsverket*, 16 January 2014.

The Free Movement Directive and, before its adoption, Regulation (EEC) No 1612/68 make it clear that the spouses of EEA nationals are entitled to reside with them, and EEA nationals exercising free movement rights are also to be given the same 'social and tax advantages' as their host states' own citizens, including the benefit of any immigration rules applicable to situations not covered by the express terms of the directive ([437]).

6.3.2. Family members of settled immigrants

Under EU law, Article 4 of the Family Reunification Directive entitles spouses and minor unmarried children to join an eligible third-country-national sponsor, but Member States can impose conditions relating to the resources that the sponsor must have at their disposal. The directive states that, where a child is over 12 years old and arrives independently from the rest of their family, the Member State may, before authorising entry and residence under the directive, verify whether or not the child meets a condition for integration provided for by its national legislation existing on the date of implementation of the directive. The ECJ dismissed an action brought by the European Parliament alleging that the directive's restrictive provisions violated fundamental rights. The ECJ did stress, however, that there is a set of requirements that EU Member States need to follow when implementing the directive ([438]).

Article 4(5) of the Family Reunification Directive allows Member States to require the sponsor and their spouse to be of a minimum age, which cannot be set higher than 21 years of age, before the spouse can join them. Some Member States have applied this option, arguing that it can help prevent forced marriages.

> Example: in *Noorzia* ([439]), the CJEU noted that requiring applicants to have reached 21 years of age before being allowed to lodge an application for family reunification does not prevent the exercise of the right to family reunification or render it excessively difficult. Such a rule prevents forced marriage and is consistent with the principles of equal treatment and legal certainty.

([437]) EFTA Court, *Arnulf Clauder*, Case E-4/11, 26 July 2011, para. 44.

([438]) ECJ, C-540/03, *European Parliament v. Council of the European Union* [GC], 27 June 2006, paras 62–65.

([439]) CJEU, C-338/13, *Marjan Noorzia v. Bundesministerin für Inneres*, 7 July 2014.

With regard to the family members of third-country nationals living in the EU, the Family Reunification Directive specifically states in Article 2(d) that the directive applies irrespective of whether the family was formed before or after the migrant arrived in the EU ([440]), although legislation in some Member States does make a clear distinction. This distinction is also not relevant to qualifying third-country-national family members of EEA citizens.

Example: in *Chakroun* ([441]), the CJEU addressed Dutch legislation that made a distinction between family formation and reunification, each of which had a different residence regime, including financial requirements. The distinction depended exclusively on whether the relationship was entered into before or after the sponsor's arrival to take up residence in the host state. Since the couple, in this specific case, had married 2 years after the sponsor's arrival in the Netherlands, their situation was treated as family formation and not family reunification, despite the couple's having been married for over 30 years at the time of the disputed decision. The Court confirmed that the right of a qualifying sponsor under the Family Reunification Directive to be joined by qualifying third-country-national family members existed whether the family relationship arose before or after the sponsor's entry. The Court took into account the lack of such a distinction in EU law (recital 6 and Article 2(d) of the directive and Article 7 of the Charter) and the necessity not to deprive the directive's provisions of their effectiveness.

National rules requiring a third-country sponsor parent to possess sufficient resources (based on preceding income patterns) to avoid the sponsor becoming dependent on social assistance before granting family reunification are compatible with Article 7(1)(c) of the Family Reunification Directive ([442]). Member States may indicate a certain sum as a reference amount but may not impose a minimum income level below which all family reunifications will be refused, irrespective of the situation of each applicant. Family reunification should not be refused to a sponsor who has proved that they have stable and regular resources that are sufficient to

([440]) See ECJ, C-127/08, *Metock and Others v. Minister for Equality, Justice and Law Reform* [GC], 25 July 2008.

([441]) CJEU, C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010.

([442]) CJEU, C-558/14, *Mimoun Khachab v. Subdelegación del Gobierno en Álava*, 21 April 2016.

maintain themselves and their family members but who is nevertheless entitled to claim special assistance to meet exceptional essential living costs, tax refunds on the basis of income or income-support measures ([443]).

The Family Reunification Directive permits Member States to 'require third country nationals to comply with integration measures, in accordance with national law' (Article 7(2)). Where integration measures exist prior to admission for family reunification, Member States often require, for example, family members to demonstrate basic language proficiency.

Example: the case of *K. and A.* ([444]) concerned two wives seeking to join their husbands, who were legally resident third-country nationals. In their applications for family reunification, the wives had sought to be exempted from having to pass the civic integration exam on the grounds of the physical and mental difficulties they each faced. Their applications were refused on the ground that these impediments were not sufficiently serious. The CJEU held that Article 7(2) of the Family Reunification Directive allows the imposition of integration measures on third-county nationals. However, the principle of proportionality requires integration measures to fulfil the objective of integrating them and not limiting the possibility of family reunion. The Court ruled that Member States must consider the individual circumstances of the applicant (e.g. the age, literacy, level of education, economic situation or health of the sponsor's relevant family members), which can lead to dispensing with the civic integration exam where family reunification would otherwise be excessively difficult.

Unaccompanied children who have been granted refugee status are entitled, under the Family Reunification Directive, to have their first-degree relatives in direct ascending line reunited with them, and this also applies in cases where the sponsor married after arrival ([445]). The applicable date for determining whether or not a refugee is an unaccompanied child for the purposes of the Family Reunification Directive is the date on which they entered the Member State and made the asylum application, not the date of the application for family reunification ([446]).

([443]) CJEU, C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010.

([444]) CJEU, C-153/14, *Minister van Buitenlandse Zaken v. K. and A.*, 9 July 2015.

([445]) CJEU, C-230/21, *X v. Belgische Staat*, 17 November 2022.

([446]) CJEU, C-550/16, *A and S v. Staatssecretaris van Veiligheid en Justitie*, 12 April 2018, paras 55–60 and 64. See also CJEU, C-560/20, *Landeshauptmann von Wien*, 30 January 2024, paras 34–36.

6.4. Safeguards concerning expulsion of family members

Many cases arise in which the third-country national's spouse or parent is threatened with expulsion or is expelled, in situations where this could have serious repercussions for existing family life. Such situations often arise in two scenarios: relationship breakdown and criminal convictions, which themselves can be interrelated.

It may also simply be a case of the authorities deciding that the family member no longer complies with the requirements that originally authorised their stay. In these cases, it is necessary to look at the substantial situation of the person concerned.

6.4.1. Relationship breakdown

If the third-country national has not yet obtained a residence permit in their own right but the relationship establishing a basis for residence breaks down, the foreign partner may lose the right to continue to reside, because they have only a derived right through the family member who has been accompanied or joined.

Under the ECHR, the ECtHR considers whether or not family life and the need to maintain contact with the children demand that the third-country national should be allowed to remain. Often the Court sees no reason why contact should not be maintained through visits, but it will consider that some situations may require the third-country national to be permitted to remain ([447]).

> Example: in *Rodrigues da Silva and Hoogkamer v. the Netherlands* ([448]), the ECtHR found that, as the domestic courts had expressly ruled that it was in the best interests of the child to remain in the Netherlands with her Dutch father, it was disproportionate to refuse to regularise the situation of her Brazilian mother, with whom she spent three to four days a week and had very close ties. According to the Court, the refusal of a residence permit and the expulsion of the mother to Brazil would in effect break those ties, as it would be impossible for them to maintain regular contact.

([447]) ECtHR, *Berrehab v. the Netherlands*, No 10730/84, 21 June 1988.

([448]) ECtHR, *Rodrigues da Silva and Hoogkamer v. the Netherlands*, No 50435/99, 31 January 2006.

Under EU law, the relationship continues to justify the residence of the separated third-country national until the marriage on which it is based is legally dissolved (Free Movement Directive) ([449]). Relationship breakdown is not sufficient to justify loss of residence. Article 13 of the Free Movement Directive provides for the retention of a right of residence for third-country-national family members in the event of divorce or annulment where the marriage has lasted three years, one year of which was spent in the host state, or where there are children of the marriage necessitating the presence of the parents. The Free Movement Directive contains a specific provision aimed at protecting residence status for third-country-national victims of domestic violence whose partners are EEA nationals (Article 13(2)(c)).

The Family Reunification Directive also provides for the possibility of granting a residence permit to foreign partners in cases where the relationship with the sponsor breaks down as a result of death, divorce or separation. A duty to grant an autonomous permit only exists after five years of residence (Article 15). According to Article 15(3) of the directive, Member States should lay down provisions ensuring that an autonomous residence permit is granted in the event of particularly difficult circumstances following divorce or separation. The CJEU clarified that such particularly difficult circumstances should be interpreted uniformly across Member States, requiring individual assessments, especially when minor children are involved ([450]). Like Article 13(2)(c) of the Free Movement Directive, Article 15(3) is also intended to extend to situations of domestic violence, although Member States have discretion as to what provisions are introduced.

6.4.2. Criminal convictions

An EU Member State may wish to deport a lawfully resident third-country national who has been convicted of criminal offences.

Under the ECHR, the ECtHR set out the relevant criteria for assessing the compatibility of an expulsion order for a person who has been convicted of criminal offences with Article 8 of the ECHR in *Üner v. the Netherlands* ([451]), namely:

- the nature and seriousness of the offence committed by the applicant in the expelling state;

([449]) ECJ, C-267/83, *Aissatou Diatta v. Land Berlin*, 13 February 1985.

([450]) CJEU, C-63/23, *Sagrario and Others v. Subdelegación del Gobierno en Barcelona*, 12 September 2024.

([451]) ECtHR, *Üner v. the Netherlands* [GC], No 46410/99, 18 October 2006, paras 57–58.

- the length of the applicant's stay in the country from which they are to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- whether the spouse knew, or should have known, of the other partner's irregular status when the relationship was entered into;
- the nationalities of the applicant and of any family members concerned;
- the family situation, such as the length of marriage, and other indicators of the strength of family life;
- whether or not the spouse knew about the offence at the time they entered into a family relationship;
- whether or not there are children from the relationship and, if so, their age;
- the seriousness of the difficulties that the spouse is likely to encounter in the destination country;
- the solidity of the applicant's social, cultural and family ties with both the host country and the country of destination;
- the best interests and well-being of any children involved, in particular any difficulties they would encounter if they had to follow the applicant to the country to which he or she is to be expelled ([452]).

([452]) See also ECtHR, *Beldjoudi v. France*, No 12083/86, 26 March 1992; ECtHR, *Amrollahi v. Denmark*, No 56811/00, 11 July 2002; ECtHR, *A. A. v. the United Kingdom*, No 8000/08, 20 September 2011; ECtHR, *Antwi and Others v. Norway*, No 26940/10, 14 February 2012; ECtHR, *Balogun v. the United Kingdom*, No 60286/09, 10 April 2012, para. 43; ECtHR, *Udeh v. Switzerland*, No 12020/09, 16 April 2013, para. 52; ECtHR, *Hasanbasic v. Switzerland*, No 52166/09, 11 June 2013; ECtHR, *Jeunesse v. the Netherlands* [GC], No 12738/10, 3 October 2014, paras 117–118; ECtHR, *Salem v. Denmark*, No 77036/11, 1 December 2016, paras 75 and 78; ECtHR, *Assem Hassan Ali v. Denmark*, No 25593/14, 23 October 2018, paras 54–55 and 61.

Example: in *Unuane v. the United Kingdom* ([453]), the applicant, a Nigerian national, had resided in the United Kingdom since 1998 and had three children with his partner, all of whom were British citizens. Following a conviction for offences related to the falsification of immigration documents, he was sentenced to five and a half years' imprisonment. The British authorities issued a removal order against him, which was upheld despite his family's strong ties to the country and the serious health condition of one of his children. The ECtHR held that the removal constituted a violation of Article 8 of the ECHR, emphasising that the seriousness of the offence alone was insufficient to justify expulsion without a thorough and individualised assessment of the impact on the applicant's family life, particularly considering the children's best interests.

Under EU law, Articles 27 to 33 of the Free Movement Directive confer on qualifying family members the same – derived – enhanced protection from expulsion as EEA nationals themselves enjoy. For example, the freedom of movement and residence of EU citizens and their family members may be restricted on grounds of public policy or public security. However, decisions to restrict this right must be justified and based on the fact that the personal conduct of the individual concerned represents a genuine, present and sufficiently serious threat. Previous criminal convictions cannot in themselves constitute grounds for taking such measures.

Article 28 of the Free Movement Directive provides for different levels of protection against expulsion depending on the degree of integration of the individual concerned. Those who have resided in the host Member State for at least five years benefit from a higher threshold and may only be expelled for serious grounds of public policy or public security.

Article 6(2) of the Family Reunification Directive allows Member States to withdraw or refuse to renew a family member's residence permit on grounds of public policy, public security or public health. When making a decision on this basis, the Member State must consider the severity or type of offence against public policy or public security committed by the family member, or the dangers emanating from that person ([454]).

([453]) ECtHR, *Unuane v. the United Kingdom*, No 80343/17, 24 November 2020.

([454]) See CJEU, Joined Cases C-381/18 and C-382/18, *G. S. and V. G. v. Staatssecretaris van Justitie en Veiligheid*, 12 December 2019.

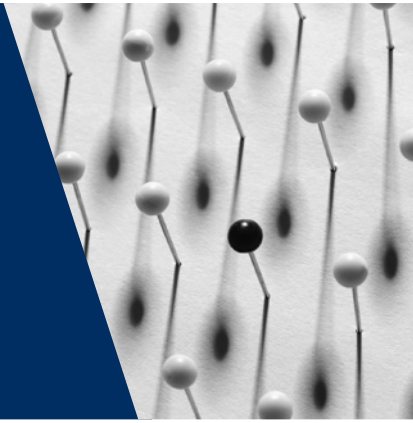
Key points

- Family reunification of EU nationals who have not exercised free movement rights is not covered by EU law, save for certain exceptions. In some Member States, EU nationals exercising free movement rights enjoy far greater rights to family reunion than the states' own nationals (see the introduction to this chapter).
- The Free Movement Directive applies to qualifying family members of EEA nationals, irrespective of their own nationality, provided the EEA sponsor has already exercised free movement rights (see Section 6.2.1).
- Family reunification of third-country-national sponsors is regulated by the Family Reunification Directive. In principle, it requires the family member to be outside the Member State, although Member States can derogate from that requirement (see Section 6.3).
- For family reunification purposes, EU law does not draw a distinction between family relationships concluded before and after the sponsor took up residence in the territory of the host state (see Section 6.3).
- The ECtHR has elaborated criteria to assess the proportionality of an expulsion decision, bearing in mind the right to respect for private and family life guaranteed by Article 8 of the ECHR. The ECtHR's approach to the expulsion of family members or to family reunification depends on the specific factual circumstances of each case (see Sections 6.2, 6.4.1 and 6.4.2).
- The ESC provides for a right to family reunion for migrant workers, and the case-law of the ECSR circumscribes the conditions and restrictions that may be applied to such reunion (see Section 6.3).
- Under the ECHR, a blanket prohibition to marry based on the person's immigration status may not be acceptable (see Section 6.1).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

7 Detention and restrictions to freedom of movement



EU	Issues covered	CoE
Reception Conditions Directive (Directive (EU) 2024/1346), Article 2(9)	**Definitions of detention or restriction on free movement**	ECHR, Article 5 (right to liberty and security) ECHR, Article 2 of Protocol No 4 (freedom of movement)
Return Directive (Directive 2008/115/EC), Article 15(1) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(1) Reception Conditions Directive (Directive (EU) 2024/1346), Article 10(2)	**Alternatives to detention**	ECtHR, *Yoh-Ekale Mwanje v. Belgium*, No 10486/10, 2011 (necessary examination of alternatives to detention)
Return Directive (Directive 2008/115/EC), Article 15(1) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(4) Reception Conditions Directive (Directive (EU) 2024/1346), Article 10	**Exhaustive list of exceptions to the right to liberty**	ECHR, Article 5(1)(a) to (f) (right to liberty and security)
Reception Conditions Directive (Directive (EU) 2024/1346), Article 8(4)(d) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(2)	*Detention to prevent an unauthorised entry into the country*	ECHR, Article 5(1)(f), first limb (right to liberty and security) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 2008; ECtHR, *Suso Musa v. Malta*, No 42337/12, 2013 (persons not yet authorised by the state to enter)

EU	Issues covered	CoE
Return Directive (Directive 2008/115/EC), Article 15 Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5 CJEU, C-61/11 PPU, *El Dridi*, 2011; CJEU C-329/11, *Achughbabian* [GC], 2011; and CJEU C-47/15, *Affum* [GC], 2016 (relationship between pre-removal and criminal detention)	*Detention pending removal*	ECHR, Article 5(1)(f), second limb (right to liberty and security) ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 2009 (removal 'under active review' is not sufficient to consider that action is being taken with a view to removal)
Return Directive (Directive 2008/115/EC), Article 20 Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5 Reception Conditions Directive (Directive (EU) 2024/1346), Article 10(4)	**Prescribed by law**	ECHR, Article 5(1) (right to liberty and security) ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 2016 (no clear, accessible or anticipated legal basis for the deprivation of liberty)
Charter of Fundamental Rights of the European Union, Article 6 (right to liberty) read in conjunction with Article 52(1) Return Directive (Directive 2008/115/EC), Articles 15 and 3(7) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5 Reception Conditions Directive (Directive (EU) 2024/1346), Article 10(2) CJEU, C-601/15 PPU, *J. N.* [GC], 2016 (proportionality of asylum detention; validity of the detention grounds related to public security and national security)	**Necessity and proportionality**	ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 2008 (detention of adults with no particular vulnerabilities under Article 5(1)(f) is not required to be reasonably necessary but must not be arbitrary)
	Arbitrariness	ECtHR, *Rusu v. Austria*, No 34082/02, 2008 (inadequate reasoning and arbitrariness of detention) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 2008 (detailed arbitrariness assessment with no finding of arbitrariness) ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 2009 (detention not closely connected to ground of detention provided in Article 5(1)(f))

EU	Issues covered	CoE
	Good faith	ECtHR, *Longa Yonkeu v. Latvia*, No 57229/09, 2011 (coastguards hiding their knowledge of an asylum application) ECtHR, *A. D. v. Malta*, No 12427/22, 2023 (timelines and delays in age assessment raising doubts about good faith)
Return Directive (Directive 2008/115/EC), Article 15(1) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(4) Reception Conditions Directive (Directive (EU) 2024/1346), Article 11(1)	*Due diligence*	ECtHR, *H. A. v. Greece*, No 58424/11, 2016 (lack of due diligence – no action to remove for five months) ECtHR, *M. B. v. the Netherlands*, No 71008/16, 2024 (lack of due diligence – no action to assess asylum application during the applicant's criminal detention)
Return Directive (Directive 2008/115/EC), Article 15 Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(4) ECJ, C-357/09 PPU, *Kadzoev* [GC], 2009 (reasonable prospect of removal)	*Realistic prospect of removal*	ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 2009 (detention while no action was taken with a view to removal) ECtHR, *Al Husin v. Bosnia and Herzegovina (No 2)*, No 10112/16, 2019 (detention despite the lack of reasonable prospect of removal)
Return Directive (Directive 2008/115/EC), Article 15(5) and (6) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 5(4) ECJ, C-357/09 PPU, *Kadzoev* [GC], 2009 (no further detention beyond the maximum period of detention)	*Maximum length of detention*	ECtHR, *Auad v. Bulgaria*, No 46390/10, 2011 (assessment of reasonable length of detention according to particular circumstances of each case)

EU	Issues covered	CoE
Return Directive (Directive 2008/115/EC), Articles 3(9), 16(3) and 17 Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 4(3) Reception Conditions Directive (Directive (EU) 2024/1346), Article 13 Anti-trafficking Directive (Directive 2011/36/EU), Article 11	**Detention of individuals with specific needs**	ECtHR, *Muskhadzhiyeva and Others v. Belgium*, No 41442/07, 2010; ECtHR, *S. F. and Others v. Bulgaria*, No 8138/16, 2017 (children detained in unsuitable facilities) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 2010 (victim of trafficking in human beings)
	Procedural safeguards	
Return Directive (Directive 2008/115/EC), Article 15(2) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 4(3) Reception Conditions Directive (Directive (EU) 2024/1346), Article 11(2)	*Right to be given reasons*	ECHR, Article 5(2) (right to liberty and security) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 2008 (two days' delay considered too long)
Charter of Fundamental Rights of the European Union, Article 47 (right to an effective remedy and to a fair trial) Return Directive (Directive 2008/115/EC), Articles 13(4) and 15(3) Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 4(3) Reception Conditions Directive (Directive (EU) 2024/1346), Article 11(3)	*Right to review of detention*	ECHR, Article 5(4) (right to liberty and security) ECtHR, *Abdolkhani and Karimnia v. Turkey*, No 30471/08, 2009; ECtHR, *S. D. v. Greece*, No 53541/07, 2009 (no procedure for review)
Return Directive (Directive 2008/115/EC), Articles 16 and 17 Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 4(3) Reception Conditions Directive (Directive (EU) 2024/1346), Article 12	**Detention conditions or regimes**	ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 2011 (detention conditions)
	Compensation for unlawful detention	ECHR, Article 5(5) (right to liberty and security)

Introduction

Detention is an exception to the fundamental right to liberty. Deprivation of liberty must therefore comply with important safeguards. It must be provided for by law and must not be arbitrary. Detention of asylum seekers during asylum procedures and migrants in return procedures must be a measure of last resort. It should only be used after other alternatives have been exhausted. Despite these principles, a large number of people in Europe are detained either upon entry or to prevent their absconding during removal procedures. When deprived of liberty, individuals must be treated in a humane and dignified manner.

International law restricts the possibility of detaining asylum seekers and refugees. According to Article 31 of the 1951 Geneva Convention, penalties must not be imposed, on account of irregular entry or presence, 'on refugees who, coming directly from a territory where their life or freedom was threatened ..., enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence' ([455]).

Article 12 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right to liberty of movement without discrimination between citizens and non-nationals. Restrictions to this right are permitted when they are provided by law and are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.

The ECHR comprises an exhaustive list of grounds for detention, one of them being to prevent unauthorised entry or to facilitate the removal of a person. Under EU law, the overarching principle is that detention of persons seeking international protection and of persons in return procedures must be necessary. In order not to render detention arbitrary, certain additional requirements need to be met, such as being proportionate, giving reasons for any detention and allowing the detainee to have access to speedy judicial review.

([455]) See UNHCR, *Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention*, Geneva, 2012; CPT, *20 Years of Combating Torture: 19th general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, CoE, Strasbourg, 2009.

7.1. Deprivation of liberty or restriction on the freedom of movement?

Under EU law, the Reception Conditions Directive (Directive (EU) 2024/1346) defines 'detention' as 'confinement of an applicant by a[n EU] Member State within a particular place, where the applicant is deprived of his or her freedom of movement' (Article 2(9)). The CJEU has confirmed that the meaning of the term 'detention' under the Return Directive (Directive 2008/115/EC) is the same ([456]).

Under the ECHR, Article 5 regulates issues pertaining to deprivation of liberty and Article 2 of Protocol No 4 to the ECHR concerns restrictions on freedom of movement. While some obvious examples of detention are given, such as confinement in a cell, other situations are more difficult to define and may amount to a restriction of movement as opposed to a deprivation of liberty.

When determining whether or not an individual's situation is protected by Article 5 of the ECHR or Article 2 of Protocol No 4, the ECtHR has held that there needs to be an assessment of the individual's situation, taking into account a range of criteria, such as the type, duration, effects and manner of implementation of the measure in question ([457]). The difference between deprivation of liberty and restriction on the freedom of movement is one of degree or intensity and not of nature or substance ([458]). The assessment will depend on the specific facts of the case.

A deprivation of liberty may not be established on the significance of any one factor taken individually; it requires examining all elements cumulatively. Even a short duration of a restriction, such as a few hours, will not automatically result in a finding that the situation constituted a restriction of movement as opposed to a deprivation of liberty ([459]). This is particularly the case if other factors are present, such

([456]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 224–225.

([457]) ECtHR, *De Tommaso v. Italy* [GC], No 43395/09, 23 February 2017, para. 80.

([458]) ECtHR, *De Tommaso v. Italy* [GC], No 43395/09, 23 February 2017, para. 80.

([459]) See ECtHR, *Nolan and K. v. Russia*, No 2512/04, 12 February 2009 (Art. 5 was applicable, as the applicant was detained for a few hours); ECtHR, *Mahdid and Haddar v. Austria* (dec.), No 74762/01, 8 December 2005 (Art. 5 was not applicable, as the applicant's stay in a transit zone was not equivalent to detention).

as if the facility is closed ([460]), there is an element of coercion ([461]) or the situation has particular effects on the individual, including any physical discomfort or mental anguish ([462]).

Any underlying public interest motive for detention, such as protecting or intending to protect, treat or care for the community against a risk or threat caused by the individual, has no bearing on the question of whether that person has been deprived of their liberty. Such intentions might be relevant when considering the justification for detention under Article 5(1)(a) to (f) of the ECHR ([463]). In each case, however, Article 5(1) must be interpreted in a manner that accounts for the specific context in which the measures are taken. There should also be regard for the responsibility and duty of the police to maintain order and protect the public, which they are required to do under both national and ECHR law ([464]).

Example: in *Amuur v. France* and *Riad and Idiab v. Belgium*, both concerning asylum seekers ([465]), and in *Nolan and K. v. Russia* ([466]), involving a third-country national, detention in the transit zone of an airport was held to be unlawful under Article 5(1) of the ECHR. The Court did not accept the authorities' argument that there had not been a deprivation of liberty because the person concerned could avoid detention at the airport by taking a flight out of the country.

In contrast, in *Ilias and Ahmed v. Hungary* ([467]), the ECtHR found that the stay of two Bangladeshi asylum seekers for 23 days in the transit zone in Hungary at the border with Serbia did not constitute a deprivation of liberty within the meaning of Article 5 of the ECHR (right to liberty). The ECtHR held that the applicants did not cross into the transit zone because of an immediate danger to

([460]) ECtHR, *J. R. and Others v. Greece*, No 22696/16, 25 January 2018, para. 86.

([461]) ECtHR, *Foka v. Turkey*, No 28940/95, 24 June 2008; ECtHR, *Nolan and K. v. Russia*, No 2512/04, 12 February 2009.

([462]) ECtHR, *Guzzardi v. Italy*, No 7367/76, 6 November 1980; ECtHR, *H. L. v. the United Kingdom*, No 45508/99, 5 October 2004.

([463]) ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009, paras 163–164. See also ECtHR, *M. B. v. the Netherlands*, No 71008/16, 23 April 2024; ECtHR, *B. A. v. Cyprus*, No 24607/20, 2 July 2024.

([464]) ECtHR, *Austin and Others v. the United Kingdom* [GC], Nos 39692/09, 40713/09 and 41008/09, 15 March 2012, para. 60.

([465]) ECtHR, *Amuur v. France*, No 19776/92, 25 June 1996, paras 38–49; ECtHR, *Riad and Idiab v. Belgium*, Nos 29787/03 and 29810/03, 24 January 2008.

([466]) ECtHR, *Nolan and K. v. Russia*, No 2512/04, 12 February 2009, paras 93–96.

([467]) ECtHR, *Ilias and Ahmed v. Hungary* [GC], No 47287/15, 21 November 2019.

their life in Serbia but entered of their own initiative to apply for asylum. The ECtHR further held that Hungary had a right to take all measures necessary to examine the applicants' claims before admitting them. While waiting for the procedural steps made necessary by their asylum application, the applicants had been living in conditions that had not limited their liberty unnecessarily or to an extent or in a manner unconnected to the examination of their asylum claims, nor did their stay in the transit zone exceed significantly the time needed for the examination of their asylum request.

In *R. R. and Others v. Hungary* ([468]), in turn, the ECtHR found that the nearly four-month stay in a transit zone of an Iranian-Afghan family of five, three of whom were minor children, constituted deprivation of liberty within the meaning of Article 5 of the ECHR. The family was held in the Hungarian transit zone at the border with Serbia while waiting for a decision on their asylum application, but delays in the procedure led to the excessive duration of their stay. The lack of a legally defined maximum length of stay, together with the substandard conditions in which the family was kept, led to the finding that their stay in the transit zone constituted deprivation of liberty within the meaning of Article 5 of the ECHR.

Example: in *Rantsev v. Cyprus and Russia* ([469]), the applicant's daughter was a Russian national residing in Cyprus and working as an artist in a cabaret on a work permit issued at the request of the cabaret owners. After a few weeks, the daughter decided to leave her employment and return to Russia. One of the cabaret owners reported to the immigration office that the daughter had abandoned her place of work and residence. The daughter was subsequently found and brought to the police station, where she was detained for about an hour. The police decided that the daughter was not to be detained and that it was for the cabaret owner, the person responsible for her, to come and collect her. Consequently, the cabaret owner took the applicant's daughter to the apartment of another cabaret employee, which she could not leave of her own free will. The next morning, she was found dead on the street below the apartment. While the total duration of the daughter's detention was about two hours, the Court held that it amounted to a deprivation of liberty within the meaning of Article 5 of the ECHR. The Cypriot authorities were responsible for the detention in the police station and also in the apartment because, without the active cooperation of the Cypriot police with the cabaret owners in the present case, the deprivation of liberty would not have occurred.

([468]) ECtHR, *R. R. and Others v. Hungary*, No 36037/17, 2 March 2021.

([469]) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010, paras 314–325.

7.2. Alternatives to detention

Under EU law, detention must be a last resort, and all alternatives must first be exhausted, unless such alternatives cannot be applied effectively in the individual case (Article 15(1) of the Return Directive (Directive 2008/115/EC): '[u]nless other sufficient but less coercive measures can be applied effectively'; see also Article 5(1) of the Return Border Procedure Regulation (Regulation (EU) 2024/1349), Article 10(2) of the Reception Conditions Directive (Directive (EU) 2024/1346) and Article 44(2) of the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351). Detention should therefore only take place after full consideration of all possible alternatives, when less coercive measures would not achieve the lawful and legitimate purpose in the individual case. Article 10(5) of the Reception Conditions Directive obliges states to lay down rules for alternatives to detention in national law, and the Return Border Procedure Regulation mandated the European Union Agency for Asylum (EUAA) to develop guidelines on various alternatives to detention that states can use in the context of a border procedure (Article 5(5)) ([470]).

Alternatives to detention include reporting obligations, such as reporting to the police or immigration authorities at regular intervals; the obligation to surrender a passport or travel document; residence requirements, such as living and sleeping at a particular address; release on bail with or without sureties; guarantor requirements; release to care worker support or under a care plan with community care or mental health teams; and electronic monitoring, such as tagging ([471]).

The Charter of Fundamental Rights of the European Union (the Charter) requires Member States to examine alternatives to detention in order to avoid arbitrary deprivation of liberty (Article 6 read in conjunction with Articles 52 and 53) ([472]).

([470]) See EUAA, *Guidelines on Alternatives to Detention*, Publications Office of the European Union, Luxembourg, 2024.

([471]) For more information, see FRA, *Alternatives to detention for asylum seekers and people in return procedures*, Publications Office of the European Union, Luxembourg, 2015.

([472]) See also CJEU, C-61/11 PPU, *Hassen El Dridi, alias Soufi Karimi*, 28 April 2011, paras 39–41; CJEU, C-146/14 PPU, *Bashir Mohamed Ali Mahdi*, 5 June 2014, para. 64.

Under the ECHR, the ECtHR looks at whether or not a less intrusive measure could have been imposed prior to detention when the detention concerns (presumed) children, families with children and vulnerable people ([473]).

> Example: *Yoh-Ekale Mwanje v. Belgium* ([474]) concerned the detention of a Cameroonian national at an advanced stage of HIV infection. The authorities knew the applicant's identity and fixed address, and she had always kept her appointments with them and had initiated several steps to regularise her status in Belgium. Notwithstanding the fact that her health deteriorated during detention, the authorities did not consider a less intrusive option, such as issuing her with a temporary residence permit to safeguard the public interest. Instead, they kept her in detention for almost four months. The ECtHR saw no link between the applicant's detention and the government's aim of removing her and, therefore, found that Article 5(1) of the ECHR had been violated.

Alternatives to detention often involve restrictions on freedom of movement. Under the ECHR, the right to freedom of movement is guaranteed by Article 2 of Protocol No 4, provided the state has ratified this protocol (see Annex 2). A restriction on this freedom must be necessary and proportionate and comply with the aims in Article 2(2) of Protocol No 4. This provision only applies to those 'lawfully within the territory' and therefore does not assist those in an irregular situation.

> Example: in *Omwenyeke v. Germany* ([475]), the applicant had been confined to living in a particular area as part of his temporary residence condition, pending the outcome of his asylum claim. The ECtHR held that, since the applicant had breached his conditions of temporary residence, he had not been 'lawfully' within the territory of Germany and therefore could not rely on the right of freedom of movement under Article 2 of Protocol No 4.

([473]) See, for example, in relation to accompanied foreign children, ECtHR, *Muskhadzhiyeva and Others v. Belgium*, No 41442/07, 19 January 2010; ECtHR, *Kanagaratnam and Others v. Belgium*, No 15297/09, para. 94; ECtHR, *Popov v. France*, Nos 39472/07 and 39474/07, 19 January 2012, para. 119; ECtHR, *A. B. and Others v. France*, No 11593/12, 12 July 2016, para. 123; ECtHR, *M. H. and Others v. Croatia*, Nos 15670/18 and 43115/18, 18 November 2021, para. 237. In respect of unaccompanied children, see ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006, paras 99–104; ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011, paras 108–110; ECtHR, *Housein v. Greece*, No 71825/11, 24 October 2013, para. 76. Concerning unwell foreigners, see ECtHR, *Yoh-Ekale Mwanje v. Belgium*, No 10486/10, 20 December 2011, para. 124.

([474]) ECtHR, *Yoh-Ekale Mwanje v. Belgium*, No 10486/10, 20 December 2011.

([475]) ECtHR, *Omwenyeke v. Germany* (dec.), No 44294/04, 20 November 2007.

7.3. Exhaustive list of exceptions to the right to liberty

Under EU law, asylum-related detention and return-related detention are covered by two different legal regimes ([476]). Deprivation of liberty is regulated by Article 10 of the Reception Conditions Directive and Article 44 of the Asylum and Migration Management Regulation for asylum seekers, and in Article 15 of the Return Directive and Article 5 of the Return Border Procedure Regulation for persons subject to return procedures.

According to Article 10 of the Reception Conditions Directive, it is not acceptable to detain a person for the sole reason that they have lodged an asylum application. It is also not permissible to detain a person for the sole reason that they are subject to the Dublin procedure (Article 44(1) of the Asylum and Migration Management Regulation). Exhaustive grounds for the detention of asylum seekers are listed in Article 10(4) of the Reception Conditions Directive ([477]). Asylum seekers may be detained in seven different situations, namely:

- to determine or verify the applicant's identity or nationality ([478]);
- to determine elements of the asylum application that could not be determined in the absence of detention, in particular where there is a risk of absconding ([479]);
- to ensure compliance with legal obligations imposed on the applicant through an individual decision requiring residence in a specific place in cases where the applicant has not complied with such obligations and there is still a risk of absconding;
- to decide on the applicant's right to enter the territory in the context of a border procedure (see Section 5.1.4);

([476]) ECJ, C-357/09 PPU, *Said Shamilovich Kadzoev (Huchbarov)* [GC], 30 November 2009, para. 45; CJEU, C-534/11, *Mehmet Arslan v. Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie*, 30 May 2013, para. 52.

([477]) See also CJEU, C-808/18, *European Commission v. Hungary* [GC], 17 December 2020, paras 167–186.

([478]) See also CJEU, C-18/16, *K. v. Staatssecretaris van Veiligheid en Justitie*, 14 September 2017.

([479]) See also CJEU, C-18/16, *K. v. Staatssecretaris van Veiligheid en Justitie*, 14 September 2017.

- if they are detained under the Return Directive and submit an asylum application to delay or frustrate the removal ([480]);
- when the protection of national security or public order so requires ([481]);
- in accordance with Article 44 of the Asylum and Migration Management Regulation, which under certain conditions allows detention to secure transfer procedures under the regulation.

Example: in the *Al Chodor* case ([482]), the applicant and his two minor children were detained by the Czech police pending their transfer to Hungary pursuant to the Dublin Regulation. The CJEU found that an applicant for international protection can be detained under the Dublin Regulation only if national law provides for objective criteria to determine if there is a risk of absconding. It noted that any measure of deprivation of liberty must be 'accessible, precise and foreseeable', as required by Article 6 of the Charter. The CJEU concluded that, in the absence of these objective criteria in a binding provision of general application under national law, detention is unlawful.

Example: the CJEU clarified in *FMS and Others* ([483]) that, under Article 8 of the Reception Conditions Directive (Directive 2013/33/EU) ([484]) and Article 15 of the Return Directive, respectively, neither an applicant for international protection nor a person subject to a return decision may be detained solely on the ground that they cannot meet their own needs. Likewise, the CJEU ruled in *VL* ([485]) that the lack of places in a reception facility cannot justify holding an applicant for international protection in detention.

([480]) See also CJEU, C-534/11, *Mehmet Arslan v. Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie*, 30 May 2013; CJEU, C-36/20 PPU, *Ministerio Fiscal v. VL*, 25 June 2020; CJEU, C-186/21 PPU, *J. A. v. Republika Slovenija*, 3 June 2021.

([481]) See also CJEU, C-601/15 PPU, *J. N. v. Staatssecretaris voor Veiligheid en Justitie*, 15 February 2016.

([482]) CJEU, C-528/15, *Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v. Salah Al Chodor and Others*, 15 March 2017.

([483]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 256, 266, 272 and 281.

([484]) 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 (recast) (OJ L 180, 29.6.2013, p. 96, ELI: http://data.europa.eu/eli/dir/2013/33/oj).

([485]) CJEU, C-36/20 PPU, *Ministerio Fiscal v. VL*, 25 June 2020, paras 104–113.

Article 15(1) of the Return Directive only allows the detention of third-country nationals who are the 'subject of return procedures'. Deprivation of liberty is permitted in particular when there is a risk of absconding or the individual avoids or hampers the preparation of return or the removal process – in order to prepare return or to carry out the removal process (see also Article 5(3) of the Return Border Procedure Regulation).

> Example: the *J. N.* ([486]) case concerned an individual with an enforceable return decision who submitted a fourth asylum application. He was detained on grounds of public order and national security under Article 8(3) of the Reception Conditions Directive (Directive 2013/33/EU) in light of prior criminal offences. The CJEU found that the return decision did not lapse during the examination of the asylum application. At the same time, the Court ruled that the applicant must be allowed to stay in the territory while the asylum application was being considered.

Article 5 of the Return Border Procedure Regulation also allows pre-removal detention, for a maximum period of 12 weeks, of those whose asylum application was rejected during an asylum border procedure (see Section 5.1.4) and who are not legally allowed to enter or remain in the territory of an Member State.

Under the ECHR, Article 5(1) protects the right to liberty and security. Its subparagraphs (a) to (f) provide an exhaustive list of permissible exceptions: 'No one shall be deprived of his liberty', except in any of the following cases and in accordance with a procedure prescribed by law:

- after conviction by a competent court,
- for failure to comply with a court order or a specific obligation prescribed by law,
- pending trial,
- in specific situations concerning children,
- on public health grounds or due to vagrancy,
- to prevent an unauthorised entry or to facilitate removal of a non-national.

([486]) CJEU, C-601/15 PPU, *J. N. v. Staatssecretaris voor Veiligheid en Justitie*, 15 February 2016.

It is for the state to justify detention by relying on one of these six grounds ([487]). If the detention cannot be based on any of these grounds, it is automatically unlawful ([488]). The grounds are restrictively interpreted ([489]). There is no catch-all provision, such as detention to prevent an unspecified crime or disorder in general. Failure to identify clearly the precise purpose of detention and the ground may mean that the detention is unlawful.

Article 5(1)(f) of the ECHR provides for detention of asylum seekers and irregular migrants in two situations:

- to prevent an unauthorised entry into the country,
- of a person against whom action is being taken with a view to their deportation or extradition.

As with the other exceptions to the right to liberty, any deprivation of liberty under Article 5(1)(f) of the ECHR must be based on one of these specific grounds, which are restrictively interpreted.

Example: in *M. B. v. the Netherlands* ([490]), the applicant was a detained asylum seeker in the Netherlands. His detention was based on the Dutch law implementing the Reception Conditions Directive. He was detained during the assessment of his asylum application because he was considered a threat to national security or public order, due to a criminal conviction, in the Netherlands, for participating in a criminal organisation with intent to commit acts of terrorism. This conviction was later overturned, after which he was placed in immigration detention because the protection of national security or public order so required. Under the ECHR, however, immigration detention is only allowed to prevent unauthorised entry or to effect removal. In this case, as no steps were taken to assess the asylum application during the applicant's criminal detention, the ECtHR held that the applicant's immigration detention was not necessary to enable the examination of his asylum claim and, consequently, a sufficiently close connection between his detention and the aim of preventing his unauthorised entry did not exist to justify his deprivation of liberty.

([487]) United Kingdom, Supreme Court, *WL (Congo) 1 & 2 v. Secretary of State for the Home Department; KM (Jamaica) v. Secretary of State for the Home Department*, [2011] UKSC 12, 23 March 2011.

([488]) ECtHR, *Al-Jedda v. the United Kingdom* [GC], No 27021/08, 7 July 2011, para. 99.

([489]) ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009.

([490]) ECtHR, *M. B. v. the Netherlands*, No 71008/16, 23 April 2024.

7.3.1. Detention to prevent an unauthorised entry into the country

Under EU law, the Schengen Borders Code (Regulation (EU) 2016/399) requires that third-country nationals who do not fulfil the entry conditions be refused entry into the EU. Border guards have a duty to prevent irregular entry (Article 14). The Screening Regulation (Regulation (EU) 2024/1356) further requires that third-country nationals who do not fulfil the entry conditions provided in the Schengen Borders Code not be authorised to enter the territory of an EU Member State during the screening process (Article 6), which is to be conducted at any adequate and appropriate location designated by each Member State, generally situated at or in close proximity to the EU's external borders (Article 8). The national law of many Member States provides for the short-term deprivation of liberty at the border, which often takes place in the transit area of an airport. The Reception Conditions Directive allows, under Article 10(4)(d), the detention of asylum seekers in the context of a border procedure (see Section 5.1.4) when this is necessary to decide on their right to enter the territory.

Under the ECHR, detention has to adhere to a number of conditions in order to be lawful under Article 5 of the ECHR.

> Example: in *Saadi v. the United Kingdom* ([491]), the ECtHR held that, until a member state has 'authorised' entry into the country, any entry is 'unauthorised'. The detention of a person who wished to effect an entry but did not yet have authorisation to do so could be, without any distortion of language, aimed at preventing their effecting an unauthorised entry within the meaning of Article 5(1)(f) of the ECHR. The Court did not accept the argument that, as soon as an asylum seeker surrenders themselves to the immigration authorities, the asylum seeker is seeking to effect an 'authorised' entry, with the result that detention could not be justified under Article 5(1)(f). An interpretation of this provision as only permitting the detention of a person who was shown to be trying to evade entry restrictions would place too narrow a construction on the provision's terms and on the member state's power to exercise its undeniable right to control the liberty of non-nationals in an immigration context. Such an interpretation would also be inconsistent with Conclusion No 44 of the Executive Committee of the United Nations High Commissioner for Refugees'

([491]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008, para. 65.

(UNHCR's) programme, the UNHCR's guidelines and the relevant CoE Committee of Ministers recommendation. All of these envisage the detention of asylum seekers in certain circumstances, for example while identity checks are taking place or while determining the elements that form the basis of an asylum claim. The Court held that the applicant's seven-day detention under an accelerated asylum procedure, in the context of a mass influx situation, had not been in violation of Article 5(1).

Example: in *Suso Musa v. Malta* ([492]), however, the Court held that, where a state had exceeded its legal obligations and enacted legislation explicitly authorising the entry or stay of immigrants pending an asylum application, either independently or pursuant to EU law, any ensuing detention for the purpose of preventing an unauthorised entry might raise a question about the lawfulness of detention under Article 5(1)(f). Indeed, in such circumstances, it would be difficult to consider the measure to be closely connected to the purpose of the detention or to regard the situation as being in accordance with domestic law. In fact, it would be arbitrary and thus run counter to the purpose of Article 5(1)(f), which stipulates the clear and precise interpretation of domestic law provisions. In *Saadi v. the United Kingdom*, national law (albeit allowing temporary admission) had not granted the applicant formal authorisation to stay or to enter the territory, and therefore no such issue had arisen. Therefore, the question of when the first limb of Article 5 ceased to apply, because the individual had been granted formal authorisation to enter or stay, was largely dependent on national law.

Example: in *B. A. v. Cyprus* ([493]), the ECtHR considered that a detention period of two years and nine months could not be reasonably considered to be required for the purposes of the first limb of Article 5(1)(f) of the ECHR. The case concerned the detention of an asylum seeker on national security grounds, which the Court found were not closely connected with the aim of preventing unauthorised entry.

7.3.2. Detention pending removal or extradition

Under EU law, some of the grounds provided for in Article 10(4) of the Reception Conditions Directive are aimed at mitigating the risk of absconding.

([492]) ECtHR, *Suso Musa v. Malta*, No 42337/12, 23 July 2013.

([493]) ECtHR, *B. A. v. Cyprus*, No 24607/20, 2 July 2024

Article 15(1) of the Return Directive and Article 5 of the Return Border Procedure Regulation permit detention in order to prepare return or to carry out the removal process, unless this can be achieved by other sufficient but less coercive measures (see Section 7.2). Detention is permitted, particularly in cases where there is a risk of absconding or other serious interferences with the return or removal process and if there is a reasonable prospect of removal within a reasonable time. There are maximum time limits set by Article 15(5) and (6) of the directive and Article 5(4) of the regulation.

Several cases have been referred to the CJEU concerning the imprisonment of third-country nationals in return procedures for the crime of irregular entry or stay ([494]).

Example: in *El Dridi* ([495]), the CJEU was asked to verify whether or not it was compatible with Articles 15 and 16 of the Return Directive to impose a criminal detention sanction during the return procedure and on the sole ground that a third-country national did not comply with an administrative order to leave the territory within a given period. The Court had to consider whether criminal detention could have been regarded as a measure necessary to implement the return decision within the meaning of Article 8(1) of the directive or, on the contrary, a measure compromising the implementation of that decision. Given the circumstances of the case, the Court held that the criminal detention sanction was not compatible with the objective of the directive – namely to return a person to their country of origin in line with fundamental rights – and did not contribute to the removal of the third-country national from the Member State concerned. When the obligation to return is not complied with within the period for voluntary departure, Member States have to pursue the enforcement of the return decision in a gradual and proportionate manner, using the least coercive measures possible and with due respect for fundamental rights.

([494]) CJEU, C-61/11 PPU, *Hassen El Dridi, alias Soufi Karim*, 28 April 2011; CJEU, C-329/11, *Achughbabian v. Préfet du Val-de-Marne* [GC], 6 December 2011 (public order-related detention is not compatible with the objective of the Return Directive); CJEU, C-430/11, *Criminal proceedings against Md Sagor*, 6 December 2012; CJEU, C-522/11, *Procura della Repubblica v. Abdoul Khadre Mbaye,* 21 March 2013 (concerning the imposition of a fine); CJEU, C-297/12, *Criminal proceedings against Gjoko Filev and Adnan Osmani*, 19 September 2013; CJEU, C-290/14, *Criminal proceedings against Skerdjan Celaj*, 1 October 2015 (concerning detention based on violating a pre-existing entry ban).

([495]) CJEU, C-61/11 PPU, *Hassen El Dridi, alias Soufi Karim*, 28 April 2011, para. 59.

Example: in *Achughbabian* ([496]), the Court examined if the principles established in *El Dridi* also applied to a third-country national's imprisonment sentence for an offence of unlawful entry or stay in the territory of a Member State. The Court clarified that the Return Directive does not preclude a Member State from classifying unlawful stay as an offence and laying down penal sanctions to deter and prevent such an infringement of the national residence rules or from imposing detention while determining whether or not the stay is legal. When detention is imposed before or during the return procedure, that situation is covered by the directive and, therefore, the detention has to pursue the removal. The CJEU found that the Return Directive was not respected because the criminal detention would not pursue the removal. It would hinder the application of the common standards and procedures and delay the return, thereby undermining the effectiveness of the directive. At the same time, the CJEU did not exclude the possibility of Member States' imposing criminal detention after the return procedure is completed, that is to say when the coercive measures provided for by Article 8 have been applied, but the removal has failed.

Example: in *Affum* ([497]), the CJEU considered the case of a Ghanaian national intercepted by French police at the entrance of the Channel Tunnel while transiting through France from Belgium to the United Kingdom. She was detained for unlawful entry, and an order to transfer her to Belgium was issued pursuant to a readmission agreement between France and Belgium. The CJEU decided that the Return Directive was applicable to third-country nationals who were only briefly present in the territory of the Member State. It found that the directive precludes national legislation envisaging imprisonment for unlawful stay, as it would thwart the application of the return procedure and delay the return. However, the CJEU clarified that the directive does not preclude national legislation permitting the imprisonment of a third-country national subject to a return procedure who stays in the territory without a justified ground for non-return.

Under the ECHR, the second limb of Article 5(1)(f) entitles CoE member states to keep an individual in detention for the purpose of removing that person, where such an order has been issued and there is a realistic prospect of removal. Detention is arbitrary when no meaningful 'action … with a view to deportation' is under way or actively pursued in accordance with the requirement of due diligence.

([496]) CJEU, C-329/11, *Achughbabian v. Préfet du Val-de-Marne* [GC], 6 December 2011, paras 37–39 and 45.

([497]) CJEU, C-47/15, *Sélina Affum v. Préfet du Pas-de-Calais* [GC], 7 June 2016.

Example: in *A. and Others v. the United Kingdom* ([498]), the Court held that a policy of keeping an applicant's possible removal 'under active review' was not sufficiently certain or determinative to amount to 'action ... being taken with a view to deportation' under Article 5(1) of the ECHR. The detention was clearly not aimed at preventing an unauthorised entry and was therefore unlawful.

7.4. Prescribed by law

Detention must be lawful according to domestic law, EU law and ECHR law.

Under EU law, Member States are obliged to bring into force laws, regulations and administrative provisions necessary to comply with the Return Directive (Article 20). Similarly, the Reception Conditions Directive requires in Article 10(4) that the grounds for detention be laid down in national law. The Return Border Procedure Regulation, in turn, is directly applicable in all Member States.

Under the ECHR, Article 5(1) provides that 'no one shall be deprived of his liberty' unless 'in accordance with a procedure prescribed by law'. This means that national law must lay down substantive and procedural rules prescribing when and in what circumstances an individual may be detained.

Article 5 does not merely refer back to domestic law but also relates to the 'quality of the law', requiring it to be compatible with the rule of law, a concept inherent in all articles of the ECHR. For the law to be of a certain quality, it must be sufficiently accessible, precise and predictable in its application to avoid a risk of arbitrariness. Any deprivation of liberty has to be in line with the purpose of Article 5 of the ECHR, to protect the individual from arbitrariness ([499]).

Example: *Khlaifia and Others v. Italy* ([500]) concerned three Tunisian nationals who were detained in a reception centre on Lampedusa and later on moored ships pending removal. No judicial or administrative measure authorised their detention and the national framework offered no clear, accessible or predictable

([498]) ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009, para. 167.

([499]) ECtHR, *Amuur v. France*, No 19776/92, 25 June 1996, para. 50; ECtHR, *Dougoz v. Greece*, No 40907/98, 6 March 2001, para. 55.

([500]) ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016.

legal basis for depriving them of liberty. Furthermore, they could not benefit from all the procedural safeguards required by Article 5 of the ECHR. The Court thus found that their detention was not 'lawful' under Article 5(1) of the ECHR.

7.5. Necessity and proportionality

Under EU law, Article 15(5) of the Return Directive provides that 'detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal'. There must be clear and cogent evidence, not just bare assertion, of the necessity in each individual case. Article 15(1) of the directive refers to detention for the purpose of removal where there is a risk of absconding, but that risk must be based on 'objective criteria' (Article 3(7)). Decisions taken under the directive 'should be adopted on a case-by-case basis and based on objective criteria'; it is not enough to detain an individual on the mere basis of irregular stay (recital 6). Similarly, Article 5 of the Return Border Procedure Regulation provides that 'detention shall be maintained for as short a period as possible' and that it may only be imposed 'as a measure of last resort if it proves necessary on the basis of an individual assessment of each case'.

EU law requires weighing whether the deprivation of liberty is proportionate to the objective to be achieved or whether removal could be successfully implemented by imposing less restrictive measures, such as alternatives to detention (Article 15(1) of the Return Directive and Article 5(1) of the Return Border Procedure Regulation) ([501]).

The Reception Conditions Directive allows the detention of asylum seekers 'where necessary and on the basis of an individual assessment of each case … if other less coercive alternative measures cannot be applied effectively' (Article 10(2); see also recital 65 and Article 44(2) of the Asylum and Migration Management Regulation) ([502]).

([501]) CJEU, C-61/11 PPU, *Hassen El Dridi, alias Soufi Karim*, 28 April 2011, paras 29–62.

([502]) See also CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 257–261.

In addition to questions of legality and procedural safeguards, detention must also substantively comply with the fundamental rights contained in the ECHR and the Charter ([503]). Also, any limitations to rights guaranteed by the Charter, including Article 6 (right to liberty), must be necessary and proportionate to the objective pursued (Article 52(1)).

Under the ECHR, Article 5 stipulates the right to liberty and security. Under Article 5(1)(f), there is no requirement for a necessity test in order to detain a person who tries to enter the country unauthorised or against whom action is being taken with a view to removal ([504]). This is in contrast to other forms of detention covered by Article 5(1), in particular preventing an individual from committing an offence or fleeing (Article 5(1)(c)) ([505]).

Article 9 of the ICCPR requires that any deprivation of liberty imposed in an immigration context must be lawful, necessary and proportionate ([506]). In its case-law, the UN Human Rights Committee has repeatedly found that detention ordered in the context of immigration proceedings must be 'reasonable, necessary and proportionate in the light of the circumstances' to comply with Article 9 of the ICCPR ([507]).

7.6. Arbitrariness

Under the ECHR, compliance with national law is insufficient. Article 5 of the ECHR requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness ([508]). It is a fundamental principle that no

([503]) CJEU, C-329/11, *Achughbabian v. Préfet du Val-de-Marne* [GC], 6 December 2011, para. 49.

([504]) A test of necessity of detention may still be required under national law. See ECtHR, *Patrick Muzamba Oyaw v. Belgium* (dec.), No 23707/15, 28 February 2017, para. 36; and ECtHR, *J. R. and Others v. Greece*, No 22696/16, 25 January 2018, para. 111.

([505]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008, para. 72.

([506]) For more, see UN Human Rights Committee, *General Comment No 35 – Article 9 (Liberty and security of person)*, 16 December 2014.

([507]) See, for example, UN Human Rights Committee, *M. M. M. et al. v. Australia*, Communication No 2136/2012, views of 25 July 2013, para. 10.3; UN Human Rights Committee, *M. G. C. v. Australia*, Communication No 1875/2009, views of 26 March 2015, para. 11.5; UN Human Rights Committee, *F. J. et al. v. Australia*, Communication No 2233/2013, views of 22 March 2016, para. 10.3.

([508]) ECtHR, *S., V. and A. v. Denmark*, Nos 35553/12, 36678/12 and 36711/12, 22 October 2018, para. 74.

arbitrary detention can be compatible with Article 5(1). The notion of 'arbitrariness' extends beyond lack of conformity with national law; a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the ECHR ([509]).

To avoid being considered arbitrary, detention under Article 5(1)(f) must be carried out in good faith: it must be closely connected to the detention ground identified and relied on by the government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed a duration that is reasonably required for the purpose pursued ([510]). The speed with which national courts replace a detention order that has either expired or been found to be defective is another element in assessing if detention is considered arbitrary ([511]). Proceedings have to be carried out with due diligence and there must be a realistic prospect of removal. What is considered arbitrary depends on the facts of the case.

Example: in *Rusu v. Austria* ([512]), the applicant was arrested when trying to leave Austria because she had entered the Member State unlawfully without a valid passport and visa, and because she lacked the necessary means of subsistence for a stay in the territory. For those reasons, the authorities assumed that she would abscond and evade the proceedings if released. The ECtHR reiterated that detention of an individual was a serious measure and that in a context where detention was necessary to achieve a stated aim the detention would be arbitrary unless it was justified as a last resort after other, less severe, measures had been considered and found to be insufficient for safeguarding the individual or public interest. The authorities' reasoning for detaining the applicant was inadequate and her detention contained an element of arbitrariness. Her detention therefore violated Article 5 of the ECHR.

Example: in *H. A. and Others v. Greece* ([513]), the applicants – nine unaccompanied children – were apprehended in Greece for lack of residence and identity documents and were placed under protective custody in police stations. The ECtHR found a violation of Article 5(1) of the ECHR, as the Greek legislation on

([509]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008, para. 67; ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009, para. 164.

([510]) ECtHR, *Yoh-Ekale Mwanje v. Belgium*, No 10486/10, 20 December 2011, paras 117–119.

([511]) ECtHR, *Minjat v. Switzerland*, No 38223/97, 28 October 2003, paras 46–48; ECtHR, *Khudoyorov v. Russia*, No 6847/02, 8 November 2005, paras 136–137.

([512]) ECtHR, *Rusu v. Austria*, No 34082/02, 2 October 2008, para. 58.

([513]) ECtHR, *H. A. and Others v. Greece*, No 19951/16, 28 February 2019. See also ECtHR, *T. S. and M. S. v. Greece*, No 15008/19, 3 October 2024.

protective custody did not lay down any maximum time limits, which could lead to arbitrary situations in which the deprivation of liberty of children could last for long periods.

7.6.1. Good faith

Under the ECHR, detention may be considered arbitrary if the detaining authorities do not act in good faith. Consequently, when there has been an element of bad faith or deception on the part of the authorities (e.g. if national authorities make a conscious decision to mislead third-country nationals to facilitate their removal), it violates Article 5 of the ECHR ([514]).

Example: in *Longa Yonkeu v. Latvia* ([515]), the ECtHR rejected the government's argument that the State Border Guard Service (Valsts robežsardze) only learned of the suspension of the applicant's removal two days after he had been removed. For four days, the authorities had been aware that the applicant had applied for asylum on humanitarian grounds, as they had received a copy of his application. Furthermore, under domestic law, he enjoyed asylum-seeker status from the date of his application and as such could not be removed. Consequently, the State Border Guard Service did not act in good faith by removing the applicant before his application for asylum on humanitarian grounds was examined by the competent domestic authority. Therefore, his detention for that purpose was arbitrary.

Example: in *A. D. v. Malta* ([516]), the ECtHR found that the placement of an alleged child in immigration detention for four and a half months without a final decision on his age assessment and without ascertaining that detention was a measure of last resort, to which no alternative was available, raised doubt about the authorities' good faith and thus constituted a violation of Article 5(1) of the ECHR.

([514]) ECtHR, *Čonka v. Belgium*, No 51564/99, 5 February 2002; ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008; ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009; ECtHR, *J. N. v. the United Kingdom*, No 37289/12, 19 May 2016.

([515]) ECtHR, *Longa Yonkeu v. Latvia*, No 57229/09, 15 November 2011, para. 143.

([516]) ECtHR, *A. D. v. Malta*, No 12427/22, 17 October 2023. See also ECtHR, *J. B. and Others v. Malta*, No 1766/23, 22 October 2024; ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos 25794/13 and 28151/13, 22 November 2016.

7.6.2. Due diligence

EU and ECHR law both contain the principle that the member state must exercise due diligence when detaining individuals subject to removal.

Under EU law, Article 15(1) of the Return Directive provides that detention should be maintained only as long as removal arrangements are in progress and executed with due diligence. Similarly, a due diligence provision can be found in Article 5(4) of the Return Border Procedure Regulation, and for asylum seekers in recital 29 and Article 11(1) of the Reception Conditions Directive and Article 44(3) of the Asylum and Migration Management Regulation.

Under the ECHR, detention under the second limb of Article 5(1)(f) of the ECHR is only justified for as long as removal proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under the ECHR ([517]). States must therefore make an active effort to organise a removal, whether to the country of origin or to a third country. In practice, states must take concrete steps and provide evidence – not simply rely on their own statements – of efforts made to secure admission, for example where the authorities of a receiving state are particularly slow to identify their own nationals.

> Example: in *H. A. v. Greece* ([518]), the applicant was an Iranian national who arrived in Greece. After being arrested by the police, he was ordered to return to Türkiye, but Türkiye refused his admission. Pending his expulsion, the applicant was detained for a long time. The ECtHR found that the Greek authorities had failed to act with due diligence, as they did not take any steps to carry out the expulsion for five months following Türkiye's refusal to admit the applicant. This led to a violation of Article 5(1) of the ECHR.

7.6.3. Realistic prospect of removal

Under both EU and ECHR law, detention is only justified where there is a reasonable or realistic prospect of removal, respectively, within a reasonable time.

([517]) ECtHR, *Chahal v. the United Kingdom*, No 22414/93, 15 November 1996, para. 113; ECtHR, *A. and Others v. the United Kingdom* [GC], No 3455/05, 19 February 2009, para. 164; ECtHR, *Amie and Others v. Bulgaria*, No 58149/08, 12 February 2013, para. 72.

([518]) ECtHR, *H. A. v. Greece*, No 58424/11, 21 January 2016. See also ECtHR, *Singh v. the Czech Republic*, No 60538/00, 25 January 2005; ECtHR, *Mikolenko v. Estonia*, No 10664/05, 8 October 2009; ECtHR, *M. and Others v. Bulgaria*, No 41416/08, 26 July 2011; ECtHR, *Shiksaitov v. Slovakia*, Nos 56751/16 and 33762/17, 10 December 2020.

Under EU law, where a reasonable prospect of removal no longer exists, detention ceases to be justified and the person must be immediately released (Article 15(4) of the Return Directive and Article 5(4) of the Return Border Procedure Regulation). Where there are barriers to removal, such as the principle of *non-refoulement* (Article 5 of the Return Directive and Article 4(3) of the Return Border Procedure Regulation), reasonable prospects of removal do not normally exist.

> Example: in *Kadzoev* ([519]), the ECJ held that, when the national court reviewed the detention, there needed to be a real prospect that removal could successfully be carried out in order for there to be a reasonable prospect of removal. That reasonable prospect did not exist where it was unlikely that the person would be admitted to a third country ([520]).

Under the ECHR, realistic prospects for expulsion are required.

> Example: *Al Husin v. Bosnia and Herzegovina (No 2)* ([521]) concerned a Syrian national who was detained on the grounds of national security. The applicant was issued with a removal order stating that, if he failed to leave voluntarily, an additional removal order would be issued indicating the destination country for his removal. The applicant remained detained on national security grounds for four years. Over 40 countries were requested to take the applicant but to no avail. The applicant was released after eight years of continuous detention. The ECtHR found that Article 5(1) had been violated because the grounds of detention had not remained valid for the whole detention period owing to the lack of a realistic prospect of enforcing expulsion.

7.6.4. Maximum length of detention

Under EU law, Article 11(1) of the Reception Conditions Directive and Article 44(3) of the Asylum and Migration Management Regulation stipulate that detention of asylum seekers must be for the shortest period possible. Reduced time limits for submitting and responding to transfer requests apply when asylum seekers are detained under the Dublin procedure.

([519]) ECJ, C-357/09, *Said Shamilovich Kadzoev (Huchbarov)* [GC], 30 November 2009, paras 65–66.

([520]) See also CJEU, C-146/14 PPU, *Bashir Mohamed Ali Mahdi*, 5 June 2014, paras 59–60.

([521]) ECtHR, *Al Husin v. Bosnia and Herzegovina (No 2)*, No 10112/16, 25 June 2019. See also ECtHR, *Mikolenko v. Estonia*, No 10664/05, 8 October 2009.

Pursuant to Article 15(1) of the Return Directive and Article 5(4) of the Return Border Procedure Regulation, detention of persons in return procedures must also be as short as possible. The return border procedure and consequently the detention of those subjected to that procedure can last a maximum of 12 weeks. If the 12 weeks expire without the return decision being enforced, the regulation ceases to apply, and the return procedure continues in accordance with the Return Directive (Article 4(4) of the Return Border Procedure Regulation). The Return Directive provides for a time limit of up to 6 months for detention, which is extendable by 12 months in exceptional circumstances, namely in cases of non-cooperation or where there are barriers to obtaining travel documentation (Article 15(5) and (6) of the Return Directive). Exceptional extensions require the authorities to have first taken all reasonable efforts to remove the individual. Further detention is not possible once the 6-month period and, in exceptional cases, the additional 12-month period have expired.

Example: in *Kadzoev* ([522]), the ECJ held that it was clear that, upon reaching the maximum duration of detention provided for in Article 15(6) of the Return Directive, there was no longer a question of whether or not there was a reasonable prospect of removal within the meaning of Article 15(4). In such a case, the person concerned must be immediately released.

Example: in *FMS and Others* ([523]), the CJEU provided clarification concerning the duration of detention under both the EU asylum *acquis* and the return *acquis*. Although Article 9 of the Reception Conditions Directive does not require Member States to lay down a maximum period when detaining applicants for international protection, their national law must ensure that detention lasts only for as long as the ground for detention remains valid. By contrast, in cases of pre-removal detention under Article 15 of the Return Directive, prolonged detention can never exceed 18 months and may be maintained only as long as removal arrangements are ongoing and are executed with due diligence.

Under the ECHR, Article 5(1)(f) does not contain maximum time limits for immigration-related detention. The permissible duration of detention for the purposes of Article 5(1)(f) of the ECHR depends on an examination of national law

([522]) ECJ, C-357/09 PPU, *Said Shamilovich Kadzoev (Huchbarov)* [GC], 30 November 2009, para. 60.

([523]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 262–265 and 278–280.

together with an assessment of the particular facts of the case ([524]). Time limits are an essential component of precise and predictable law governing the deprivation of liberty.

Example: in *Louled Massoud v. Malta* ([525]), an Algerian national was placed in a detention centre for a little more than 18 months with a view to removal. During that time, the applicant refused to cooperate, and the Algerian authorities were not prepared to issue him with travel documents. In finding a violation of Article 5(1), the ECtHR expressed grave doubts about whether or not the ground for the applicant's detention, the intended removal, remained valid for the whole period of his detention. This included doubts about the more than 18-month period following the rejection of his asylum claim, the probable lack of a realistic prospect of his expulsion and the possible failure of the domestic authorities to conduct the proceedings with due diligence. Moreover, the Court established that the applicant did not have any effective remedy for contesting the lawfulness and length of his detention.

Example: in *Auad v. Bulgaria* ([526]), the ECtHR held that the length of detention should not exceed the length reasonably required for the purpose pursued. The Court noted that a similar point had been made by the ECJ in relation to Article 15 of the Return Directive in the *Kadzoev* case. The Court stressed that, unlike Article 15 of the Return Directive, Article 5(1)(f) of the ECHR did not contain maximum time limits. Whether or not the length of removal proceedings could affect the lawfulness of detention under this provision thus depended solely on the particular circumstances of each case.

Example: in *Azimov v. Russia* ([527]), the applicant was kept in pre-removal detention for more than 18 months without any maximum time limit set, after the ECtHR had issued an interim measure suspending his removal. The ECtHR held that the suspension of the domestic proceedings, due to an interim measure, should not result in a situation in which the applicant remains detained for an unreasonably long period.

([524]) ECtHR, *Auad v. Bulgaria*, No 46390/10, 11 October 2011, para. 128.

([525]) ECtHR, *Louled Massoud v. Malta*, No 24340/08, 27 July 2010.

([526]) ECtHR, *Auad v. Bulgaria*, No 46390/10, 11 October 2011.

([527]) ECtHR, *Azimov v. Russia*, No 67474/11, 18 April 2013. See also ECtHR, *Komissarov v. the Czech Republic*, No 20611/17, 3 February 2022.

7.7. Detention of individuals with specific needs

Under EU law, Article 24 of the Reception Conditions Directive and Article 3(9) of the Return Directive list persons considered vulnerable (see Chapter 9). Neither of the two instruments bars the detention of vulnerable persons, but, when they are detained, Article 13 of the Reception Conditions Directive and Articles 16(3) and 17 of the Return Directive require that detailed attention be paid to their particular situation. These provisions of the Return Directive also apply to the return border procedure (as per recital 9 and Article 4(3) of the Return Border Procedure Regulation).

Both directives emphasise that children are only to be detained as a measure of last resort and only if less coercive measures cannot be applied effectively. Detention has to be for the shortest possible period of time. All efforts must be made to release those detained and to place them in accommodation that is suitable for children. Under the Reception Conditions Directive, asylum-seeking children can only be detained in exceptional circumstances and never placed in prison accommodation (Article 13 of the Reception Conditions Directive). Unaccompanied children detained pending removal should be placed in institutions with staff and facilities that correspond to the needs of persons of their age (Article 17 of the Return Directive) ([528]). The Reception Conditions Directive regulates where unaccompanied children may be placed and requires Member States to keep siblings together and to limit any changes of accommodation to the strict minimum (Article 27(9)). Member States must start tracing family members as soon as possible (Article 27(10)). Finally, individuals working with children must receive initial, continuous and appropriate training on children's rights and needs (Article 26(6) of the Reception Conditions Directive and Article 33 of the Qualification Regulation).

The Anti-trafficking Directive (Directive 2011/36/EU, as amended by Directive (EU) 2024/1712) contains a duty to provide assistance and support to victims of trafficking, such as providing appropriate and safe accommodation (Article 11), although the directive does not fully ban their detention.

Under the ECHR, the ECtHR has reviewed immigration cases involving the detention of children and persons with health problems.

([528]) For more, see FRA, *European legal and policy framework on immigration detention of children*, Publications Office of the European Union, Luxembourg, 2017.

Example: in *R. R. and Others v. Hungary* ([529]), the ECtHR reviewed the detention of a family of five (a father, a pregnant mother and three minor children) in light of Articles 3 and 5 of the ECHR. The ECtHR held that the detention of the family, which lasted almost four months, violated Article 5, as they never received a formal decision on their detention; thus, the detention was not lawful and could not be challenged. When assessing the conditions of detention, in view of the specific needs of the pregnant mother and the minor children, the ECtHR held that their detention violated Article 3 of the ECHR. This was because, among other reasons, no individualised assessment of their needs was carried out; no psychological assistance was provided to the mother, who had mental health problems; and the living conditions were not adequate to hold children for prolonged periods.

Regarding the detention of individuals with specific needs, the Court found their detention in facilities not equipped to handle their needs to be arbitrary and in violation of Article 5 of the ECHR, and, in some cases, raising issues under Article 3 of the ECHR ([530]). The Court also considered that asylum seekers are particularly vulnerable, in the context of detention and as regards conditions in which they are held ([531]).

Example: in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* ([532]), the ECtHR held that the detention of an unaccompanied asylum-seeking child in an adult detention centre breached Article 3 of the ECHR.

Example: in *Muskhadzhiyeva v. Belgium* ([533]), the ECtHR held that the detention of four Chechen children pending a Dublin transfer in a facility not equipped to deal with the specific needs of children was in breach of Article 3 of the ECHR.

([529]) ECtHR, *R. R. and Others v. Hungary*, No 36037/17, 2 March 2021. See also ECtHR, *M. A. and Others v. Hungary*, No 58680/18, 5 October 2023; ECtHR, *O. Q. v. Hungary*, No 53528/19, 5 October 2023; ECtHR, *P. S. and A. M. v. Hungary*, No 53272/17, 5 October 2023.

([530]) ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006; ECtHR, *Muskhadzhiyeva and Others v. Belgium*, No 41442/07, 19 January 2010; ECtHR, *Kanagaratnam and Others v. Belgium*, No 15297/09, 13 December 2011; ECtHR, *Popov v. France*, Nos 39472/07 and 39474/07, 19 January 2012; ECtHR, *M. S. v. the United Kingdom*, No 24527/08, 3 May 2012; ECtHR, *Price v. the United Kingdom*, No 33394/96, 10 July 2001.

([531]) ECtHR, *S. D. v. Greece*, No 53541/07, 11 June 2009; ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011.

([532]) ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006. See also ECtHR, *Darboe and Camara v. Italy*, No 5797/17, 21 July 2022.

([533]) ECtHR, *Muskhadzhiyeva and Others v. Belgium*, No 41442/07, 19 January 2010. See also ECtHR, *Popov v. France*, Nos 39472/07 and 39474/07, 19 January 2012.

In *A. M. and Others v. France* ([534]), the ECtHR found that, even when conditions were appropriate, detention of children exceeding a brief period can lead to a violation of Article 3 of the ECHR.

Example: in *S. F. and Others v. Bulgaria* ([535]), the ECtHR considered the detention of a family with three children in a border police detention facility and the length of their stay. The Court noted that the immigration detention of children, whether accompanied or not, raises particular issues, since children are extremely vulnerable and have specific needs. Irrespective of the time spent in detention, the conditions in the police detention facility were not suitable for children. The ECtHR thus found a breach of Article 3 of the ECHR.

Example: in *Bilalova and Others v. Poland* ([536]), the applicants, Russian nationals of Chechen origin (a women with her five children), complained that the placement of children in a pre-removal detention centre was unlawful. The ECtHR noted that, as a matter of principle, the confinement of young children in such structures should be avoided and that only short-term placement under suitable conditions could be compatible with the ECHR, provided, however, that the authorities established that they resorted to this measure as a last resort only after having specifically examined less coercive measures and found that none was available ([537]). The Court concluded that there was insufficient evidence to show that the domestic authorities had carried out such an assessment, and that steps had not been taken to limit the duration of detention. Therefore, the detention of children violated Article 5(1) of the ECHR. Not considering the best interests of the child and not taking steps to limit the duration of detention of family with children may also amount to a violation of Article 8 of the ECHR in some situations ([538]).

([534]) ECtHR, *A. M. and Others v. France*, No 24587/12, 12 July 2016.

([535]) ECtHR, *S. F. and Others v. Bulgaria*, No 8138/16, 7 December 2017.

([536]) ECtHR, *Bilalova and Others v. Poland*, No 23685/14, 26 March 2020.

([537]) See also ECtHR, *M. H. and S. B. v. Hungary*, Nos 10940/17 and 15977/17, 22 February 2024, para. 76.

([538]) See ECtHR, *Bistieva and Others v. Poland*, No 75157/14, 10 April 2018. For an illustration of the central role of the best interests of the child and the objective of putting an end to the immigration detention of children in closed centres, see also UN Committee on the Rights of the Child, *E.B. on behalf of E.H. et al. v. Belgium*, Communication 55/2018, 3 February 2022.

7.8. Procedural safeguards

Under both EU law and the ECHR, there are procedural safeguards with respect to the detention of asylum seekers and migrants.

Under EU law, the Return Directive provides specific guarantees when migrants in an irregular situation face return. The provisions of the Return Directive on procedural safeguards apply to return border procedures, according to recital 9 and Article 4(3) of the Return Border Procedure Regulation. The Reception Conditions Directive (Article 11), in turn, includes safeguards for asylum seekers.

Under the ECHR, Article 5 of the ECHR contains its own built-in set of procedural safeguards. The following two articles also apply to deprivation of liberty under Article 5(1)(f) of the ECHR.

- Article 5(2) details the right to be informed promptly, in a language understood by the person concerned, of the reasons for their arrest and of any charge against them.

- Article 5(4) details the right to take proceedings by which the lawfulness of detention shall be decided speedily by a court and release ordered if the detention is not lawful ([539]).

Detention must always be ordered in writing, and detention orders have to be issued individually. Where children are detained with an accompanying parent or any associated adult and the detention order is only issued against the parent or associated adult or simply mentions the names of children, the detention of children violates Article 5(1) of the ECHR ([540]).

([539]) ECtHR, *O. S. A. and Others v. Greece*, No 39065/16, 21 March 2019.

([540]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 102–104; ECtHR, *Minasian and Others v. the Republic of Moldova*, No 26879/17, 17 January 2023, para. 52.

7.8.1. Right to be given reasons

Under EU law, Article 15(2) of the Return Directive and Article 4(3) of the Return Border Procedure Regulation require authorities to order detention in writing and provide reasons in fact and in law. For asylum seekers, the same requirement is included in Article 11(2) of the Reception Conditions Directive. The CJEU has also reasserted these requirements ([541]).

Under the ECHR, every detainee must be informed of the reasons for their detention 'promptly' and 'in a language which he [or she] understands' (Article 5(2)). This means that a detainee must be told the legal and factual grounds for their arrest or detention in simple, non-technical language that the detainee can understand so as to be able, if they see fit, to challenge its lawfulness in court in accordance with Article 5(4) ([542]).

Example: in *Nowak v. Ukraine* ([543]), a Polish national asked for the reasons for his arrest and was told that he was an 'international thief'. The ECtHR held that this statement could hardly correspond to the removal order, which had been drafted in Ukrainian and referred to a provision of national law. The applicant did not have sufficient knowledge of the language to understand the document, which he received on the fourth day of his detention. Before that date, there was no indication that he had been notified that he was detained with a view to removal. Furthermore, the applicant had no effective means of raising his complaint while in detention or of claiming compensation afterwards. Consequently, there had been a breach of Article 5(2) of the ECHR.

Example: in *Saadi v. the United Kingdom* ([544]), a 76-hour delay in providing reasons for detention was considered too long and in breach of Article 5(2) of the ECHR.

([541]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 257 and 259.

([542]) See also ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016, para. 115; ECtHR, *Čonka v. Belgium*, No 51564/99, 5 February 2002.

([543]) ECtHR, *Nowak v. Ukraine*, No 60846/10, 31 March 2011, para. 64. See also ECtHR, *Dbouba v. Turkey*, No 15916/09, 13 July 2010, paras 52–54.

([544]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008.

Example: in *J. R. and Others v. Greece* ([545]), three Afghan nationals were detained in a Greek 'hotspot' on the island of Chios. The ECtHR found a violation of Article 5(2) of the ECHR. Even though the applicants had received a brochure with information on the reasons for their detention, the content of the brochure was not clear and precise enough to inform the applicants of the reasons of their detention.

7.8.2. Right to review of detention

Under EU law and the ECHR, the right to judicial review is key for ensuring protection against arbitrary detention.

Under EU law, Article 47 of the Charter demands that any individual in a situation governed by EU law has the right to an effective remedy and to a fair and public hearing within a reasonable time. Article 15(2) of the Return Directive and Article 11(3) of the Reception Conditions Directive require a speedy judicial review when detention is ordered by administrative authorities. In addition, Article 15(3) of the Return Directive and Article 11(5) of the Reception Conditions Directive establish that detention has to be reviewed at reasonable intervals of time either by application from the third-country national or *ex officio*. The review must be carried out by a judicial authority in the case of asylum seekers, whereas for persons in return procedures this is only required in cases of prolonged detention. Relevant provisions of the Return Directive on review of detention equally apply to the return border procedure, according to recital 9 and Article 4(3) of the Return Border Procedure Regulation.

Example: in *FMS and Others* ([546]), the CJEU reaffirmed that the lawfulness of detention under both the Reception Conditions Directive and the Return Directive must be subject to judicial review with no exception. This requires that, in the absence of national rules providing for a judicial review, the national court be entitled to rule on the matter and, if detention is found unlawful, to order the release of the person.

([545]) ECtHR, *J. R. and Others v. Greece*, No 22696/16, 25 January 2018.

([546]) CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* [GC], 14 May 2020, paras 273–277. See also CJEU, Joined Cases C-704/20 and C-39/21, *Staatssecretaris van Justitie en Veiligheid v. C and B and X v. Staatssecretaris van Justitie en Veiligheid*, 8 November 2022.

Example: in *Adrar* ([547]), the CJEU ruled that the Return Directive, read together with Articles 6, 7, 19(2), 24(2) and 47 of the Charter, requires that, when a national court reviews the lawfulness of detention of a third-country national detained to be removed, the national court must examine whether the principle of *non-refoulement*, the best interests of the child or family life preclude the removal of the concerned individual.

Where the extension of a detention measure has breached the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers that the infringement at issue actually deprived the party relying thereon of the possibility of arguing their defence better, to such an extent that the outcome of that administrative procedure could have been different ([548]).

Provision of legal aid is regulated. Article 47 of the Charter and Article 13(4) of the Return Directive require that all individuals have the possibility of being advised, represented and defended in legal matters and that legal aid be made available to ensure access to justice. For asylum seekers, specific provisions on free legal assistance and representation are included in Article 11 of the Reception Conditions Directive (see Chapter 5 for more details).

Under the ECHR, Article 5(4) specifically requires that 'everyone' deprived of their liberty be entitled to take proceedings to have the legality of their detention 'decided speedily by a court and his [or her] release ordered if the detention is not lawful'. This obligation is mirrored in Article 9(4) of the ICCPR.

The need for speedy review and accessibility of the remedy are two key safeguards. The purpose of Article 5(4) is to guarantee a detainee's right to 'judicial supervision' of the measure to which they are subjected. The remedy must be available during the detention to allow the detainee to obtain speedy judicial review, and the review must be capable of leading to release if detention is found to be unlawful ([549]). The

([547]) CJEU, C-313/25 PPU [Adrar], *GB v. Minister van Asiel en Migratie*, 4 September 2025.

([548]) CJEU, C-383/13, *M. G. and N. R. v. Staatssecretaris van Veiligheid en Justitie*, 10 September 2013.

([549]) ECtHR, *Khlaifia and Others v. Italy* [GC], No 16483/12, 15 December 2016, para. 131; ECtHR, *Ilnseher v. Germany* [GC], Nos 10211/12 and 27505/14, 4 December 2018, para. 251.

remedy must be sufficiently certain, in theory and in practice, in order to be accessible and effective. Automatic judicial review of immigration detention is not an essential requirement under Article 5(4) of the ECHR ([550]).

It is particularly important that asylum seekers have access to effective remedies because they are in a precarious position and could face *refoulement*.

Example: in *Abdolkhani and Karimnia v. Turkey* ([551]), two Iranian asylum seekers had been detained in the police headquarters. The ECtHR found that they had not had at their disposal any procedure through which the lawfulness of their detention could have been examined by a court ([552]).

Example: in *Oravec v. Croatia* ([553]), the applicant, who was suspected of drug trafficking, was detained and subsequently released. Following the prosecutor's appeal against his release, the applicant was again placed in custody. The ECtHR considered that the appeal represented a continuation of the proceedings relating to the lawfulness of the applicant's detention and that the outcome of the appeal was a crucial factor in deciding on its lawfulness, irrespective of whether at that moment in time the applicant was held in custody or not. Article 5(4) of the ECHR therefore applied to the circumstances of the case.

Example: in *Minasian and Others v. the Republic of Moldova* ([554]), the applicants were a mother and her three children, who were detained in view of their removal procedure. The detention order was issued against the mother, listing the children as accompanying her. As the children were not issued a separate decision ordering their own detention, they were not able to challenge their detention. As a result, the ECtHR held that the practice breached Article 5(4) of the ECHR.

([550]) ECtHR, *J. N. v. the United Kingdom*, No 37289/12, 19 August 2016, para. 96.

([551]) ECtHR, *Abdolkhani and Karimnia v. Turkey*, No 30471/08, 22 September 2009.

([552]) See also ECtHR, *S. D. v. Greece*, No 53541/07, 11 June 2009; ECtHR, *Z. N. S. v. Turkey*, No 21896/08, 19 January 2010; ECtHR, *Dbouba v. Turkey*, No 15916/09, 13 July 2010.

([553]) ECtHR, *Oravec v. Croatia*, No 51249/11, 11 July 2017, para. 65.

([554]) ECtHR, *Minasian and Others v. the Republic of Moldova*, No 26879/17, 17 January 2023.

7.9. Detention conditions or regimes

The conditions of detention in themselves may breach EU or ECHR law. Both EU and ECHR law require that detention must comply with other fundamental rights, including that conditions of deprivation of liberty must be humane, families should not be separated and children and vulnerable individuals should normally not be detained (see Section 7.7 concerning detention of individuals with specific needs and children) ([555]).

Under EU law, detention conditions for persons in return procedures are regulated by Article 16 of the Return Directive, and for children and families by Article 17. Pre-removal detention must take place in specialised facilities, as a rule, and detainees are to be kept separate from ordinary prisoners ([556]). These provisions on detention conditions also apply to the return border procedure, according to recital 9 and Article 4(3) of the Return Border Procedure Regulation. Asylum seekers' detention conditions are regulated by Article 12 of the Reception Conditions Directive, with specific provisions for vulnerable persons included in Article 13.

Under the ECHR, the place, regime and conditions of detention must be appropriate, otherwise they may raise an issue under Article 3, 5 or 8 of the ECHR. For detention specifically to fall under Article 3 of the ECHR, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with the deprivation of liberty itself ([557]). Regarding Article 5, the place and conditions of detention should be appropriate, bearing in mind that, in the migration context, the length of the detention should not exceed that reasonably required for the purpose pursued, otherwise detention will be considered arbitrary ([558]). Detention may also raise issues under Article 8. For example, the detention of accompanied children may raise issues under Article 8 in respect of both children and adults ([559]).

([555]) For more information, see ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006 (unaccompanied child); ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010 (victim of trafficking).

([556]) See also CJEU, C-519/20, *Proceedings brought by K*, 10 March 2022; CJEU, Joined Cases C-473/13 and C-514/13, *Adalo Bero v. Regierungspräsidium Kassel and Ettayebi Bouzalmate v. Kriesverwaltung Kleve* [GC], 17 July 2014, para. 32; CJEU, C-474/13, *Thi Ly Pham v. Stadt Schweinfurt, Amt fur Meldewesen und Statistik* [GC], 17 July 2014, paras 16–17.

([557]) ECtHR, *Guide on Article 3 of the European Convention on Human Rights – Prohibition of torture*, CoE, Strasbourg, 2025, para. 53.

([558]) ECtHR, *Saadi v. the United Kingdom* [GC], No 13229/03, 29 January 2008, para. 74.

([559]) ECtHR, *Guide on the case-law of the European Convention on Human Rights – Immigration*, CoE, Strasbourg, 2024, para. 40.

To assess whether these rights were violated, the Court will look at the individual features of the conditions and their cumulative effect. These include, among other elements, where the individual is detained (airport, police cell, prison) ([560]); whether other facilities could be used; the size of the containment area; whether the accommodation is shared and, if so, with how many other people; the availability of and access to washing and hygiene facilities; ventilation and access to open air; access to the outside world; and the detainee's health and access to medical facilities. An individual's specific circumstances are of particular relevance, such as if the detainee is a child, a survivor of torture, a pregnant woman, a victim of trafficking, an older person or a person with disabilities.

The ECtHR takes into account reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) when assessing conditions of detention in a specific case. Those reports also provide helpful guidance to member states on what conditions are unacceptable ([561]).

Example: in the cases of *Dougoz*, *Peers* and *S. D. v. Greece* ([562]), the Court set out important principles about conditions of detention and also made it clear that detained asylum seekers were particularly vulnerable given their experiences when fleeing persecution, which could increase their anguish in detention.

Example: in *M. S. S. v. Belgium and Greece* ([563]), the Court found a violation of Article 3 of the ECHR in relation to not only the applicant's detention conditions but also his general living (reception) conditions in Greece. The applicant was an Afghan asylum seeker, and the Greek authorities had been aware of his identity and that he was a potential asylum seeker since his arrival in Athens. He was immediately placed in detention without any explanation. There had been various reports by international bodies and NGOs concerning the Greek authorities' systematic placement of asylum seekers in detention. The applicant's allegations that he was subjected to brutality by the police were consistent with witness reports collected by international organisations, in particular the CPT. Findings by the CPT and the UNHCR also confirmed the applicant's allegations of

([560]) ECtHR, *Khanh v. Cyprus*, No 43639/12, 4 December 2018, para. 46.

([561]) See, for example, CPT, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 November to 1 December 2023*, CoE, Strasbourg, 2024.

([562]) ECtHR, *Dougoz v. Greece*, No 40907/98, 6 March 2001; ECtHR, *Peers v. Greece*, No 28524/95, 19 April 2001; ECtHR, *S. D. v. Greece*, No 53541/07, 11 June 2009.

([563]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011.

unsanitary conditions and overcrowding in the detention centre next to Athens International Airport. Even though the applicant was detained for a relatively short time, the conditions of detention in the holding centre were unacceptable. The ECtHR held that the applicant must have experienced feelings of arbitrariness, inferiority and anxiety and that the detention conditions had undoubtedly had a profound effect on his dignity, amounting to degrading treatment. In addition, he was particularly vulnerable as an asylum seeker because of his migration and the traumatic experiences he had probably endured. The Court concluded that there had been a violation of Article 3 of the ECHR.

Article 3 of the ECHR requires that states take specific measures in cases of detainees on hunger strike. The ECtHR has found that the placement in solitary confinement of a detainee who is at an advanced stage of a hunger strike and may present an increased risk of losing consciousness is problematic, unless appropriate arrangements are made to supervise the person's health ([564]).

Example: the case of *Ceesay v. Austria* ([565]) concerns a Gambian national who died of dehydration in pre-removal detention. On the morning of his death, he was brought to the hospital. He appeared a physically fit man who was aggressive because he did not want to be examined. He was found fit for detention and was subsequently placed in solitary confinement, owing to his aggressive behaviour. His health declined precipitously, and he died. The autopsy revealed that he suffered from undiagnosed sickle cell disease. The ECtHR found that the Austrian Ministry of the Interior had issued clear procedures for hunger strike events. Doctors regularly visited the detainee, including on his last day, and during the solitary confinement the police checked on him every 15–30 minutes. While his aggressive behaviour may have been a sign of already advanced dehydration and a consequent disintegration of his blood cells owing to sickle cell disease, that was not expected at the time of the events. The ECtHR concluded that the authorities could not be blamed for not having tested the detainee for sickle cell disease and did not find a violation of Article 3 of the ECHR.

([564]) ECtHR, *Palushi v. Austria*, No 27900/04, 22 December 2009, para. 72.

([565]) ECtHR, *Ceesay v. Austria*, No 72126/14, 16 November 2017.

Relevant soft law sources on this issue include the CoE Committee of Ministers' *Twenty Guidelines on Forced Return* ([566]), the CoE's guide for practitioners on the administrative detention of migrants and asylum seekers ([567]) and the European prison rules ([568]).

7.10. Compensation for unlawful detention

Damages may be payable to individuals who have been detained unlawfully, as a matter of both EU and ECHR law.

Under EU law, the ECJ established in *Francovich* ([569]) that national courts must provide a remedy for damages caused by a breach of an EU provision by a Member State. The CJEU found that an erroneously detained person in the asylum context is eligible to compensation. ([570])

Under the ECHR, Article 5(5) states that 'everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation'. Thus, for there to be compensation, there must be a violation of any one or more paragraphs of Article 5 of the ECHR ([571]).

Key points

- Under EU law, deprivation of liberty must be a measure of last resort, after exhausting the possibility of alternative measures that are less intrusive, whereas, under the ECHR, the ECtHR looks at whether or not a less intrusive measure could have been imposed prior to detention when the detention concerns (presumed) children, families with children and vulnerable people (see Section 7.2).

([566]) CoE Committee of Ministers, *Twenty Guidelines on Forced Return*, adopted on 4 May 2005.

([567]) Division for Legal Co-operation, Directorate General Human Rights and Rule of Law, *Administrative Detention of Migrants and Asylum Seekers – Guide for practitioners*, CoE, Strasbourg, 2023, notably Chaps 2–7.

([568]) CoE Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to member states on the European prison rules, adopted on 11 January 2006 and revised and amended on 1 July 2020.

([569]) ECJ, Joined Cases C-6/90 and C-9/90, *Francovich and Bonifaci and Others v. Italian Republic*, 19 November 1991.

([570]) () CJEU, C-387/24 PPU [Bouskoura], *C v . Staatssecretaris van Justitie en Veiligheid*, 1 October 2024, para. 58.

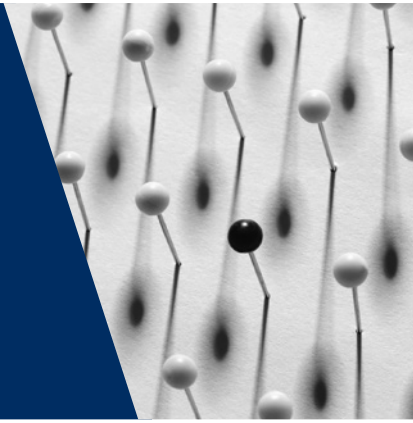
([571]) ECtHR, *Lobanov v. Russia*, No 16159/03, 16 October 2008, para. 54.

- Under the ECHR, the concrete situation of an individual may amount to a deprivation of liberty under Article 5 of the ECHR or to a restriction on their freedom of movement under Article 2 of Protocol No 4 to the ECHR (see Section 7.1).
- Under the ECHR, a deprivation of liberty must be justified for a specific purpose defined in Article 5(1)(a) to (f); be ordered in accordance with a procedure prescribed by law; and not be arbitrary (see Section 7.3).
- Under EU law, a deprivation of liberty must be in accordance with the law (see Section 7.3), necessary and proportionate (see Section 7.5).
- Under EU law, a maximum length of pre-removal detention has been set at 6 months, which can exceptionally be extended up to a maximum of 18 months. The ECHR does not contain maximum time limits for immigration detention; in line with ECtHR case-law, the lawfulness of the length of detention depends on the particular circumstances of the case (see Section 7.6.4).
- Under both EU law and the ECHR, there must be a reasonable or realistic prospect of removing someone who is being detained for the purpose of removal (see Section 7.6.3), and removal procedures have to be carried out with due diligence (see Section 7.6.2).
- A deprivation of liberty must comply with the procedural safeguards in Article 5(2) of the ECHR on the right to be informed of the reasons for the arrest. Under EU law, the Return Directive, the Return Border Procedure Regulation and the Reception Conditions Directive make it obligatory to order detention in writing and to provide reasons in fact and law.
- Under both EU law and the ECHR, the person deprived of their liberty has the right to an effective remedy and to have the detention decision reviewed speedily (see Section 7.8).
- Under both EU law and the ECHR, deprivation of liberty or restriction on freedom of movement must comply with other human rights guarantees, such as the conditions of detention respecting human dignity, never putting the health of individuals at risk, and the need for special consideration of members of vulnerable groups (see Sections 7.7 and 7.9).
- An individual who has been detained arbitrarily or unlawfully may have a claim for damages under both EU law and the ECHR (see Section 7.10).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

8 Economic and social rights



EU	Issues covered	CoE
Charter of Fundamental Rights of the European Union, Article 12 (freedom of assembly and association), Article 15(1) (freedom to choose an occupation and right to engage in work), Article 16 (freedom to conduct a business), Article 28 (right of collective bargaining and action), Article 29 (right of access to placement services), Article 30 (protection in the event of unjustified dismissal), Article 31 (fair and just working conditions) and Article 32 (prohibition of child labour and protection of young people at work) Access to the labour market is regulated by secondary EU law for each specific category of persons.	**Economic rights**	ECHR, Article 4 (prohibition of slavery and forced labour) ECHR, Article 11 (freedom of association) European Social Charter, Article 1 (the right to work, non-discrimination and forced or compulsory labour), Article 2 (the right to just conditions of work), Article 4 (the right to fair remuneration), Article 5 (freedom of association), Article 6 (collective bargaining and collective action), Article 18 (right to engage in a gainful occupation) and Article 24 (the right to protection in cases of termination of employment) ECtHR, *Bigaeva v. Greece*, No 26713/05, 2009 (foreigner allowed to complete professional training but not allowed to sit related examination)

EU	Issues covered	CoE
Charter of Fundamental Rights of the European Union, Article 14 (right to education for everyone) Return Directive (Directive 2008/115/EC), Article 14(1) (migrants in an irregular situation) Reception Conditions Directive (Directive (EU) 2024/1346), Article 16 (asylum seekers) Temporary Protection Directive (Directive 2001/55/EC), Articles 12 and 14 (beneficiaries of temporary protection)	**Education**	ECHR, Article 2 of Protocol No 1 (right to education) European Social Charter, Article 2 (the right of children and young persons to protection), Article 17 (right of children to social, legal and economic protection) and Article 19 (right of migrant workers and their families to protection and assistance) ECtHR, *Ponomaryovi v. Bulgaria*, No 5335/05, 2011 (migrants in an irregular situation charged higher fees for secondary education) European Commission of Human Rights, *Karus v. Italy* (dec.), No 29043/95, 1998 (foreigners charged higher fees for tertiary education)
Charter of Fundamental Rights of the European Union, Article 34(3) (social security and social assistance) For third-country-national family members of EEA nationals, long-term residents, asylum applicants, international protection beneficiaries (including temporary protection holders) and victims of trafficking, rules on housing are contained in secondary EU law.	**Housing**	ECtHR, *Hirtu and Others v. France* [GC], No 24720/13, 2020 (eviction of vulnerable people without provision of alternative accommodation) European Social Charter, Article 31 (right to housing) and Article 16 (the right of the family to social, legal and economic protection) ECSR, *Feantsa v. the Netherlands*, Complaint No 86/2012, 2014 (right to emergency shelter) ECSR, *Amnesty International v. Italy*, Complaint No 178/2019, 2023 (forced evictions and exclusionary housing policies) ECSR, *ICJ and ECRE v. Greece*, Complaint No 173/2018, 2021 (housing for children in an irregular situation)

EU	Issues covered	CoE
Charter of Fundamental Rights of the European Union, Article 35 (healthcare) Healthcare is regulated by secondary EU law for each specific category of persons.	Healthcare	European Social Charter, Article 11 (the right to health) European Social Charter, Article 13 (the right to social and medical assistance) ECSR, *FIDH v. France*, Complaint No 14/2003, 2004 (right to medical assistance and children's right to protection)
For third-country-national family members of EEA nationals: Free Movement Directive (Directive 2004/38/EC), Articles 24 and 14 Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004), amended by Regulation (EU) No 465/2012 **For third-country nationals moving within the EU:** Council Regulation (EC) No 859/2003 and Regulation (EU) No 1231/2010 **Beneficiaries of international protection:** CJEU, Joined Cases C-443/14 and C-444/14, *Alo and Osso* [GC], 2016 (residence conditions imposed on a beneficiary of subsidiary protection) CJEU, C-713/17, *Ayubi*, 2018 (refugee with temporary residence permit)	Social security and assistance	ECtHR, *Koua Poirrez v. France*, No 40892/98, 2003 (discrimination against foreigners as regards disability benefits) ECtHR, *Andrejeva v. Latvia* [GC], No 55707/00, 2009 (discrimination against foreigners as regards pensions) European Social Charter, Article 12 (right to social security), Article 13 (right to social and medical assistance), Article 14 (right to benefit from social welfare services), Article 15 (rights of persons with disabilities), Article 17 (right of children to social, legal and economic protection), Article 23 (right of elderly persons to social protection) and Article 30 (protection against poverty and social exclusion)

Introduction

For most migrants, accessing employment, education, housing, healthcare, social security, social assistance and other social benefits can be a challenging exercise. An acknowledged right to remain is normally necessary to access the full range of social rights.

States are generally permitted to differentiate between nationalities when they are exercising their sovereign right to permit or deny access to their territory. In principle, it is not unlawful to enter agreements or pass national legislation permitting certain nationalities privileged rights to enter or remain in the state's territory. States are normally also permitted to attach differentiated conditions to entry or residence, such as stipulating that there should be no access to employment or no recourse to public funds. International and European human rights legal instruments prohibit discrimination, including on the ground of nationality, in the respective fields they regulate ([572]).

This chapter provides a brief overview of both EU and CoE standards relating to access to economic and social rights, namely the rights to work, education, housing, healthcare and social protection.

8.1. Main sources of law

Under EU law, EU free movement provisions have a significant impact on the situation of third-country-national family members of EU citizens who have exercised their right to free movement within Europe. The Free Movement Directive (Directive 2004/38/EC) regulates the situation of their family members whatever their nationality. Article 2(2) of the directive defines which family members are covered by the directive (see also Section 6.2.1). The directive also applies to third-country-national family members of citizens from Iceland, Liechtenstein and Norway ([573]). Family members of Swiss citizens enjoy a similar status ([574]). The family members covered by these different provisions not only are entitled to access the labour market but can access social benefits.

Under EU law, Turkish nationals, although not EEA nationals, and their family members have a privileged position in EU Member States. This derives from the1963 Ankara Agreement and its 1970 Additional Protocol, which assumed that Türkiye would become a member of the EU by 1985.

([572]) Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391, ELI: http://data.europa.eu/eli/treaty/char_2012/oj), Art. 21; ECHR, Art. 14 and Protocol No 12, Art. 1; ESC, Part V, Art. E.

([573]) EEA Agreement, Part III, 'Free movement of persons, services and capital' (OJ L 1, 3.1.1994, p. 12, ELI: http://data.europa.eu/eli/agree_internation/1994/1/oj).

([574]) Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6, ELI: http://data.europa.eu/eli/agree_internation/2002/309(1)/oj), Art. 7.

The economic and social rights of other third-country nationals are regulated by specific directives, covering, for example, asylum applicants, refugees, other beneficiaries of international protection (including temporary protection holders) or long-term residents. In particular, the Single Permit Directive ([575]), recast by Directive (EU) 2024/1233, introduces a single application procedure for third-country nationals to reside and work in a Member State's territory and a common set of rights for legally residing third-country-national workers.

Example: the case of *Martinez Silva* ([576]) concerned the denial to a third-country national of a family benefit on the basis that Italian law does not allow that benefit to be granted to non-EU nationals holding a single work permit. The CJEU held that a single permit holder may not be excluded from receiving a family benefit by national legislation, because of the equal treatment clause included in the Single Permit Directive. This interpretation has been reinforced by subsequent CJEU case-law ([577]).

The Racial Equality Directive (Directive 2000/43/EC) prohibits discrimination on the basis of race or ethnicity in the context of employment and when accessing goods and services and the welfare and social security system. It also applies to third-country nationals; according to Article 3(2) of the directive, however, it 'does not cover difference of treatment based on nationality and is without prejudice … to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned'.

The Community Charter of the Fundamental Social Rights of Workers was adopted on 9 December 1989 by a declaration by all EU Member States. It established the major principles that form the basis of the European labour law model and shaped the development of the European social model in the following decade. The fundamental social rights declared in the Community charter are further developed and expanded in the Charter of Fundamental Rights of the European Union (the Charter). The Charter is limited in its application to those matters that fall within the scope of EU law, and its provisions cannot expand the scope of EU law. Under the Charter,

([575]) Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/98/oj).

([576]) CJEU, C-449/16, *Kerly del Rosario Martinez Silva v. Istituto nazionale della previdenza sociale (INPS) and Comune di Genova*, 21 June 2017.

([577]) CJEU, C-664/23, *Caisse d'allocations familiales des Hauts-de-Seine v. TX*, 19 December 2024.

very few social rights are guaranteed to all individuals, such as the right to education in Article 14(1) and (2), as most rights are restricted to citizens and/or those who are lawfully resident.

Under CoE law, the ECHR mainly guarantees civil and political rights and thus provides only limited guidance on economic and social rights.

The European Social Charter (ESC) (adopted in 1961 and revised in 1996), however, supplements the ECHR and is a key reference for European human rights law in the field of economic and social rights. It lays down fundamental rights and freedoms and establishes a supervisory mechanism based on a reporting procedure, a collective complaints procedure and an ad hoc reporting procedure, guaranteeing the respect of ESC rights by States Parties. The ESC enshrines a body of rights that encompass housing, health, education, employment, social protection, free movement of individuals and non-discrimination.

Although the ESC's protection for migrants is not based on the principle of reciprocity, its provisions apply in principle only to nationals of states that have ratified the ESC who are migrants in other states that have also ratified the ESC. According to the ESC Appendix, although it does not specifically refer to them, Articles 1 to 17 and 20 to 31 of the ESC apply to foreigners provided they are nationals of a State Party to the ESC lawfully resident or working regularly within the territory of another State Party to the ESC. These articles are to be interpreted in light of Articles 18 and 19 on migrant workers and their families. Article 18 secures the right to engage in a gainful occupation in the territory of the States Parties, and Article 19 secures the right of migrant workers and their families to protection and assistance.

The ESC's scope of application is thus somewhat limited, but the ECSR has developed a significant body of jurisprudence. When certain fundamental rights are at stake, the ECSR has extended the ESC's personal scope to cover everyone in the territory, including migrants in an irregular situation. This has been the case for Article 7(10) (protection of children and young persons), Article 11 (the right to protection of health), Article 13 (the right to social and medical assistance), Article 16 (right of families to decent housing, particularly as regards the right not to be deprived of

shelter), Article 17 (the right of children to social, legal and economic protection), Article 30 (protection against poverty and social exclusion) and Article 31 (the right to housing) ([578]).

The ESC has an important complementary relationship to the ECHR that gives ECSR case-law considerable value. Even though not all EU Member States and CoE member states have ratified the ESC or accepted all of its provisions (see Annex 3), the ECtHR has held that ratification is not essential for the Court's interpretation of certain issues raised under the ECHR that are also regulated by the ESC ([579]).

8.2. Economic rights

This section looks at economic rights, including access to the labour market and the right to equal treatment at work. Access to the labour market is usually dependent upon a person's legal status. From the moment a person is working, however, whether lawfully or not, core labour rights have to be respected. These include the right to safe and fair working conditions, the prohibition of exploitation and forced labour and the right to remuneration for the work performed.

Under the ECHR, economic and social rights are not explicitly guaranteed, with the exception of the prohibition of slavery and forced labour (Article 4) and the right to form trade unions (Article 11).

Among ECtHR cases in related areas, the Court has examined the situation of a foreigner who had been allowed to commence training for a certain profession and was then denied the right to exercise it.

([578]) ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No 14/2003, merits, 8 September 2004; ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, merits, 20 October 2009; ECSR, *Defence for Children International (DCI) v. Belgium*, Complaint No 69/2011, merits, 23 October 2012; ECSR, *Conference of European Churches (CEC) v. the Netherlands*, Complaint No 90/2013, merits, 1 July 2014; ECSR, *European Federation of National Organisations working with the Homeless (Feantsa) v. the Netherlands*, Complaint No 86/2012, merits, 2 July 2014; ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (Eurocef) v. France*, Complaint No 114/2015, merits, 24 January 2018; ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, merits, 26 January 2021. Furthermore, the ECSR issued a statement of interpretation on the rights of refugees under the ESC in 2015.

([579]) ECtHR, *Demir and Baykara v. Turkey* [GC], No 34503/97, 12 November 2008, paras 85–86. Other examples of relevant international instruments applicable in this field include the International Covenant on Economic, Social and Cultural Rights, the UN Convention on Migrant Workers and International Labour Organization Convention No 143.

Example: in *Bigaeva v. Greece* ([580]), a Russian citizen had been permitted to commence an 18-month traineeship with a view to being admitted to the Greek Bar. Upon completion, the Bar council refused her permission to sit the Bar examinations on the grounds that she was not a Greek national. The ECtHR noted that the Bar council had allowed the applicant to commence her traineeship although it was clear that on completion she would not be entitled to sit the Bar examinations. The Court found that the authorities' conduct had shown a lack of consistency and respect towards the applicant both personally and professionally and had constituted an unlawful interference with her private life within the meaning of Article 8 of the ECHR. The ECtHR did not find, however, that excluding foreigners from the law profession was, in itself, discriminatory.

Under the ESC, Article 1 guarantees the right to work and prohibits forced labour and discrimination in employment. This implies that the only jobs from which foreigners may be banned are those that are inherently connected with protection of the public interest or national security and involve the exercise of (high-level) public authority ([581]).

Article 18 of the ESC provides for the right to engage in a gainful occupation in the territory of other States Parties to the ESC. This provision does not regulate entry to the territory for work purposes and is, in some respects, exhortatory rather than mandatory. It does require, however, that work permit refusal rates be not too high ([582]); that work and residence permits be obtainable by means of a single application procedure and without excessive fees and charges ([583]); that work and residence permits are delivered within a reasonable time ([584]); that any work permits granted be not too restrictive geographically and/or occupationally ([585]); and loss of employment need not automatically and immediately lead to loss of residence permit but should give the person time to look for another job ([586]).

([580]) ECtHR, *Bigaeva v. Greece*, No 26713/05, 28 May 2009.
([581]) ECSR, Conclusions 2012 – Albania – Article 1(2), 2012.
([582]) ECSR, Conclusions XVII-2 – Spain – Article 18(1), 2005.
([583]) ECSR, Conclusions XVII-2 – Germany – Article 18(2), 2005.
([584]) ECSR, Conclusions XVII-2 –Portugal – Article 18(2), 2005.
([585]) ECSR, Conclusions V – Germany – Article 18(3), 1977.
([586]) ECSR, Conclusions XVII-2 – Finland – Article 18(3), 2005.

Article 19 of the ESC includes an extensive catalogue of provisions protecting and supporting migrant workers in the territory of other States Parties but with the stipulation that they must be there lawfully (see Chapter 4 for details on Article 19(8) and Section 6.3 for details on Article 19(6)).

The ESC also covers a range of rights relating to working conditions and collective rights, including the rights to reasonable working hours, paid annual leave, fair remuneration, workplace health and safety, and trade union freedom, which apply also to migrant workers ([587]).

Under EU law, Article 15(1) of the Charter prescribes 'the right to engage in work and to pursue a freely chosen or accepted occupation'. This right is, however, circumscribed by national law, including national laws regulating access to the labour market by non-nationals. The Charter also recognises the right to collective bargaining and action (Article 28), the freedom to form and join trade unions (Article 12(1)), and the right to access free employment placement services (Article 29). Every worker, including non-EU nationals, enjoys protection from unjustified dismissal (Article 30), the right to fair and just working conditions and the right to rest and to paid annual leave (Article 31). Article 16 guarantees the freedom to conduct a business. The Charter also provides for the protection of health and safety at work (Article 31) and prohibits child labour (Article 32).

Secondary EU law devoted to a specific category of persons usually regulates access to the labour market. Third-country nationals have differing degrees of access to the labour market depending on the category to which they belong. Section 8.2.11 briefly outlines the situation regarding the main categories of third-country nationals.

8.2.1. Family members of EEA and Swiss nationals

Under EU law, designated family members – of whatever nationality – of EU citizens who exercise free movement rights, and of other EEA and Swiss nationals, have the right to move throughout Europe for the purposes of employment and self-employment when accompanying or joining the principal EU citizen or EEA national (Article 3(1) of the Free Movement Directive). Family members of all EEA nationals receive equal treatment with an EEA Member State's own nationals (Article 24).

([587]) ECSR, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No 30/2005, merits, 6 December 2006, which refers to mine workers.

Their equal-treatment rights in employment and occupation are further protected by Directive 2014/54/EU ([588]) on measures facilitating the exercise of workers' free movement rights. Family members of Swiss nationals benefit from similar mobility and residence rights but are not entitled to full equality of treatment in all areas of social and labour law ([589]).

In the context of the free movement of EU citizens and their family members of whatever nationality, Article 45(4) of the TFEU allows Member States to reserve employment in the public service for their own nationals. The CJEU has interpreted this derogation strictly and has ruled that Member States cannot reserve entire sectors or professions for their nationals unless the roles involve the exercise of powers conferred by public law and duties designed to safeguard the general interests of the state. For example, access to trainee teacher posts ([590]) and foreign language university assistant positions ([591]) cannot be reserved for nationals only.

To facilitate the genuine free movement of workers, the EU has also adopted extensive legislation concerning the mutual recognition of professional qualifications, both general and sector-specific. The Professional Qualifications Directive (Directive 2005/36/EC) on the recognition of professional qualifications (as last amended in 2025) governs this area. These rules apply to third-country-national family members of EEA and Swiss nationals as well. Specific provisions govern situations where qualifications were obtained partly or wholly outside the EU, even if those qualifications have already been recognised in one Member State. The CJEU has handed down a considerable number of judgments in this field ([592]).

8.2.2. Posted workers

Under EU law, those third-country nationals who do not enjoy free movement rights but are lawfully working for an employer in one Member State, and who are temporarily sent by that employer to carry out work on its behalf in another Member State,

([588]) Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8, ELI: http://data.europa.eu/eli/dir/2014/54/oj).

([589]) CJEU, C-70/09, *Alexander Hengartner and Rudolf Gasser v. Landesregierung Vorarlberg*, 15 July 2010, paras 39–43.

([590]) ECJ, C-66/85, *Deborah Lawrie-Blum v. Land Baden-Württemberg*, 3 July 1986, paras 26–27.

([591]) ECJ, Joined Cases C-259/91, C-331/91 and C-332/91, *Pilar Allué and Carmel Mary Coonan and Others v. Università degli studi di Venezia and Università degli studi di Parma*, 2 August 1993, paras 15–21.

([592]) For an overview of the case-law related to the Professional Qualifications Directive (Directive 2005/36/EC), consult the directive's EUR-Lex entry under 'Document information'.

are covered by the Posted Workers Directive (Directive 96/71/EC) as amended by Directive (EU) 2018/957 ([593]). The purpose of the directive is to guarantee the protection of posted workers' rights and working conditions throughout the EU in order to prevent social dumping. More explicitly, the directive is aimed at reconciling the freedom to provide cross-border services under Article 56 of the TFEU with appropriate protection of the rights of workers temporarily posted abroad for that purpose ([594]). As the ECJ highlighted, this cannot, however, lead to a situation in which an employer is obliged under the directive to respect the relevant labour law of both the sending and the host Member State, as the protection standard granted in the two Member States can be regarded as equivalent ([595]).

The directive establishes minimum standards that must apply to employees from one Member State posted to work in another. Article 3 provides that terms and conditions laid down by the host Member State's legislation or by universally applicable collective agreements apply to posted workers, particularly regarding maximum work periods and minimum rest periods, paid leave and minimum pay rates. The applicable terms and conditions must be clear and accessible to workers and employers.

When posted workers come from outside the EU, including from third countries with EU association agreements, they may still be entitled to social security protections on the basis of those agreements, especially if they maintain sufficient links with the sending Member State ([596]).

Under the ESC, the ECSR held that Swedish law entailed restrictions on collective bargaining and action in respect of posted workers, which violated Article 6(2) and (4) ([597]).

([593]) Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16, ELI: http://data.europa.eu/eli/dir/2018/957/oj).

([594]) ECJ, C-346/06, *Dirk Rüffert v. Land Niedersachsen*, 3 April 2008.

([595]) ECJ, C-341/05, *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1 Byggettan and Svenska Elektrikerförbundet* [GC], 18 December 2007.

([596]) CJEU, C-549/22, *X v. Raad van bestuur van de Sociale verzekeringsbank*, 29 February 2024.

([597]) ECSR, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No 85/2012, merits, 3 July 2013. See also ECSR, *Conclusions 2018 – Sweden – Article 6(4)*, 2019.

8.2.3. Turkish nationals

Under EU law, Turkish nationals have a particularly privileged position under the 1963 Ankara Agreement and its 1970 Additional Protocol, as well as the decisions made by the EEC–Turkey Association Council set up under those instruments. Nevertheless, Turkish nationals do not have the automatic right to enter any Member State in order to take up employment. If, however, a Member State's national law permits them to take up employment, they then have the right to continue in that same employment after one year ([598]). After three years, under certain conditions, they may also seek other employment under Article 6(1) of Decision No 1/80 of the EEC–Turkey Association Council ([599]). Like EEA workers, Turkish workers are defined in a broad manner.

> Example: the CJEU concluded in *Genc* ([600]) that a Turkish national who only works a particularly limited number of hours, namely five and a half hours per week, for an employer in return for remuneration that only partially covers the minimum necessary for her subsistence is a worker within the meaning of Article 6(1) of Decision No 1/80 of the EEC–Turkey Association Council, provided that her employment is real and genuine.

Under Article 7 of Decision No 1/80, family members of a Turkish worker, even if they are not Turkish nationals themselves, can access the labour market after they have been legally residing for three years in the Member State concerned. Objective reasons may justify the family member concerned living apart from the Turkish migrant worker. National law that makes family reunification difficult or impossible would lead to a restriction on the establishment of a self-employed person, which is prohibited under the 1970 Additional Protocol ([601]).

A Turkish national's child who has completed vocational training in the host Member State may respond to employment offers, provided one of the parents has been legally employed in the host Member State for at least three years.

([598]) ECJ, C-386/95, *Süleyman Eker v. Land Baden-Württemberg*, 29 May 1997, paras 20–22.

([599]) ECJ, C-171/95, *Recep Tetik v. Land Berlin*, 23 January 1997, para. 30.

([600]) CJEU, C-14/09, *Hava Genc v. Land Berlin*, 4 February 2010, paras 27–28.

([601]) CJEU, C-138/13, *Naime Dogan v. Bundesrepublik Deutschland*, 10 July 2014.

Example: in the *Derin* case ([602]), the ECJ held that a Turkish national, who as a child joined his Turkish parents legally working in Germany, could only lose the right of residence in Germany, which was derived from a right to free access to employment, on grounds of public policy, public security or public health, or if he were to leave the Member State's territory for a significant period of time without good reason.

In relation to the right of establishment or the provision of services, Turkish nationals benefit from the standstill clause in Article 41 of the Additional Protocol to the Ankara Agreement. If no visa or work permit requirement was imposed on Turkish nationals at the time Article 41 of the protocol came into force in a particular Member State, then that Member State is prohibited from now imposing a visa or work permit requirement (see also Section 3.7).

8.2.4. British nationals covered by the EU–United Kingdom agreements

British nationals (and some of their family members) who were lawfully residing in a Member State or were frontier workers on 31 December 2020 fall within the EU–UK Withdrawal Agreement (Article 10). For them, the EU–UK Withdrawal Agreement guarantees several rights in the Member State where they reside or work as frontier workers. Such guarantees include non-discrimination on the ground of nationality and, with some exceptions, equal treatment with nationals with regard to citizen's rights (Articles 12 and 23). Under Articles 24 and 25 of the EU–UK Withdrawal Agreement, they are entitled to access employment; to equal treatment with nationals as regards working conditions, freedom of association and employment services; and to pursue activities as self-employed persons. Professional qualifications recognised before the end of the transition period continue to be valid, entitling the holders to pursue their profession under the same conditions as nationals (Article 27).

The EU–UK Trade and Cooperation Agreement does not grant British nationals a general right to live or work in the EU. It provides limited, temporary mobility for business purposes (Title II, Chapter 4 'Entry and temporary stay of natural persons for business purposes') for defined categories of persons. These are business visitors for establishment purposes; intra-corporate transferees; short-term business

([602]) ECJ, C-325/05, *Ismail Derin v. Landkreis Darmstadt-Dieburg*, 18 July 2007, paras 74–75.

visitors; contractual service suppliers; and independent professionals. These categories are subject to national immigration laws and the specific conditions regulating the specific type of business activity.

8.2.5. Nationals of other countries with association or cooperation agreements

Under EU law, Article 216 of the TFEU provides for the conclusion of agreements between third countries and the EU, with Article 217 providing specifically for association agreements. Nationals of certain third states with which the EU has concluded association, stabilisation, cooperation, partnership and/or other types of agreements ([603]) enjoy equal treatment in many respects, but they are not entitled to the full equal treatment that is enjoyed by EU citizens. As at June 2026, the EU had concluded agreements with over 100 countries and territories worldwide ([604]).

These association and cooperation agreements do not create a direct right for their nationals to enter and work in the EU. Nationals from these countries working legally in a given Member State are, however, entitled to equal treatment to and the same working conditions as the nationals of that Member State. This is, for example, the case of Article 64(1) of the Euro-Mediterranean agreements with Morocco and Tunisia, which establishes that 'the treatment accorded by each Member State to workers of Moroccan [or Tunisian] nationality employed in its territory shall be free from any discrimination based on nationality, as regards working conditions,

([603]) Stabilisation and association agreements are in place with Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. With eastern European countries, association agreements (including deep and comprehensive free trade agreements) are in force with Ukraine, Moldova and Georgia. Armenia's comprehensive and enhanced partnership agreement entered into force in 2021. Cooperation with Azerbaijan continues under the 1999 partnership and cooperation agreement. In Central Asia, an enhanced partnership and cooperation agreement with Kazakhstan entered into force in 2020, while partnership and cooperation agreements remain the baseline with (inter alia) Uzbekistan and Tajikistan, and an enhanced partnership and cooperation agreement with Kyrgyzstan has been signed. In the Southern Neighbourhood, Euro-Mediterranean Association agreements are in force with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia, and an interim association agreement applies to the Palestinian Authority. The 2000 Cotonou Agreement with African, Caribbean and Pacific countries has been succeeded by the Samoa Agreement between the EU and the Organisation of African, Caribbean and Pacific States, signed on 15 November 2023 and provisionally applied since 1 January 2024. Chile's 2002 association framework has been modernised via an advanced framework agreement and an interim trade agreement providing for provisional application.

([604]) European External Action Service, EU treaties office database.

remuneration and dismissal, relative to its own nationals' ([605]). For temporary employment, non-discrimination is limited to working conditions and remuneration (Article 64(2)). Article 65(1) of both agreements also introduced non-discrimination in the field of social security ([606]).

The CJEU has dealt with a number of cases relating to these agreements ([607]). Some of these have concerned the possibility of renewing, for work purposes, a third-country national's residence permit, after having lost their rights of residence as a dependant as a result of a breakdown in a relationship.

Example: the *El Yassini* ([608]) case concerned a Moroccan national who lost the initial reason for his stay and was refused an extension of his residence permit, despite his gainful employment. In this case, the ECJ had to ascertain if its case-law concerning Turkish nationals ([609]) was also applicable by analogy to Moroccan nationals, and therefore if Article 40 of the EEC–Morocco Cooperation Agreement ([610]) (later replaced by the Euro-Mediterranean Agreement with Morocco) included employment security for the whole duration of employment. The ECJ found that Article 40 has a direct effect on working conditions and pay but determined that the Ankara Agreement and the EEC–Morocco Cooperation Agreement were substantially different. Consequently, the Court held that the United Kingdom could refuse to extend the applicant's residence permit, even though this would imply the termination of his employment before the

([605]) Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ L 70, 18.3.2000, p. 2, ELI: http://data.europa.eu/eli/agree_internation/2000/204/oj), entered into force on 1 March 2000; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (OJ L 97, 30.3.1997, p. 2, ELI: http://data.europa.eu/eli/agree_internation/1998/238/oj), entered into force on 1 March 1998.

([606]) ECJ, C-18/90, *Office National de l'emploi v. Bahia Kziber*, 31 January 1991.

([607]) Cases related to the agreements include ECJ, C-18/90, *Office National de l'emploi v. Bahia Kziber*, 31 January 1991 (EEC-Morocco Cooperation Agreement, Art. 41(1), *allocation d'atteinte*, superseded by the Euro-Mediterranean Agreement with Morocco); ECJ, C-416/96, *Nour Eddline El-Yassini v. Secretary of State for Home Department*, 2 March 1999 (EEC-Morocco Cooperation Agreement); ECJ, C-438/00, *Deutscher Handballbund v. Kolpak*, 8 May 2003 (Slovakia).

([608]) ECJ, C-416/96, *Nour Eddline El-Yassini v. Secretary of State for Home Department*, 2 March 1999, paras 64, 65 and 67.

([609]) ECJ, C-237/91, *Kazim Kus v. Landeshauptstadt Wiesbaden*, 16 December 1992, paras 21–23 and 29.

([610]) Cooperation agreement between the European Economic Community and the Kingdom of Morocco (OJ L 264, 27.9.1978, p. 2, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21976A0427%2801%29&qid=1770289732503).

expiry of the employment agreement. The situation would have been different if national law provided 'specific rights in relation to employment which were more extensive than the rights of residence'.

Example: in *Gattoussi* ([611]), the ECJ was called to decide a similar case but under the prohibition of discrimination laid down in Article 64(1) of the Euro-Mediterranean Agreement between the EU and Tunisia. In this case, however, the applicant had been explicitly granted an indefinite work permit. As the Tunisian national had been granted specific employment rights that were more extensive than the rights of residence, the ECJ found that refusal to extend his right of residence had to be justified on grounds of protection of a legitimate national interest, such as public policy, public security or public health.

In a less extensive manner, Article 23 of the EU–Russia Partnership and Cooperation Agreement ([612]) regarding labour conditions establishes that 'subject to the laws, conditions and procedures applicable in each Member State, the Community and its Member States shall ensure that the treatment accorded to Russian nationals, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals'. The implementation of this agreement, however, has been largely suspended in view of the EU's restrictive measures adopted in response to Russia's war of aggression against Ukraine ([613]).

([611]) ECJ, C-97/05, *Mohamed Gattoussi v. Stadt Rüsselsheim*, 14 December 2006, para. 39.

([612]) Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part (OJ L 327, 28.11.1997, p. 3, ELI: http://data.europa.eu/eli/agree_internation/1997/800/oj).

([613]) See Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 234I, 9.9.2022, p. 1, ELI: http://data.europa.eu/eli/dec/2022/1500/oj). For the broader restrictive measures framework adopted and repeatedly strengthened since 24 February 2022, see Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13, ELI: http://data.europa.eu/eli/dec/2014/512/oj) (consolidated as of 24 December 2025) and Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/833/oj) (consolidated as of 16 January 2026).

Example: the *Simutenkov* case ([614]) concerned a Russian national employed as a professional football player at a club in Spain, whose participation in competitions was limited by the Spanish rules because of his nationality. The ECJ interpreted the non-discrimination provision laid down in Article 23 of the EU–Russia Partnership and Cooperation Agreement when assessing a rule drawn up by a Member State's sports federation that provides that, in national-level competitions, clubs may only field a limited number of players from countries that are not parties to the EEA Agreement. The Court held that the rule was not in compliance with the purpose of Article 23(1) of the EU–Russia Partnership and Cooperation Agreement.

8.2.6. Long-term residents and beneficiaries of the Family Reunification Directive

Under EU law, persons who have acquired long-term resident status under Article 11(1) of the Long-term Residents Directive (Directive 2003/109/EC) enjoy equal treatment with nationals as regards access to paid and unpaid employment; conditions of employment and working conditions (including working hours, health and safety standards, holiday entitlements, remuneration and dismissal); and freedom of association and union membership and freedom to represent a union or association.

For beneficiaries of the Family Reunification Directive (see also Chapter 6), the family member of a legally residing third-country-national sponsor is entitled to access employment and self-employed activity (Article 14). Access to the labour market can be made subject to a time limit after arrival in the host state that cannot exceed 12 months. During this time, the host state can consider whether or not its labour market can accept them.

8.2.7. Blue card holders, researchers and students

Under EU law, third-country nationals who hold an EU blue card benefit from comprehensive economic and social rights provided by the Blue Card Directive (Directive (EU) 2021/1883). Under Article 9 of the directive, an EU blue card must be issued to a third-country national who fulfils the criteria set out in Article 5, where no grounds

([614]) ECJ, C-265/03, *Igor Simutenkov v. Ministerio de Educación y Cultura and Real Federación Española de Fútbol* [GC], 12 April 2005, para. 41.

for rejection under Article 7 apply. Member States remain free, under Article 3(3) of the directive, to continue using national schemes for highly skilled workers, in which case they fall under the Single Permit Directive (Directive (EU) 2024/1233) regime.

EU blue card holders are entitled to the same employment conditions as nationals, including remuneration, working conditions, social security branches listed in the Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004), education and vocational training, recognition of professional qualifications and access to goods and services. They also enjoy freedom of association, including the right to join trade unions and professional associations on the same terms as nationals (Article 16).

EU blue card holders may change employment, subject to certain restrictions during the first 12 months. In the event of unemployment, EU blue card holders may remain in the host Member State for some time to seek employment (Article 15). Under Article 17(6) of the Blue Card Directive, the family members of EU blue card holders, of whatever nationality, are entitled to automatic access to the labour market.

The Students and Researchers Directive (Directive (EU) 2016/801) regulates third-country nationals' admission to the EU for the purposes of research, study, training, voluntary service, pupil exchange schemes, educational projects and working as an au pair. After the completion of their research or studies, researchers and students must have the possibility of staying in the territory of the Member State for at least nine months to seek employment or set up a business.

Example: in *Ali Ben Alaya* ([615]), the CJEU ruled that Member States are obliged to admit to their territory a third-country national who meets the conditions for admission, provided that the Member State does not invoke against that applicant one of the grounds listed in the directive as a justification for refusing a residence permit. Conditions for admission are exhaustively listed in Articles 7 and 8 of the Students and Researchers Directive.

([615]) CJEU, C-491/13, *Mohamed Ali Ben Alaya v. Bundesrepublik Deutschland*, 10 September 2014.

8.2.8. Single permit holders

Under the Single Permit Directive (Directive (EU) 2024/1233), a single permit authorises its holder to enter and reside in the issuing Member State, to move freely within its territory and to perform the specific employment activity authorised by the permit. Pursuant to Article 11(1)(a) to (d) of the directive, single permit holders must be informed of their rights. Single permit holders have a right to change employer. A Member State may require prior notification, subject the change to a labour market check or require a minimum work period with the first employer that may never exceed six months. In the event of unemployment, single permit holders may remain in the host Member State for some time to seek employment (Article 11(2) to (6)).

Single permit holders are entitled to equal treatment in terms and conditions of employment (including remuneration, dismissal, working time, leave, and health and safety), freedom of association and the right to strike, vocational training, recognition of diplomas and other professional qualifications (Article 12(1)). Member States may make limited derogations from equal treatment in defined areas while respecting the boundaries laid down in Article 12(2) of the directive.

8.2.9. Asylum seekers and refugees

Under EU law, Article 17(1) of the Reception Conditions Directive (Directive (EU) 2024/1346), requires Member States to grant **asylum seekers** access to the labour market no later than six months from the date on which the application for international protection is registered, provided that no first instance decision has been adopted, and that this delay cannot be attributed to the applicant.

Example: in *KS and Others v. The International Protection Appeals Tribunal and Others* ([616]), the CJEU held that a delay may be 'attributable to the applicant' only when the asylum applicant fails to cooperate with the authorities, such as by withholding information or documents required under Article 13 of Directive 2013/32/EU ([617]) (now Regulation (EU) 2024/1348). By contrast, a delay resulting from the adoption of a Dublin transfer decision, lodging an

([616]) CJEU, C-322/19, *KS and Others v. The International Protection Appeals Tribunal and Others*, 14 January 2021, paras 72–73, 84, 89–91.

([617]) 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 (recast) (OJ L 180, 29.6.2013, p. 60, ELI: http://data.europa.eu/eli/dir/2013/32/oj).

asylum application in a Member State other than the one of first entry, or bringing a suspensive appeal against a transfer decision cannot be attributed to the applicant.

Conditions for granting access to the labour market may be decided upon in accordance with national law but must not hinder effective access; any labour market test must be proportionate (Article 17(2) to (4)). Priority can be given, however, to EEA nationals and other legally residing third-country nationals. Access is retained during an appeal under Article 17(9), and Member States must ensure or facilitate access to courses addressing language, civic orientation and vocational training (Article 18).

Article 28(1) and (2) of the Qualification Regulation (Regulation (EU) 2024/1347) recognises the right of **refugees** and **those granted subsidiary protection** to take up employment and to be self-employed immediately after obtaining such status. They enjoy equal treatment with nationals as regards working conditions, freedom of association, vocational training and employment services. They are to be granted the same access as nationals to procedures for the recognition of qualifications. In addition, Article 30 of the regulation provides for access to measures to assess prior learning, in case the individual cannot provide documentary evidence of previous qualification. These provisions reflect Articles 17, 18, 19 and 22(2) of the 1951 Geneva Convention.

8.2.10. Beneficiaries of temporary protection

Under EU law, the Temporary Protection Directive (Directive 2001/55/EC) obliges Member States, for the whole duration of any Council-declared mass influx of displaced people, to guarantee beneficiaries of temporary protection a core set of economic and social rights. Article 12 grants immediate access to paid employment and self-employment, on an equal footing with nationals of a Member State as regards working conditions, remuneration and social security coverage; vocational training must also be available. Member States may, however, give priority in job placement to EEA nationals and third-country nationals already legally resident, where this is justified by labour market policy (Article 12 (2)).

The rights apply automatically once a Council implementing decision activates temporary protection for a specific group. Council Implementing Decision (EU) 2022/382 ([618]) (successively prolonged to 4 March 2027) applies to persons displaced from Ukraine. All Member States, except Denmark, are bound by its rules, whereas Denmark's national rules offer similar protection.

8.2.11. Migrants in an irregular situation

Under EU law, access to many social rights depends on being lawfully present or resident in the host state. The EU is committed to eliminating the arrival and presence of unauthorised economic migrants. The key measure is the Employers Sanctions Directive (Directive 2009/52/EC): it prohibits the employment of irregular migrants from outside the EU by punishing employers through fines or even criminal sanctions in the most serious of cases. All Member States, except Denmark and Ireland, are bound by the directive. It is also intended to offer migrant workers in an irregular situation a degree of protection from abusive employers.

Under the directive, before recruiting a third-country national, employers are required to check that they are authorised to stay, and to notify the relevant national authority if they are not (Article 4). Employers who can show that they have complied with these obligations and have acted in good faith are not liable to sanctions. As many migrants in an irregular situation work in private households, the directive also applies to private individuals as employers.

Employers who have not carried out such checks and are found to be employing irregular migrants will be liable for financial penalties, including the costs of returning irregularly staying third-country nationals to their home countries (Article 5). They also have to repay outstanding wages, taxes and social security contributions. Employers are liable to criminal penalties in the most serious of cases, such as repeated infringements, the illegal employment of children or the employment of significant numbers of migrants in an irregular situation.

The directive protects migrants by ensuring that they get any outstanding remuneration from their employer and by providing access to support from third parties, such as trade unions or NGOs (Article 13). The directive particularly emphasises

([618]) Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1, ELI: http://data.europa.eu/eli/dec_impl/2022/382/oj).

enforcement of the rules (e.g. Articles 9, 10 and 14) (see Section 3.3 on the issuance of residence permits to victims of particularly exploitative working conditions who collaborate with the justice system).

8.3. Education

Children's right to education is provided under several international human rights instruments, and the monitoring committees for the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination oversee its application. These committees have consistently held that the non-discrimination requirements of those instruments also apply to refugees, asylum seekers and migrants in both regular and irregular situations.

Under the ECHR, Article 2 of Protocol No 1 provides for the right to education, and Article 14 and Protocol No 12 prohibit discrimination on the ground of 'national origin'. Article 2 of Protocol No 1 guarantees in principle the right to primary and secondary education.

Example: the case of *Timishev v. Russia* ([619]) concerned a Russian national of Chechen origin, internally displaced within Russia, whose children were refused school enrolment because they could not present the required local residence registration, specifically a card confirming residence in Nalchik. The Court found that the right for children to be educated was one of 'the most fundamental values of the democratic societies making up the Council of Europe' and held that Russia had violated Article 2 of Protocol No 1.

Example: in *Ponomaryovi v. Bulgaria* ([620]), the ECtHR found that a requirement to pay secondary school fees that were predicated on the immigration status and nationality of the applicants was not justified. The Court noted that the applicants had not entered the Member State unlawfully, nor were they subsequently claiming access to free schooling. Even when the applicants fell, somewhat inadvertently, into the situation of lacking permanent residence permits, the authorities had no substantive objection to their remaining in Bulgaria and

([619]) ECtHR, *Timishev v. Russia*, Nos 55762/00 and 55974/00, 13 December 2005, para. 64.

([620]) ECtHR, *Ponomaryovi v. Bulgaria*, No 5335/05, 21 June 2011, paras 59–63.

apparently never had serious intentions of removing them. Considerations relating to the need to stem or reverse the flow of irregular immigration clearly did not apply to the applicants.

Example: in the case of *Karus v. Italy* ([621]), the European Commission of Human Rights found that charging higher fees to foreign university students did not violate their right to education, as the differential treatment was reasonably justified by the Italian government's wish to have the positive effects of tertiary education stay within the Italian economy.

Under the ESC, Article 17 governs the right to education and is subject to the provisions of Articles 18 and 19 in relation to migrants. Regarding the interpretation of Article 17(2), the ECSR held that access to education is essential for every child's life and development and its denial worsens the vulnerability of unlawfully present children ([622]). Accordingly, all children regardless of residence status fall within the ESC's personal scope, and Article 17(2) requires states to ensure that children have effective access to education ([623]).

Under EU law, the Charter provides in Article 14 that everyone has the right to education and the 'possibility' of receiving free compulsory education. Under secondary EU law, all third-country-national children in the EU, except those present only for a short period, are entitled to access basic education. This also includes child migrants in an irregular situation whose removal has been postponed ([624]). For other categories, such as family members of EEA nationals, refugees or long-term residents, broader entitlements have been codified.

Under certain conditions, third-country-national children of EEA nationals have the right to remain for the continuation or completion of their education, including after the EEA national has died or moved on (Article 12(3) of the Free Movement Directive). These children also have the right to be accompanied by the parent who has

([621]) European Commission of Human Rights, *Karus v. Italy* (dec.), No 29043/95, 20 May 1998.

([622]) ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, merits, 20 October 2009; see, inter alia, paras 47 and 48.

([623]) ECSR, *Statement of Interpretation on Article 17(2)*, 2011.

([624]) 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 (OJ L 348, 24.12.2008, p. 104, ELI: http://data.europa.eu/eli/dir/2008/115/oj), Art. 14(1) (the Return Directive).

custody (Article 12(3)) ([625]). In addition, children of EEA workers who are or were employed in a EU Member State other than their own benefit from the provision contained in Article 10 of Regulation (EU) No 492/2011, which continues to apply independently of the provisions of the Free Movement Directive ([626]). Where necessary to ensure the child's effective enjoyment of the right to education, the host Member State must grant the parent who is the primary carer a derived right of residence and access to work and social assistance ([627]).

Third-country nationals recognised as long-term residents under the Long-term Residents Directive (see Section 3.6) enjoy equal treatment with citizens of the Member State as regards access to education and vocational training, study grants and recognition of qualifications (Article 11). They also have the right to move to other Member States for education and vocational training (Article 14).

Article 12 of the Single Permit Directive and Article 16 of the Blue Card Directive contain an equal treatment clause with nationals of the Member State where these permit holders reside with regard to education and vocational training, although some restrictions may be imposed.

Article 22(1) of the 1951 Geneva Convention and the EU asylum *acquis* provide for the right to education of asylum-seeking children and for those granted international protection. Article 16 of the Reception Conditions Directive requires Member States to grant minor children of asylum applicants – and applicants who are themselves children – access to education under the same conditions as nationals, no later than two months after the application is lodged, and, as a rule, within the ordinary school system.

([625]) Art. 12(3) of the Free Movement Directive builds upon ECJ case-law on Art. 12 of Regulation (EEC) No 1612/68 (today Art. 10 of Regulation (EU) No 492/2011) and especially on ECJ, Joined Cases C-389/87 and C-390/87, *G. B. C. Echternach and A. Moritz v. Minister van Onderwijs en Wetenschappen*, 15 March 1989 and ECJ, C-413/99, *Baumbast and R v. Secretary of State for the Home Department*, 17 September 2002.

([626]) ECJ, C-480/08, *Maria Teixeira v. London Borough of Lambeth and Secretary of State for the Home Department* [GC], 23 February 2010.

([627]) CJEU, C-310/08, *London Borough of Harrow v. Ibrahim and Secretary of State for the Home Department*, 23 February 2010. The case concerns the interpretation of Regulation (EEC) No 1612/68, which Regulation (EU) No 492/2011 replaced.

Article 29 of the Qualification Regulation guarantees access to the education system for both children and adults granted international protection, on equal terms with nationals. Article 28 ensures that employment-related education opportunities for adults, such as vocational training, are offered to beneficiaries of international protection, under equivalent conditions to those for nationals.

Under the Temporary Protection Directive, children benefiting from temporary protection must be granted access to the education system on the same conditions as nationals. Member States may also allow adults enjoying temporary protection to access the general education system (Article 14).

8.4. Housing

The right to adequate housing is part of the right of everyone to an adequate standard of living, laid down in Article 11 of the International Covenant on Economic, Social and Cultural Rights.

Under the ECHR, there is no right to acquire a home, only a right to respect for an existing one ([628]). Immigration controls that limit an individual's access to their own home have been the subject of several cases brought before the ECtHR ([629]). Although there is no right to a home as such, the ECtHR has considered the failure of member states to provide shelter when they are required to do so by law. In extreme situations, the Court found the denial to be so severe as to constitute a violation of Article 3 of the ECHR on the prohibition of inhuman and degrading treatment. On the other hand, the ECtHR did not find a violation of Article 3 of the ECHR where the applicants were not in a situation of material deprivation likely to reach the gravity necessary to fall within the scope of Article 3 and the authorities had not exhibited indifference towards the applicants, having offered them a way of improving their situation ([630]).

([628]) ECtHR, *Chapman v. the United Kingdom* [GC], No 27238/95, 18 January 2001.

([629]) See, for example, ECtHR, *Gillow v. the United Kingdom*, No 9063/80, 24 November 1986, paras 55–58.

([630]) ECtHR, *N. T. P. and Others v. France*, No 68862/13, 24 August 2018, paras 46–49; ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011. See also ECtHR, *N. H. and Others v. France*, Nos 28820/13, 75547/13 and 13114/15, 2 July 2020.

Example: in *Hirtu and Others v. France* ([631]), the applicants, a Roma community living in an informal settlement, were evicted without any genuine consideration of their vulnerability or of alternative accommodation options. The ECtHR found that the authorities had not given due consideration to the consequences of the eviction on the applicants' living conditions, particularly their vulnerable situation and the lack of alternative housing solutions.

The Court has been careful not to interfere with CoE member states' right to impose admission conditions, including when newly arrived migrants are excluded from public housing assistance.

Example: the case of *Bah v. the United Kingdom* ([632]) concerned the refusal to consider a mother and her 14-year-old son to be 'in priority need' of housing because the son had only recently been admitted from abroad for family reunion and was subject to an immigration condition that he should not have recourse to public funds. The applicant alleged that the consequent denial of access to priority-need housing had been discriminatory. The Court rejected the application. It found nothing arbitrary in the denial of a claim of priority need based solely on the presence of the applicant's son, whose leave to enter the United Kingdom had been expressly conditional upon having no recourse to public funds. By bringing her son into the United Kingdom while fully aware of his entrance conditions, the applicant accepted this condition and effectively agreed not to have recourse to public funds to support him. The legislation at issue in this case pursued a legitimate aim, namely fairly allocating a scarce resource between different categories of claimants. It is important to note that the applicants in the *Bah* case were not left destitute and alternative housing was available to them.

It should be noted that, in certain exceptional cases, the ECtHR has ordered interim measures under Rule 39 of the Rules of Court to ensure that asylum-seeking families are provided with shelter while their claims before the ECtHR are pending (see also Section 3.4) ([633]).

([631]) ECtHR, *Hirtu and Others v. France*, No 24720/13, 14 May 2020.

([632]) ECtHR, *Bah v. the United Kingdom*, No 56328/07, 27 September 2011.

([633]) ECtHR, *Camara v. Belgium*, No 49255/22, 18 July 2023; ECtHR, *Al-Shujaa and Others v. Belgium*, No 52208/22 and 142 others, 13 December 2022 (see its press release hereCourt decided requests for interim measures from homeless asylum seekers in Belgium).

Under the ESC, Article 19(4)(c) provides that states must ensure adequate accommodation to migrant workers, but this right is restricted to those who move between states that are party to the ESC.

The right to housing (Article 31 of the ESC) is closely linked to a series of additional ESC rights: Article 11 on the right to health; Article 13 on the right to social and medical assistance; Article 16 on the right to appropriate social, legal and economic protection for the family; Article 17 on the right of children and young persons to social, legal and economic protection; and Article 30 on the right to protection against poverty and social exclusion, which can be considered alone or be read in conjunction with Article E on non-discrimination.

Example: in the case of *Feantsa v. the Netherlands* ([634]), the ECSR held that the right to emergency shelter and to emergency social assistance is not limited to those belonging to certain vulnerable groups but extends to all individuals in a precarious situation, pursuant to the principle of upholding their human dignity and protecting their fundamental rights. The ECSR considered that certain social rights directly related to the rights to life and human dignity are part of a 'non-derogable core' of rights that protect the dignity of all people. Those rights, therefore, must be guaranteed to refugees and should be assured for all displaced persons.

Example: in *Amnesty International v. Italy* ([635]), the ECSR held that forced evictions, segregation and exclusionary housing policies targeting Roma communities violated Article 31 read together with Article E of the ESC. The committee emphasised that persistent state inaction that perpetuates racial segregation and systemic exclusion amounts to a failure to fulfil the positive obligations flowing from the ESC.

Although the appendix to the ESC limits its application to lawfully resident nationals of States Parties, the ECSR has also applied specific provisions of the revised ESC to children in an irregular situation, stressing that the ESC has to be interpreted in light of international human rights law.

([634]) ECSR, *European Federation of National Organisations working with the Homeless (Feantsa) v. the Netherlands*, Complaint No 86/2012, merits, 2 July 2014.

([635]) ECSR, *Amnesty International v. Italy*, Complaint No 178/2019, merits, 18 October 2023.

Example: in *ICJ and ECRE v. Greece* ([636]), the ECSR examined chronic overcrowding, insanitary conditions, inadequate healthcare and the absence of effective guardianship in both reception centres and detention facilities hosting unaccompanied and accompanied migrant children. The committee held that this systemic neglect breached Article 31(1) and (2) (right to housing), Article 17(1) (protection of children), Article 11(1) (right to healthcare), Article 13(1) (right to social and medical assistance) and Article 16 (family protection), all read together with Article E (non-discrimination) of the ESC. Building on the principle, first set out in *DCI v. the Netherlands* ([637]), that the ESC could not be interpreted in a vacuum, the committee concluded that denial of dignified accommodation simultaneously undermines the enjoyment of all international human rights. In *DCI v. the Netherlands*, it was also established that evicting unlawfully present persons from shelter should be banned, as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to respect for human dignity.

Under EU law, Article 1 of the Charter provides for the right to dignity and Article 34 provides for the right to social assistance with regard to housing. Relevant provisions concerning housing can also be found in secondary EU law on third-country-national family members of EEA and Swiss nationals, long-term residents, persons in need of international protection and victims of trafficking.

Under Article 24 of the Free Movement Directive, third-country-national family members of EEA nationals must have the same access to social and tax advantages as nationals. Family members of EEA and Swiss nationals cannot be subjected to restrictions on their right to access housing, including socially supported housing ([638]). This does not apply to third-country-national family members of EU citizens who have not exercised free movement rights. Their situation is not regulated by EU law but instead by domestic law. Economically inactive EEA nationals and their family members, who must show that they are economically self-sufficient, may not be eligible for financial assistance for their housing needs (Article 7(1)(b) of the Free Movement Directive).

([636]) ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, merits, 26 January 2021.

([637]) ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, merits, 20 October 2009.

([638]) European Community–Switzerland Agreement, 2002.

Long-term residents are entitled to receive equal treatment with nationals with regard to procedures for obtaining housing (Article 11(1)(f) of the Long-term Residents Directive). The Single Permit Directive entitles migrant workers to equal treatment with nationals as regards procedures for obtaining housing, although Member States may restrict it (Article 16(1)(f) and (2)).

Example: in *Kamberaj* ([639]), the CJEU found that national law treating third-country nationals differently from EU citizens with regard to housing benefits violated Article 11(1)(d) of the Long-term Residents Directive. Specifically, the Court maintained that, under Article 11(4), Member States can limit social assistance and protection, noting though that the list of minimum core benefits contained in recital 13 is not exhaustive. The CJEU extended the core benefits to include housing benefits. In doing so, the Court recalled Article 34 of the Charter, which, in order to combat social exclusion and poverty, 'recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources'.

Under the Reception Conditions Directive, asylum applicants are entitled to housing support from the moment they apply. Under Article 19 of the directive, Member States are required to provide persons seeking international protection with material reception conditions that provide an adequate standard of living for applicants, which guarantees their subsistence and safeguards their physical and mental health. Where accommodation is offered in kind, minimum standards, including measures to prevent assault and gender-based violence, must be met (Article 20(4)). These obligations apply in responsibility determination procedures under the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351) (see Section 5.2). However, once an asylum applicant is notified of a transfer decision, reception conditions may be withdrawn in a Member State other than the one where they are required to be present, without prejudice to a standard of living in line with EU law (Reception Conditions Directive, Article 21).

([639]) CJEU, C-571/10, *Servet Kamberaj v. Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others* [GC], 24 April 2012.

Example: in *Cimade* ([640]), the CJEU clarified how to apply the Reception Conditions Directive in the case of transfer requests under the Dublin Regulation. The CJEU held that a Member State seeking to transfer an asylum seeker under the Dublin Regulation is responsible, including financially, for ensuring that asylum seekers have the full benefit of the Reception Conditions Directive until the applicant is physically transferred. The directive aims to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the Charter. Therefore, minimum reception conditions must also be granted to asylum seekers awaiting a Dublin Regulation decision.

For recognised refugees and beneficiaries of subsidiary protection, Article 34 of the Qualification Regulation requires Member States to ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under conditions equivalent to those imposed on other third-country nationals legally resident in the Member State's territory.

For beneficiaries of temporary protection, Article 13 of the Temporary Protection Directive requires Member States to ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

Victims of trafficking in human beings are entitled to special assistance and support measures that include 'at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation' (Article 11(5) of the Anti-trafficking Directive). Following amendments introduced by Directive (EU) 2024/1712, Member States must also ensure that shelters and other interim accommodation are available in sufficient numbers, are easily accessible, support recovery and independent living, and are equipped for children's needs (Article 11(5a)). In addition, the new Article 11a requires coordination with asylum authorities and safeguards victims' right to apply for asylum also while receiving assistance.

([640]) CJEU, C-179/11, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012. See also CJEU, Joined Cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [GC], 21 December 2011.

For other categories of third-country nationals, EU law tries to ensure that they will not constitute a burden for Member States' social assistance systems. Therefore, before researchers, students, trainees, volunteers, pupils and au pairs (Students and Researchers Directive, Article 7(1)(e)) are allowed to enter the EU, they need to provide proof that they have sufficient resources not to become an unreasonable burden on the host Member State. Member States can establish similar requirements for family members of third-country-national sponsors (Article 7(1)(a) of the Family Reunification Directive).

8.5. Healthcare

Under the ECHR, there is no express right to healthcare, although this may fall under the concept of 'moral and physical integrity' and thus within the scope of Article 8 guaranteeing the right to respect for private life ([641]). Under certain circumstances, a member state's responsibility under the ECHR may be engaged where it is shown that the national authorities have put an individual's life at risk through acts or omissions that denied the individual healthcare that has otherwise been made available to the general population ([642]). However, in cases of 'mere' medical negligence, states' obligations are limited to the setting up of an adequate regulatory framework that compels hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives ([643]). In relation to migration, healthcare issues have primarily arisen under the ECHR in the context of healthcare needs being invoked as a shield against expulsion. In extreme cases, this may engage Article 3 of the ECHR (see Chapter 4).

Under the ESC, Article 11 sets out the right to health and Article 13 provides for the right to medical assistance ([644]). The ECSR considers that these rights are applicable to migrants in an irregular situation.

([641]) ECtHR, *Bensaid v. the United Kingdom*, No 44599/98, 6 February 2001.

([642]) ECtHR, *Powell v. the United Kingdom* (dec.), No 45305/99, 4 May 2000.

([643]) ECtHR, *Lopes de Sousa Fernandes v. Portugal* [GC], No 56080/13, 19 December 2017, para. 186.

([644]) See also the European Convention on Social and Medical Assistance (CETS No 14), which similarly provides for mutual provision of social and medical assistance to nationals of states that are parties to it in the territory of another State Party. This CoE convention has only 18 parties, all of which except Türkiye and the United Kingdom are also part of the EU. It was opened for signature on 11 December 1953 and entered into force 1 July 1954.

Example: *FIDH v. France* ([645]) concerned ending the medical and hospital treatment fee exemption for migrants in an irregular situation and with very low incomes and restricting access to medical services for migrant children in an irregular situation. While ESC rights, in principle, only extend to foreigners who are nationals of other States Parties and lawfully resident within the state, the ECSR emphasised that the ESC must be interpreted in a purposive manner consistent with the principles of individual human dignity and that any restrictions should consequently be narrowly read. Denying medical assistance to foreign nationals, even if they are there unlawfully, is thus contrary to the ESC, although not all ESC rights may be extended to migrants in an irregular situation. The ECSR found a violation of Article 17 on the right of children to protection (adults retained some assistance and so no violation of Article 13 was found). This decision corresponds to the approach later taken with respect to children in the 2009 *Defence for Children International* case (see Section 8.4).

Under EU law, the Charter does not include a right to health but recognises related rights, such as the protection of human dignity (Article 1) and the right to physical integrity (Article 3). The Charter also includes the right to healthcare under Article 35, which states that '[e]veryone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices'. The Charter's application is limited to those matters that fall within the scope of EU law. The Charter does not make any distinction on the ground of nationality; it makes, however, the exercise of the right to healthcare subject to national laws and practices.

Secondary EU law regulates access to healthcare for a variety of categories of third-country nationals and requires some of them to have health insurance before they are granted a particular status or admission into the Member State territory. The most common third-country-national categories will be briefly mentioned.

Whatever their nationality, working or self-employed family members of EEA and Swiss nationals who have exercised free movement rights are entitled to equal treatment with nationals (Article 24 of the Free Movement Directive for EU

([645]) ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No 14/2003, merits, 8 September 2004. See also ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (Eurocef) v. France*, Complaint No 114/2015, merits, 24 January 2018.

nationals) ([646]). Those who wish to reside in another Member State on the basis that they are economically self-sufficient must show that they have health insurance to cover all risks for both themselves and their family members (Article 7(1)(b)) ([647]).

Whether an EEA national or a third-country national, any individual who is affiliated with a national health scheme in their EEA state of residence is entitled to the necessary treatment ([648]) when visiting other EEA member states and Switzerland ([649]). Travelling to another EU Member State for the purpose of receiving publicly provided medical treatment is subject to complex rules ([650]).

Under the Family Reunification Directive, the sponsor may be required to prove that they have, in particular, 'sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family' as well as 'stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned' (Article 7(1)(b) to (c)).

Similarly, before being granted long-term resident status, third-country nationals and their family members are required to provide evidence of sickness insurance that covers all risks that are normally covered by the host Member State for its own nationals (Article 5(1)(b) of the Long-term Residents Directive). They also need to show that they have stable and regular resources that are sufficient to maintain themselves and the members of their families without recourse to the Member State's social assistance system (Article 5(1)(a)). Persons who have obtained long-term resident status are entitled to equal treatment with nationals of the host

([646]) EEA Agreement, Part III, 'Free movement of persons, services and capital'; European Community–Switzerland Agreement, 2002.

([647]) CJEU, C-402/19, *LM v. Centre public d'action social de Seraing*, 30 September 2020.

([648]) Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004), Art. 19(1); CJEU, C-211/08, *European Commission v. Kingdom of Spain*, 15 June 2010, paras 58 and 61.

([649]) Decision 2012/195/EU of the Joint Committee established under the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of 31 March 2012, replacing Annex II to that Agreement on the coordination of social security schemes (OJ L 103, 13.4.2012, p. 51, ELI: http://data.europa.eu/eli/dec/2012/195(1)/oj).

([650]) See Art. 22(1)(c) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 5.7.1971, p. 2, ELI: http://data.europa.eu/eli/reg/1971/1408/oj), at issue in both ECJ, C-368/98, *Abdon Vanbraekel and Others v. Alliance nationale des mutualités chrétiennes (ANMC)*, 12 July 2001 and ECJ, C-372/04, *The Queen, on the application of Yvonne Watts v. Bedford Primary Care Trust and Secretary of State for Health* [GC], 16 May 2006.

Member State as regards 'social security, social assistance and social protection as defined by national law' (Article 11(1)(d)). Recital 13 of the directive states that, with regard to social assistance, 'the possibility of limiting the benefits for long-term residents to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits should be determined by national law.'

Third-country nationals who are single permit holders enjoy equal treatment with nationals, under the Single Permit Directive, in multiple fields of social security (Article 12(1)(e)). Member States may limit equal treatment to those in employment or who have worked for a minimum period (Article 12 (2) (a)).

Under Article 22 of the Reception Conditions Directive, asylum seekers are entitled to necessary healthcare, which must include at least emergency care, essential treatment of physical and mental health disorders, and sexual and reproductive health services, including prevention and response to sexual and gender-based violence, and necessary medical or other assistance for those who have special needs. Member States must also guarantee that child asylum applicants receive the same healthcare as national children and that any necessary treatment begun before majority continues without interruption once they reach adulthood.

The Return Directive (Directive 2008/115/EC) similarly states that '[e]mergency health care and essential treatment of illness shall be provided' to those whose removal has been suspended or who have been given time to depart voluntarily (Article 14). The same applies during detention pending removal (Article 16).

Recognised refugees and those with subsidiary protection are entitled to equal access to healthcare with the Member State's own nationals under Article 32 of the Qualification Regulation. There are also special provisions for those with special needs.

Assistance and support measures to be given to victims of trafficking in human beings encompass necessary medical treatment, including psychological assistance, counselling and information (Article 11(5) of the Anti-trafficking Directive (Directive 2011/36/EU)).

8.6. Social security and social assistance

'Social security' refers to benefits that are based on past contributions into a national social security system, such as retirement pensions. 'Social assistance' refers to benefits that are provided by the state to persons in need, such as persons with disabilities. They include a wide range of benefits, which are usually financial.

Under the ECHR, there is no express right to social security or social assistance. However, in certain circumstances, an issue of discrimination may arise in the area of social security and social assistance, regardless of whether or not the individual in question has financially contributed to the scheme in question. The ECtHR found that in certain circumstances the refusal of the states to grant benefits to lawful residents merely because they did not meet a nationality requirement amounted to discrimination ([651]).

Example: the case of *Koua Poirrez v. France* ([652]) concerned the denial of disability benefits to a lawfully resident migrant because he was neither French nor a national of a country with a reciprocal agreement with France. The ECtHR found that very weighty reasons would have to be put forward before the ECtHR could regard a difference of treatment based exclusively on the ground of nationality as compatible with the ECHR. The ECtHR ruled that the applicant had been discriminated against, which was in violation of Article 14 of the ECHR read in conjunction with Article 1 of Protocol No 1 on the right to peaceful enjoyment of possessions (see Section 9.3).

Example: the case of *Andrejeva v. Latvia* ([653]) related to contribution-based benefits. The applicant had worked most of her life in the territory of Latvia when it was part of the Soviet Union. She was denied a part of her pension because she had been working outside Latvia and was not a Latvian citizen. The ECtHR could not accept the government's argument that it would be sufficient for the applicant to become a naturalised Latvian citizen in order to receive the full amount of the pension claimed. The Court found that dismissing the victim's claims on the ground that they could have avoided the discrimination by altering one of

([651]) ECtHR, *Luczak v. Poland*, No 77782/01, 27 November 2007; ECtHR, *Fawsie v. Greece*, No 40080/07, 28 October 2010. See also ECtHR, *Dhahbi v. Italy*, No 17120/09, 8 April 2014; ECtHR, *Gaygusuz v. Austria*, No 17371/90, 16 September 1996, paras 46–50; ECtHR, *Koua Poirrez v. France*, No 40892/98, 30 September 2003, para. 41.

([652]) ECtHR, *Koua Poirrez v. France*, No 40892/98, 30 September 2003, para. 41.

([653]) ECtHR, *Andrejeva v. Latvia* [GC], No 55707/00, 18 February 2009, para. 91.

the factors in question – for example by acquiring a nationality – would render Article 14 of ECHR devoid of substance. The ECtHR found a violation of Article 14 of the convention taken in conjunction with Article 1 of Protocol No 1.

In these examples, the applicants were, in all other respects, similar to a state's own national; none of the applicants was in a precarious immigration situation or subject to formal restrictions on having recourse to public funds.

Example: the case of *Weller v. Hungary* ([654]) concerned a Hungarian father and a Romanian mother. At the time of application, which was prior to Romania's accession to the EU, the mother had a residence permit but not a settlement permit in Hungary. Under Hungarian law, only mothers with Hungarian citizenship or a settlement permit could apply for maternity benefit. The applicant complained that men with foreign spouses were treated less favourably in the enjoyment of the benefit than those with Hungarian wives. The Court found a violation of Article 8 of the ECHR taken together with Article 14.

Under the ESC, there is a right to social security (Article 12), a right to social and medical assistance (Article 13) and a right to benefit from social welfare services (Article 14). In addition, there are specific provisions for persons with disabilities (Article 15), children and young persons (Article 17) and elderly persons (Article 23). Article 30 contains the right to protection against poverty and social exclusion. As far as social assistance is concerned, Article 13 of the ESC is applicable to migrants in an irregular situation, as reaffirmed in ECSR decisions ([655]).

Under EU law, two situations regarding third-country nationals have to be distinguished. First, there is a system of coordinating benefits among Member States for third-country nationals moving within the EU. Second, specific categories of third-country nationals are entitled, under secondary EU law, to certain benefits regardless of whether they have moved within the EU.

([654]) ECtHR, *Weller v. Hungary*, No 44399/05, 31 March 2009, paras 36–39.

([655]) ECSR, *Conference of European Churches (CEC) v. the Netherlands*, Complaint No 90/2013, merits, 10 November 2014.

(a) Coordination of benefits within the EU

Third-country-national family members of EEA nationals who have moved to an EU Member State are entitled under Article 24 of the Free Movement Directive (and for non-EU citizens under the EEA Agreement) to the same social and tax advantages as the host Member State's own nationals. According to Article 14(1) of the same directive, however, those who are exercising free movement rights without working must not become an unreasonable burden on the host Member State's social assistance system. A complex body of law has been built up over the years to coordinate social security and social assistance for persons exercising free movement rights. This has been codified in the Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004) (as amended) ([656]) with the basic principle that the EU-wide system is a system of coordination, not harmonisation ([657]). It is intended to

([656]) The regulation has been amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes (OJ L 284, 30.10.2009, p. 43, ELI: http://data.europa.eu/eli/reg/2009/988/oj); Regulation (EU) No 1231/2010; Commission Regulation (EU) No 1244/2010 of 9 December 2010 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 338, 22.12.2010, p. 35, ELI: http://data.europa.eu/eli/reg/2010/1244/oj); Regulation (EU) No 465/2012; Commission Regulation (EU) No 1224/2012 of 18 December 2012 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 349, 19.12.2012, p. 45, ELI: http://data.europa.eu/eli/reg/2012/1224/oj); Council Regulation (EU) No 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia (OJ L 158, 10.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/517/oj); Commission Regulation (EU) No 1372/2013 of 19 December 2013 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 346, 20.12.2013, p. 27, ELI: http://data.europa.eu/eli/reg/2013/1372/oj); Commission Regulation (EU) 2017/492 of 21 March 2017 amending Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 76, 22.3.2017, p. 13, ELI: http://data.europa.eu/eli/reg/2017/492/oj); and most recently, Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344, OJ L 186, 11.7.2019, p. 21, ELI: http://data.europa.eu/eli/reg/2019/1149/oj).

([657]) ECJ, C-21/87, *Felix Borowitz v. Bundesversicherungsanstalt für Angestellte*, 5 July 1988, para. 23; ECJ, C-331/06, *K. D. Chuck v. Raad van Bestuur van de Sociale Verzekeringsbank*, 3 April 2008, para. 27.

minimise the negative effects of migrating between Member States by simplifying administrative procedures and ensuring equal treatment between those who move between Member States and nationals of an Member State. Some entitlements are exportable, while others are not. Regulation (EC) No 987/2009 (as amended) ([658]) sets out the procedures needed to implement the Coordination of Social Security Regulation.

Employed third-country nationals who move between Member States, their family members and survivors are entitled to the benefit of the cross-border legislation on accumulation and coordination of social security benefits (Council Regulation (EC) No 859/2003 and Regulation (EU) No 1231/2010). This is subject to the condition that the employed third-country nationals are legally resident in a Member State's territory and have links beyond those to the third country and a single Member State. These regulations do not cover employed third-country nationals who only have links to a third country and a single Member State.

British nationals are subject to distinct rules. Those who exercised free movement rights before 31 December 2020 remain within the full scope of the Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004) and its implementing Regulation (EC) No 987/2009 pursuant to Articles 30 to 36 of the EU–UK Withdrawal Agreement. Exportability of benefits and equal treatment principles continue to apply to them, their family members and survivors exactly as they applied on that date. By contrast, British nationals whose cross-border situation began on or after 1 January 2021 are covered by the Protocol on Social Security Coordination annexed to the EU–UK Trade and Cooperation Agreement. The protocol, being an autonomous international instrument, covers the same list of branches as the Coordination of Social Security Systems Regulation (sickness, maternity/paternity, invalidity, old age, survivors, accidents at work and occupational diseases, death grants, unemployment, pre-retirement and family benefits) and maintains its core principles.

([658]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/987/oj). The regulation has been amended by Regulation (EU) No 465/2012, Regulation (EU) No 1224/2012 and Regulation (EU) No 1372/2013.

(b) Entitlements for certain categories of third-country nationals

Under the Long-term Residents Directive, those who have acquired long-term resident status are entitled to equal treatment with host country nationals with regard to social security, social assistance and social protection under Article 11(1)(d). Social assistance and social protection entitlements, however, may be limited to core benefits. By contrast, under Article 12(1)(e) of the Single Permit Directive and Article 16(1)(e) of the Blue Card Directive, workers from third countries holding a single permit or an EU blue card must enjoy equal treatment with nationals as regards social security. EU law does not grant them a right to social assistance.

The Family Reunification Directive does not provide family members of third-country-national sponsors with access to social assistance. The sponsors have to show that they have stable and regular resources that are sufficient to maintain themselves and the family members without recourse to the Member State's social assistance system (Article 7(1)(c) of the directive).

Asylum applicants have no specific right to access social assistance. Article 19 of the Reception Conditions Directive, however, lays down minimal standards for material reception conditions and Article 19(6) indicates how the amount of financial allowance or vouchers is to be determined. The CJEU established that Member States cannot invoke sudden rises in asylum applications or accommodation shortages to evade their obligations to provide minimum reception conditions([659]).

Regarding beneficiaries of temporary protection, where they lack sufficient resources, Member States must provide social welfare assistance and means of subsistence. Aid levels may take account of beneficiaries' earnings if they work (Article 13(2) and (3) of the Temporary Protection Directive).

Under Article 31 of the Qualification Regulation, refugees and beneficiaries of subsidiary protection must receive the necessary social assistance granted to nationals of the host Member State. For subsidiary protection holders this may, however, be limited to 'core benefits', which are defined as including minimum income support, assistance in the event of illness or pregnancy, parental assistance and childcare, and housing benefits. Article 25(2) extends benefits to the family members of beneficiaries of subsidiary protection.

([659]) CJEU, C-97/24, *S.A. and R.J. v Minister for Children, Equality, Disability, Integration and Youth and Others*, 1 August 2025.

Example: in *Ayubi* ([660]), the CJEU found that national legislation is contrary to EU law if it provides fewer social security benefits to refugees with a temporary right of residence in a Member State than to nationals of that Member State and to refugees who have a permanent right of residence there.

Example: in *Alo and Osso* ([661]), the CJEU ruled that a residence condition imposed on a beneficiary of subsidiary protection amounts to a restriction of their access to social welfare protected under Article 29 of the Qualification Directive (now Article 31 of the Qualification Regulation) when such a measure is not imposed on refugees, third country-nationals legally residing in that Member State or own nationals. The CJEU, however, accepted that residence restrictions imposed with the objective of facilitating the integration of beneficiaries of subsidiary protection might be permitted under Article 33 of the Qualification Directive on freedom of movement (now Article 26 of the Qualification Regulation). It is for the national court to decide whether or not subsidiary protection status holders and other legally residing third-country nationals, not subject to such a residence condition, are in an objectively comparable situation.

Beneficiaries of temporary protection are entitled to necessary social welfare and subsistence assistance, as well as medical care including at least emergency care and essential treatment of illnesses (Temporary Protection Directive, Article 13(1) to (4)).

According to Article 11(7) of the Anti-trafficking Directive, Member States are required to attend to victims of trafficking with special needs. Following amendments introduced with Directive (EU) 2024/1712, Article 11(5) clarifies that assistance and support must ensure a subsistence-level standard of living and include material assistance and necessary medical treatment, including psychological assistance. For child victims, specific assistance and support obligations are laid down in Article 14(1). These complement the child-specific provisions in Article 13.

([660]) CJEU, C-713/17, *Ahmad Shah Ayubi v. Bezirkshauptmannshaft Linz-Land*, 21 November 2018.

([661]) CJEU, Joined Cases C-443/14 and C-444/14, *Kreis Warendorf v. Ibrahim Alo & Amira Osso v. Region Hannover* [GC], 1 March 2016.

Key points

General points under EU law and the European Social Charter

- A right to enter or remain is normally necessary in order to access economic and social rights (see the introduction to this chapter).
- Core components of social rights are to be provided to any individual present in the territory (see references to migrants in an irregular situation in Sections 8.2–8.6).
- States may require that certain immigrants have no access to employment or recourse to public funds, subject to limits deriving from anti-discrimination law (see the introduction to this chapter).
- Many rights under the Charter are restricted solely to own citizens and those lawfully resident in a Member State (see Section 8.1).
- The ESC enshrines a body of economic and social rights; the enjoyment of these rights is, in principle, restricted to nationals of a State Party to the ESC when in the territory of another State Party to the ESC. The ECSR has, however, made some exceptions concerning housing for children (see Section 8.4) and healthcare (see Section 8.5).
- Very weighty reasons would have to be put forward before the ECtHR could regard a difference of treatment based exclusively on the ground of nationality as compatible with the ECHR (see Section 8.6).

Economic rights under EU law

- Access to the labour market can be restricted; the degree to which third-country nationals have access to the labour market differs depending on which category they belong to (see Section 8.1).
- From the moment a person is working, whether lawfully or not, core labour rights have to be respected (see Section 8.2).
- Qualifying family members of EEA nationals have the same right to access the labour market as citizens of an EU Member State (see Section 8.2.1).
- Turkish nationals benefit from the standstill clause of Article 41 of the Additional Protocol to the Ankara Agreement, which prevents states from imposing new burdens on them (see Section 8.2.3).

- British nationals who were lawfully residing in an EU Member State on 31 December 2020 fall within the scope of the EU–UK Withdrawal Agreement, which guarantees equal treatment with EU nationals in a number of fields and entitles them to access employment and self-employment (see Section 8.2.4).
- Asylum seekers whose claims have not yet been decided at first instance must be granted access to the labour market no later than six months after the registration of their application for international protection (see Section 8.2.9).
- The Employers Sanctions Directive penalises those who employ migrants in an irregular situation and also provides migrants in abusive situations with the right to claim withheld pay and some other protections (see Section 8.2.11).

Education (see Section 8.3)

- Pursuant to Article 2 of Protocol No 1 to the ECHR, no one should be denied the right to education. Member states, however, enjoy a wider margin of appreciation in imposing certain limitations in respect of higher levels of education.
- All third-country-national children staying in the EU, including migrants in an irregular situation whose removal has been postponed, are entitled under secondary EU law to access basic education.

Housing (see Section 8.4)

- The Charter recognises and respects the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources. Secondary EU law also includes specific provisions for third-country-national family members of EEA nationals, long-term residents, single permit holders, persons in need of international protection and victims of trafficking.
- EU Member States are required to provide asylum applicants with a standard of living adequate for the health of applicants and capable of ensuring their subsistence.
- A failure by the authorities to respect someone's home may raise an issue under Article 8 of the ECHR. In extreme situations, a failure to provide shelter may raise an issue under Article 3 of the ECHR.
- The ESC grants a right to housing, which acts as a gateway to a series of additional rights.

Healthcare (see Section 8.5)

- Persons affiliated with a national health scheme in their EEA state of residence can benefit from local healthcare provisions when they visit other EEA member states and Switzerland.

- Under EU law, refugees and other beneficiaries of international protection are entitled to equal access to healthcare with nationals, whereas asylum seekers and migrants in an irregular situation whose removal has been postponed are entitled to emergency healthcare and essential treatment of illness.
- The ECHR contains no specific provision concerning healthcare, but the ECtHR may examine complaints of this sort under Articles 2, 3 and/or 8 of the ECHR.
- The ESC guarantees medical assistance to migrants in an irregular situation.

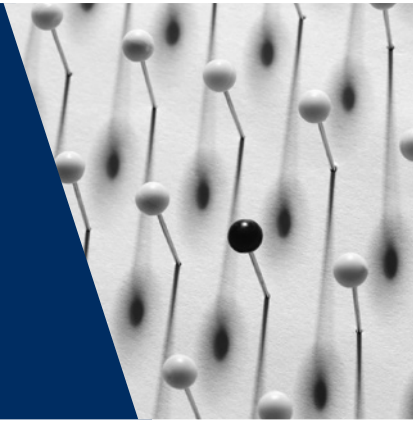
Social security and social assistance (see Section 8.6)

- Under EU law, for those third-country nationals moving between Member States under the free movement provisions, a complex body of law has been built up over the years regarding entitlement to social security and social assistance.
- Under the ECHR, the refusal of social assistance or other benefits to a foreigner may raise an issue of discrimination regardless of whether or not they have contributed to the scheme from which the allowance will be paid out.
- The ESC requires that social assistance be guaranteed to persons in need, including those in an irregular situation.

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

9 Persons with specific needs



EU	Issues covered	CoE
Charter of Fundamental Rights of the European Union, Article 24 (the rights of the child) Treaty on European Union, Article 3(3) (the rights of the child)	**Unaccompanied children**	European Social Charter, Article 17 (right of children to social, legal and economic protection) ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, 2009 (reception conditions for undocumented children) ECtHR, *Rahimi v. Greece*, No 8687/08, 2011 (unaccompanied child asylum seeker detained in adult detention centre)
Asylum and Migration Management Regulation (Regulation (EU) 2024/1351), Articles 25, 34 and 36 Reception Conditions Directive (Directive (EU) 2024/1346), Articles 26 to 27 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 23 Qualification Regulation (Regulation (EU) 2024/1347), Article 33 Return Directive (Directive 2008/115/EC), Article 10	**Reception and treatment**	ECHR, Article 3 (prohibition of torture and other forms of ill treatment) ECtHR, *Rahimi v. Greece*, No 8687/08, 2011 (unaccompanied child asylum seeker detained in adult detention centre)

EU	Issues covered	CoE
Screening Regulation (Regulation (EU) 2024/1356), Article 13 CJEU, C-648/11, *MA, BT and DA*, 2013 (intra-EU transfers of asylum applicants) CJEU, C-441/19, *TQ v. Staatssecretaris van Justitie en Veiligheid*, 2021 (conditions to be satisfied before the adoption of a return decision with respect to a child)		
Asylum Procedure Regulation (Regulation (EU) 2024/1348), Articles 23 and 25	**Age assessment**	ECHR, Article 8 (right to respect for private and family life) ECtHR, *Darboe and Camara v. Italy*, No 5797/17, 2022 (minimum guarantees and presumption of minority) ECtHR, *F. B. v. Belgium*, No 47836/21, 2025 (last-resort nature of medical tests to determine the age of an applicant) Convention on Action against Trafficking in Human Beings, 2005, Article 10(3) ECSR, *Eurocef v. France*, Complaint No 114/2015, 2018
Reception Conditions Directive (Regulation (EU) 2024/1346), Article 27 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 23 Screening Regulation (Regulation (EU) 2024/1356), Article 13 Asylum and Migration Management Regulation (Regulation (EU) 2024/1351), Article 14 Qualification Regulation (Regulation (EU) 2024/1347), Article 33	**Guardianship and legal representation**	ECHR, Article 3 (prohibition of torture and other forms of ill treatment) ECHR, Article 5 (right to liberty and security) ECtHR, *Moustahi v. France*, No 934/14, 2020 (unaccompanied child arbitrarily placed under the guardianship of a third person) ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 2006 (detention and removal of an unaccompanied child)

EU	Issues covered	CoE
Anti-trafficking Directive (Directive 2011/36/EU) Residence Permits for Victims of Trafficking Directive (Directive 2004/81/EC) Victims' Rights Directive (Directive 2012/29/EU)	**Victims of trafficking**	ECHR, Article 4 (prohibition of slavery and forced labour) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 2010 (authorities obliged to carry out investigation of their own motion) Convention on Action against Trafficking in Human Beings, 2005
UN Convention on the Rights of Persons with Disabilities and Optional Protocol (ratified by the EU) Reception Conditions Directive (Directive (EU) 2024/1346), Articles 13, 22 and 24 to 25 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 19	**Persons with disabilities**	ECHR, Article 14 (prohibition of discrimination) European Social Charter, Article 15 (rights of persons with disabilities to independence, social integration and participation in the life of the community)
Reception Conditions Directive (Directive (EU) 2024/1346), Article 28 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Articles 13 and 21	**Victims of torture**	ECHR, Article 3 (prohibition of torture and other forms of ill treatment) ECtHR, *R. R. and Others v. Hungary*, No 36037/17, 2021 (psychological assistance for traumatised asylum seekers in transit zones)
Free Movement Directive (Directive 2004/38/EC), Article 13(2)(c) Family Reunification Directive (Directive 2003/86/EC), Article 15(3) Gender-based Violence Directive (Directive (EU) 2024/1385) CJEU, C-621/21, *Intervyuirasht organ na DAB pri MS*, 2024 (gender-based violence as persecution) CJEU, Joined Cases C-608/22 and C-609/22, *AH and FN,* 2024 (systemic discrimination against Afghan women)	**Victims of gender-based violence**	Istanbul Convention, 2011

Introduction

This chapter focuses on certain groups of individuals who may be considered particularly vulnerable and therefore require specific attention. In addition to what has been generally explained in previous chapters, both EU and ECHR law may afford extra protection to persons with specific needs.

In EU law, the specific situation of vulnerable persons needs to be taken into account, for example in reception arrangements or when depriving persons of their liberty. Vulnerable persons are listed in Article 24 of the Reception Conditions Directive (Directive (EU) 2024/1346) and Article 3(9) of the Return Directive (Directive 2008/115/EC). Both provisions include minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence ([662]). The non-exhaustive list in the Reception Conditions Directive also explicitly mentions LGBTI (lesbian, gay, bisexual, trans and intersex) persons, victims of trafficking, persons with serious illnesses and persons with mental disorders.

Regarding stateless persons, the Reception Conditions Directive (Articles 2(1) and 3(1)), the Asylum Procedure Regulation (Regulation (EU) 2024/1348, Article 3), the Asylum and Migration Management Regulation (Regulation (EU) 2024/1351, Article 2(4)), the Screening Regulation (Regulation (EU) 2024/1356, Article 2(5)) and the Qualification Regulation (Regulation (EU) 2024/1347, Article 2) define 'applicant', 'refugee' or 'beneficiary of international protection' in a way that includes stateless persons – a category that is also defined in EU law in line with the 1954 Convention relating to the Status of Stateless Persons (Article 1(1)). Consequently, every reception, procedural and substantive safeguard discussed in this chapter applies equally to people without a nationality.

Pursuant to Article 25 of the Reception Conditions Directive, Member States must individually assess whether asylum applicants have special reception needs within 30 days of the application and monitor their needs throughout the procedure. Under

([662]) See also Art. 5(3)(a) of the Union Resettlement and Humanitarian Admission Framework Regulation (Regulation (EU) 2024/1350), which lists as vulnerable persons women and girls at risk; minors, including unaccompanied minors; survivors of violence or torture, including on the basis of gender or sexual orientation; persons with legal and/or physical protection needs, including as regards protection from *refoulement*; persons with medical needs, including where life-saving treatment is unavailable in the country to which they have been forcibly displace; persons with disabilities; and persons who lack an alternative durable solution, in particular those in a protracted refugee situation.

the Asylum Procedure Regulation, the competent authority must identify asylum applicants who need special procedural guarantees (Article 20) and ensure appropriate support; if such support cannot be provided, accelerated or border procedures may not be applied (Article 21).

Under ECHR law, one's vulnerability has been considered as a factor in examining complaints in the context of migration. States' failure to protect an applicant in a situation of particular vulnerability may amount to a breach of Article 3 of the ECHR. Considering that migrant children are, as such, in a situation of extreme vulnerability, the ECtHR has established standards in relation to age assessment procedures and the accompaniment of children. For further information on the assessment of risk under the ECHR, see Section 4.1.3.

9.1. Unaccompanied children

The term 'unaccompanied minors' is used to describe individuals under the age of 18 who enter the European territory without an adult responsible for them in the receiving state (see Qualification Regulation (Article 2(1l)) ([663]). There are key provisions of EU legislation on asylum and immigration that address their situation, which are reviewed in this section.

The ECHR does not expressly contain provisions in relation to unaccompanied children, but their treatment may be considered under various provisions, such as Article 3 on the prohibition of torture, Article 5 on the right to liberty and security or Article 2 of Protocol No 1 on the right to education. Article 8 obliges states to respect family life, which includes facilitating the reunification of children with their parents where this is necessary to safeguard the child's best interests ([664]). The ECtHR has held that states have a responsibility to look after unaccompanied children and not to abandon them when releasing them from detention ([665]).

Any decision concerning a child must be based on respect for the rights of the child as set out in the UN Convention on the Rights of the Child, which has been ratified by all states except the United States of America. This convention lays out children's

([663]) See also the Asylum Procedure Regulation (Regulation (EU) 2024/1348), Art. 3(7).

([664]) ECtHR, *Sen v. the Netherlands*, No 31465/96, 21 December 2001.

([665]) ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011; ECtHR, *SH. D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, No 14165/16, 13 June 2019.

human rights that are to be applied regardless of immigration status ([666]). The principle of 'the best interests of the child' is of fundamental importance, and public authorities must make this a primary consideration when taking actions related to children. Unlike the Charter of Fundamental Rights of the European Union (the Charter, Article 24(2)), this principle is not explicitly stated in the ECHR, but it is regularly expressed in the ECtHR's case-law. The principle also underpins specific provisions of EU legislation in relation to unaccompanied children.

The European Social Charter (ESC) refers to 'separated children' in Article 17(1)(c). The ECSR – like the ECtHR – has highlighted that states interested in stopping attempts to circumvent immigration rules must not deprive foreign children, especially if unaccompanied, of the protection their status warrants. The protection of fundamental rights and the constraints imposed by a state's immigration policy must therefore be reconciled ([667]).

Example: in *DCI v. the Netherlands* ([668]), the ECSR found that excluding undocumented children and their families from emergency accommodation and social assistance violated Articles 17 and 31 of the ESC. It held that unaccompanied children enjoy a right to shelter under Article 31(2) of the ESC. The committee underlined that a child's right to shelter, food and basic care may never depend on their immigration status.

9.1.1. Reception and treatment

Under EU law, specific provisions for unaccompanied children are contained in the asylum instruments and the Return Directive.

Before considering the treatment of unaccompanied children during the application process, it is important to be aware of which state is responsible for processing their asylum application. According to the Asylum and Migration Management

([666]) The UN Committee on the Rights of the Child has provided additional guidance on the protection, care and proper treatment of unaccompanied children in its General Comment No 6 (2005) and on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return in its General Comment No 4 (2017).

([667]) ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (Eurocef) v. France*, Complaint No 114/2015, merits, 24 January 2018. See also ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No 173/2018, merits, 26 January 2021.

([668]) ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No 47/2008, merits, 20 October 2009.

Regulation, applications by unaccompanied children are to be examined by the Member State in which family members, siblings or relatives are legally present (Article 25), provided this is in the best interests of the child. Article 26 of the Reception Conditions Directive gives guidance on how to assess the child's best interests.

In the absence of a family member, a sibling or a relative, the Member State responsible is the state where the child has first lodged their asylum application. This rule applies provided it is in the best interests of the child (Article 25(5)) ([669]).

> Example: in *MA, BT and DA* ([670]), the CJEU had to determine which state was responsible in the case of an unaccompanied child who had submitted asylum applications in different Member States. The CJEU clarified that, in the absence of a family member legally present in a Member State, the state in which the child is physically present is responsible for examining such claim. In doing so, it relied on Article 24(2) of the Charter, whereby, in all actions relating to children, the child's best interests are to be a primary consideration.

Any interview with an unaccompanied child must be conducted by someone with knowledge of the special needs of this group (Asylum Procedure Regulation, Article 23). Asylum applications by unaccompanied children may only be processed through accelerated procedures in five cases and provided their best interests and procedural needs can be fully met (Articles 21 and 42(3) of the Asylum Procedure Regulation). They are excluded from the border procedure, except for national security and public order cases (Article 53(1) read together with Article 42(3)), in which case they are automatically allowed to stay if they appeal against the rejection of their application (Article 68(3)(a)).

Detention of unaccompanied children is lawful solely in exceptional circumstances and strictly as a measure of last resort; it must be for the shortest possible period, and it can never take place in prison-type premises. When asylum detention is ordered, children must be held in facilities adapted to their age and separated from unrelated adults, and the authorities must explore non-custodial alternatives first (Article 13(2) to (3) of the Reception Conditions Directive). For further information on the detention of children, see Section 7.7.

([669]) See CJEU, C-19/21, *I and S v. Staatssecretaris van Justitie en Veiligheid*, 1 August 2022.

([670]) CJEU, C-648/11, *The Queen, on the application of MA and Others v. Secretary of State for the Home Department*, 6 June 2013.

Under Article 10 of the Return Directive, when removing an unaccompanied child from a Member State's territory, the authorities of that Member State must be satisfied that they will be returned to a member of their family, a nominated guardian or adequate reception facilities in the state of return. There is no absolute ban on returning unaccompanied children ([671]), but the decision to return must give due consideration to the best interests of the child. If return is postponed or a period for voluntary departure granted, children's special needs must be taken into account (Article 14) ([672]).

Example: in *TQ v. Staatssecretaris van Justitie en Veiligheid* ([673]), the applicant was an unaccompanied Guinean child who entered the Netherlands at the age of 15. The CJEU emphasised that, under the Return Directive, Member States must undertake an assessment of the best interests of the child. They must verify the availability of adequate reception facilities before issuing a return decision for an unaccompanied child.

Under the ECHR, the ECtHR has held that in cases concerning migrant children, whether accompanied or unaccompanied, the child's situation of extreme vulnerability is the decisive factor. This factor takes precedence over considerations relating to their status as an irregular migrant. The particularly serious conditions in which the child may find themselves and any failure of the national authorities to comply with an order to protect the applicant, who is particularly vulnerable because of their age, may constitute degrading treatment and breach Article 3 of the convention ([674]).

Example: in *Rahimi v. Greece* ([675]), the applicant was an unaccompanied Afghan child who had been detained in an adult detention centre and later released without the authorities offering him any assistance with accommodation. The

([671]) However, national law may ban it; see for example France, Article L.631-4 Ceseda, which prohibits expulsion orders against children, and Italy, Art. 19(2)(a) of Legislative Decree 286/1998, which bars the removal of unaccompanied children.

([672]) For more information, see FRA, *Returning Unaccompanied Children: Fundamental rights considerations*, Publications Office of the European Union, Luxembourg, 2019.

([673]) CJEU, C-441/19, *TQ v. Staatssecretaris van Justitie en Veiligheid*, 14 January 2021. See also CJEU, C-646/21, *K and L v. Staatssecretaris van Justitie en Veiligheid*, 11 June 2024.

([674]) ECtHR, *Khan v. France*, No 12267/16, 28 February 2019; ECtHR, *SH. D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, No 14165/16, 13 June 2019; ECtHR, *T. S. and M. S. v. Greece*, No 15008/19, 3 October 2024.

([675]) ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011. See also ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos 25794/13 and 28151/13, 22 November 2016; ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 65–67.

ECtHR concluded that the applicant's conditions of detention and the authorities' failure to take care of him following his release had amounted to degrading treatment proscribed by Article 3. The Court held that respecting the best interests of the child requires that placement options other than detention be explored for unaccompanied children.

9.1.2. Age assessment

Under EU law, Article 25 of the Asylum Procedure Regulation regulates how to assess a person's age when there are reasonable doubts as to whether they are under 18 years of age. Member States must follow a two-step procedure. First, a multidisciplinary assessment must be carried out, including, for example, an interview or psychosocial examination performed by qualified professionals, such as social workers, psychologists or paediatricians. Medical tests are only allowed if the multidisciplinary assessment remains inconclusive. Medical examination must be the least invasive possible, carried out by specialists using the least invasive methods. Applicants, or their parents or guardians, must be adequately informed about the age assessment, and their prior consent is required before any medical test is performed.

The test results will often have a significant impact on the individual's asylum application and access to social welfare. If the age assessment is inconclusive as to whether the person has attained 18 years of age, they must be treated as a child (Article 25(2) of the Asylum Procedure Regulation).

Under the ECHR, the ECtHR, with respect to the detention of children subject to an age assessment procedure, held that an unreasonably long age assessment procedure with respect to persons close to adulthood could not be justified and raised serious doubts about the authorities' good faith, in particular when the member state declared a low number of alleged children in migration per year ([676]).

([676]) ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos 25794/13 and 28151/13, 22 November 2016. See also CoE, *Age Assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*, Strasbourg, 2017, and EUAA, *Practical Guide on Age Assessment*, Publications Office of the European Union, Luxembourg, 2025.

The Court has examined age assessment through the lens of Article 8 of the ECHR. Any medical or other intrusive examination designed to establish age constitutes an interference with private life and must be carried out based on clear legal rules. It must pursue a legitimate aim, respect informed consent and be strictly proportionate.

Example: in *Darboe and Camara v. Italy* ([677]), a Gambian asylum seeker who initially claimed to be 17 years of age was moved three months after arrival to an adult reception centre. His age was redetermined on the basis of a single wrist X-ray carried out without consent. No margin of error was indicated in the medical report, and no guardian or effective remedy was provided. The ECtHR established that the presumption of minority triggers procedural guarantees that must be respected during the age assessment procedure. In addition, the presumption of minority should apply during the age assessment procedure, and a person should be treated as a child as long as the contrary has not been established.

Example: in *F. B. v. Belgium* ([678]), the Court found a violation of Article 8 of the ECHR due to the applicant's lack of informed consent to the triple bone test performed to determine her age. In addition to the applicant's lack of information, the Court noted that national authorities did not comply with the requirement for such a medical test to be undertaken only as a last resort. Indeed, the applicant was interviewed by a trained guardianship officer only after the tests had been carried out, whereas an earlier interview might have enabled national authorities to clarify the applicant's age.

Other CoE instruments address the issue of age assessment in similar terms to those of the ECtHR. Article 10(3) of the Convention on Action against Trafficking in Human Beings (Anti-trafficking Convention) ([679]) also envisages an age assessment when the age of the victim is uncertain. As stressed by the CoE Group of Experts on Action against Trafficking in Human Beings (GRETA), which monitors the implementation of the Anti-trafficking Convention, age assessment must be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual. Such assessments should be conducted in a safe,

([677]) ECtHR, *Darboe and Camara v. Italy*, No 5797/17, 21 July 2022.

([678]) ECtHR, *F. B. v. Belgium*, No 47836/21, 6 March 2025.

([679]) CoE, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No 197, Warsaw, 2005.

child- and gender-sensitive manner, with due respect for human dignity. The benefit of the doubt should be applied in such a manner that, in the event of uncertainty, the individual will be considered a child ([680]).

The ESC, under Article 17, establishes the right of children and young persons to social, legal and economic protection.

> Example: in *Eurocef v. France* ([681]), the ECSR analysed the use of bone testing to determinate the age of unaccompanied children in France and found a violation of Article 17(1) of the ESC. In particular, the ECSR considered the use of bone testing inappropriate and unreliable given the overreliance on bone tests by the French authorities, as documented in national and international sources.

9.1.3. Guardianship

Under EU law, Article 27(1) of the Reception Conditions Directive obliges Member States to appoint a guardian or legal representative as soon as possible and no later than 15 working days from the date of the asylum application. Pending that appointment, a suitable adult must act provisionally to ensure that every decision respects the child's best interests and that the child's immediate needs, including safe accommodation and healthcare, are met. Article 27 of the directive states that a guardian requires specialised training and regular supervision and caps a guardian's caseload at 30 children (which can go up to 50 children in a formally declared crisis ([682])). It also requires that the child can access a mechanism through which to raise complaints against their appointed representative or designated persons.

Parallel provisions in Article 23 of the Asylum Procedure Regulation guarantee the representation of unaccompanied children throughout the asylum procedure. The representative must prepare the child for interview, support the child during all relevant procedural steps and keep the child informed of the progress of the case. Article 13(3) of the Screening Regulation requires that a representative, or at least a specially trained adult, accompany and assist the child throughout the screening.

([680]) GRETA, *5th General Report on GRETA's Activities: Covering the period from 1 October 2014 to 31 December 2015*, CoE, Strasbourg, 2016; UNHCR, *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum*, 1997.

([681]) ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (Eurocef) v. France*, Complaint No 114/2015, merits, 24 January 2018.

([682]) Art. 1(4) of the Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359) defines the notion of 'situation of crisis'.

Article 23 of the Asylum and Migration Management Regulation requires that a representative assists the child throughout the process of determining the Member State responsible to examine an asylum application.

The Qualification Regulation requires Member States to appoint a guardian as soon as possible after an unaccompanied child has been granted international protection (Article 33). To guarantee effective support, each guardian may be responsible for only a proportionate, limited number of children and Member States must have independent bodies to supervise guardians and to deal swiftly with any complaints the children may raise.

The Screening Regulation also aims to ensure that the best interests of the child are a primary consideration during the screening process. For that purpose, the regulation provides that child protection authorities should, where necessary, be closely involved in the screening (recital 25). In addition, children must be accompanied by an adult family member, if present, during the screening (Article 13). In the case of unaccompanied children, Member States must provide for the appointment of a representative in charge of representing and assisting the unaccompanied child during the screening (Article 13). The information contained in the screening form has to be made available in a child-friendly and age-appropriate manner (Article 11).

Organisations or individuals whose interests conflict, or could conflict, with those of the child are ineligible to represent the child (Article 26 of the Reception Conditions Directive; Article 23 of the Asylum Procedure Regulation; Article 33 of the Qualification Regulation).

ECHR law does not directly regulate the appointment of guardians or representatives for migrant children. In 2019, the CoE Committee of Ministers called on states to establish a comprehensive and consistent framework of measures in relation to guardianship for unaccompanied and separated children in migration ([683]). The recommendation provides guidance to member states to ensure that comprehensive and child-friendly measures are adopted to uphold and protect the rights of unaccompanied and separated children in migration. This instrument specifies that member states should have in place an effective system of guardianship for unaccompanied and separated children in migration and must ensure the designation or appointment of a guardian without undue delay. Guardians must inform, assist,

([683]) CoE Committee of Ministers, Effective guardianship for unaccompanied and separated children in the context of migration – Recommendation CM/Rec(2019)11 of the Committee of Ministers and explanatory memorandum, adopted on 11 December 2019, Strasbourg, 2022.

support and represent unaccompanied and separated children in migration, safeguard their rights and best interests, and act as a link between the child and national authorities.

The ECtHR considers that a state's decision to place young migrant children under the guardianship of an adult is of particular importance. For that reason, national authorities are required to establish, as far as possible, the nature of the ties between the child and the adult to whom they intend to assign them. Where no documents are available to establish with certainty the existence of ties between the adult and the child, national authorities are required to exercise particular vigilance in order to minimise the risk of entrusting a child to a person who has no authority over them ([684]).

> Example: in *Moustahi v. France* ([685]), the ECtHR considered that the applicant children had been arbitrarily placed under the guardianship of an unrelated adult. In this case, national authorities did not verify the accuracy of the claim that there were ties between the children and the third party before placing the children under his guardianship although the individuals had different surnames and another person claimed to be a member of the family of the applicants. The Court held that this placement was made not with the aim of ensuring the respect of the best interests of the children but rather to facilitate their speedy removal. For that reason, the Court concluded that the applicants were considered unaccompanied children.

The ECtHR assessed the lack of appointment of guardians for migrant children in light of Articles 3 and 5 of the ECHR. In cases of alleged violation of Article 3 involving the detention or removal of unaccompanied children, the Court took into account the child's age and dependence on their parents. It also considered whether the child was detained together with adults ([686]). Regarding removal of unaccompanied children, the Court also considered whether appropriate supervisory measures and safeguards were provided. Failure to provide adequate support to unaccompanied children, including failure to appoint a guardian, has been considered a violation of Article 3 of the ECHR.

([684]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, para. 61.

([685]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020.

([686]) ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006, paras 50–63; ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011, para. 86; ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 65–67.

Example: in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* ([687]), the Court concluded that Belgium had breached its obligations under Article 3 of the ECHR due to the detention and withdrawal of a five-year-old Congolese national. The applicant, who had been separated from her parents and whom no one had been assigned to look after, was detained together with adults. In addition, she was sent back to the Democratic Republic of Congo alone, and the authorities had merely informed one of the applicant's relatives of her arrival without expressly requesting his presence or ensuring that he would be there at the applicant's arrival.

Example: in *Rahimi v. Greece* ([688]), the Court held that Greece had violated its obligations under Article 3 of the ECHR due to the conditions of detention of an unaccompanied child and the national authorities' failure to take appropriate measures to take care of the unaccompanied child following his release (including assigning a guardian).

The state's failure to appoint a guardian for unaccompanied children may also amount to a violation of Article 5(4) of the ECHR. In such cases, migrant children may be left without appropriate assistance. This situation impedes the unaccompanied child's exercise of their right to have the lawfulness of their detention assessed by a court under Article 5(4) of the ECHR ([689]). The Court came to the same conclusion when a child had been arbitrarily associated with an unrelated adult ([690]) or when the authority designated as legal guardian did not put the unaccompanied children in contact with a lawyer and did not lodge an appeal on their behalf with a view to discontinuing their detention and accelerating their transfer to appropriate facilities ([691]).

([687]) ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006.

([688]) ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011.

([689]) ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011, para. 120.

([690]) ECtHR, *Moustahi v. France*, No 9347/14, 25 June 2020, paras 103–104.

([691]) ECtHR, *H. A. and Others v. Greece*, No 19951/16, 28 February 2019, paras 211–213.

9.2. Victims of trafficking in human beings

A distinction should be made between smuggling and trafficking. Smuggling of migrants is an activity undertaken for financial or other material benefit by procuring the irregular entry of a person into a state where that person is not a national or a permanent resident ([692]).

Under both EU and **CoE instruments**, trafficking of persons is 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' ([693]). Exploitation may be for various purposes, including, for example, prostitution or forced labour. There is an element of compulsion and intimidation involved in trafficking that is not involved in smuggling.

Under the ECHR, the ECtHR has held that trafficking in human beings falls within the scope of Article 4 of the ECHR, which prohibits slavery and forced labour ([694]). A conduct or a situation may give rise to an issue of human trafficking under Article 4 of the ECHR if the three constituent elements of the definition of human trafficking under the Anti-trafficking Convention ([695]) and the Palermo Protocol ([696]) are identified. These consist of an action (recruitment, transportation, transfer, harbouring or receipt of persons); the means (threat of use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person); and an exploitative purpose ([697]). When a conduct

([692]) UN, UN Protocol against the Smuggling of Migrants by Land, Air and Sea supplementing the UN Convention against Transnational Crime, 2000, Art. 3. This UN protocol has been ratified by the EU; see Council Decision 2006/616/EC of 24 July 2006 and Council Decision 2006/617/EC of 24 July 2006.

([693]) CoE, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No 197, Warsaw, 2005, Art. 4; Anti-trafficking Directive, Art. 2(1).

([694]) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010, paras 282–286.

([695]) CoE, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No 197, Warsaw, 2005.

([696]) UN, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

([697]) ECtHR, *S. M. v. Croatia*, No 60561/14, 25 June 2020, paras 113–114.

or a situation amounts to trafficking, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes slavery, servitude or forced or compulsory labour ([698]).

Member states are under a positive obligation to put effective provisions in place to protect victims and potential victims of trafficking, in addition to criminal provisions for punishing traffickers ([699]). For more information see Section 3.3.

> Example: in *Rantsev v. Cyprus and Russia* ([700]), the ECtHR held that it was important that a victim of trafficking should not need to request that they be identified as a victim of trafficking or that their trafficking be investigated. The authorities are obliged to take the initiative themselves when such criminal activity is suspected.

The Anti-trafficking Convention is the first European treaty to provide detailed provisions on the assistance, protection and support to be provided to victims of trafficking in addition to the member states' obligations to carry out effective criminal investigations and take steps to combat trafficking. The convention requires States Parties to adopt legislative or other measures necessary to identify victims of trafficking and to provide competent authorities with trained personnel qualified in preventing and combating trafficking, and in identifying and helping victims of trafficking (Article 10). Parties must adopt measures as necessary to assist victims in their recovery (Article 12).

Under EU law, the Anti-trafficking Directive (Directive 2011/36/EU) as amended by Directive (EU) 2024/1712 defines trafficking in human beings in the same terms as the CoE Anti-trafficking Convention. Under the directive, Member States must ensure that victims of trafficking have access to legal counsel without delay. Such advice and representation have to be free of charge where the victim does not have sufficient financial resources (Article 12). The directive also introduces the concept of criminal and civil liability of legal persons as well as that of natural persons. Child victims of trafficking receive particular attention in the directive, especially with regard to assistance and support (Articles 13 to 16). Such assistance and support

([698]) ECtHR, *S. M. v. Croatia*, No 60561/14, 25 June 2020, para. 289.

([699]) ECtHR, *L. E. v. Greece*, No 71545/12, 21 January 2016; ECtHR, *Chowdury and Others v. Greece*, No 21884/15, 30 March 2017; ECtHR, *L. O. v. France* (dec.), No 4455/14, 26 May 2015; ECtHR, *V. F. v. France* (dec.), No 7196/10, 29 November 2011.

([700]) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010, para. 288.

measures include a guardian or representative being appointed to the child victim as soon as the authorities identify the child (Article 14); interviews with the child being conducted without delay and, where possible, by the same person (Article 15); and a durable solution based on the best interests of the child in cases of unaccompanied child victims of trafficking (Article 16).

The Anti-trafficking Directive protects victims of trafficking against prosecution for crimes they have been forced to commit, which may include passport offences, offences linked to prostitution or working irregularly under national law. The assistance and support provided to victims of trafficking is not conditional upon cooperation with the authorities in a criminal investigation (Article 11). Victims need to be treated in a particular way during the procedure (Articles 12 and 15).

If a victim of trafficking in human beings seeks asylum, additional instruments apply. The Reception Conditions Directive lists victims of trafficking among applicants whose special reception needs must be identified and met (Article 24). It requires that victims of trafficking be provided with necessary medical and psychological treatment and care, including rehabilitation services and counselling where necessary (Article 25). The Asylum Procedure Regulation requires authorities to detect applicants who need special procedural guarantees at an early stage (Article 20) and to provide the necessary support throughout the procedure; accelerated or border procedures cannot be used where such support cannot be ensured (Article 21).

Article 9 of the Victims' Rights Directive (Directive 2012/29/EU) requires Member States to provide support services to victims of crime, including victims of human trafficking. These include relevant information and advice as well as emotional and, where available, psychological support ([701]).

Both EU and CoE law are concerned with the vulnerability and legal status of trafficking victims once trafficking has been detected. The Residence Permits for Victims of Trafficking Directive (Directive 2004/81/EC) requires EU Member States to issue temporary residence permits to victims of trafficking who cooperate with the authorities. Under Article 14 of the Anti-trafficking Convention, trafficking victims may be issued with renewable residence permits if their personal situation so

([701]) See also FRA and CoE, *Handbook on European Law relating to access to justice*, Publications Office of the European Union, Luxembourg, 2016.

requires or if they need to stay in the country in order to cooperate with the authorities in the investigation of the trafficking offence. This issue has been dealt with in Section 3.3.

9.3. Persons with disabilities

When seeking asylum, persons with physical, mental, intellectual or sensory impairments may face specific barriers to accessing protection and assistance, and they may need extra assistance that may not always be provided by the competent authorities.

The UN Convention on the Rights of Persons with Disabilities (CRPD) ([702]) sets forth international standards concerning persons with disabilities. Article 5 of the CRPD sets out principles of equality and non-discrimination, and Article 18 states that 'States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others'.

Under the ECHR, there is no definition of disability, but the ECtHR has held that Article 14 protects against discrimination based on disability ([703]).

When interpreting Article 15 of the ESC (the right of persons with disabilities to independence, social integration and participation in the life of the community), the **ECSR** considers that persons with disabilities who are nationals of one of the States Parties and who reside or work lawfully in another one should be treated in the same way as nationals of that country, not only by law but also in practice ([704]).

Under EU law, the EU has ratified the CRPD ([705]) and is therefore bound by the convention, which is part of the EU legal order. Article 24 of the Reception Conditions Directive states that Member States must take into account the specific situation of vulnerable persons, including persons with disabilities, serious illnesses and persons with mental disorders, when implementing the provisions related to reception

([702]) UN, Treaty Series, Vol. 2515, 2006, pp. 3–192.

([703]) ECtHR, *Glor v. Switzerland*, No 13444/04, 30 April 2009; ECtHR, *Pretty v. the United Kingdom*, No 2346/02, 29 April 2002; ECtHR, *Koua Poirrez v. France*, No 40892/98, 30 September 2003.

([704]) ECSR, *Statement of Interpretation on Article 15*, 1998.

([705]) Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35, ELI: http://data.europa.eu/eli/dec/2010/48(1)/oj).

conditions. An applicant's specific reception needs must be assessed within 30 days of their asylum application and reviewed whenever circumstances change; appropriate support must be provided (Article 25), including mental healthcare, where needed (Article 22). The Return Directive also includes persons with disabilities when defining vulnerable persons (Article 3(9)), but there are no particular provisions in relation to them. There is no absolute bar to detaining disabled asylum applicants or persons in return procedures, but, if they are detained, particular attention must be paid to them (Article 16(3)). In cases of asylum seekers, the Reception Conditions Directive (Article 13) requires that their health, including their mental health, must be of primary concern to national authorities.

The Asylum Procedure Regulation introduces an obligation to identify applicants who need special procedural guarantees, including those whose disabilities limit their ability to take part in the procedure, and to provide any necessary support (Articles 20 and 21). Under Article 13 (11)(c), the personal interview may be omitted if applicants are unfit or unable to be interviewed owing to circumstances that are long-lasting and beyond their control. Mental impairments include post-traumatic stress disorder, a widespread phenomenon among people fleeing conflict, which the CJEU has treated as a 'disability' that triggers the duty of reasonable accommodation ([706]).

9.4. Victims of torture

Victims of torture are considered to belong to a particularly vulnerable group, who should be afforded enhanced protection in the immigration context.

Under EU law, Article 28 of the Reception Conditions Directive contains a duty for Member States to ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care. Staff working with them must receive appropriate training.

Difficulties in recounting traumatic events can hinder a fair asylum interview. Consequently, the Asylum Procedure Regulation provides that interviewers must be knowledgeable about factors that could affect an applicant's ability to testify, including indications of past torture (Article 13(8)). The regulation also requires Member

([706]) CJEU, Joined Cases C-335/11 and C-337/11, *HK Danmark (Ring and Skouboe Werge)*, 11 April 2013.

States to provide applicants who have experienced torture, rape and other serious forms of violence with adequate support during the asylum procedure (Article 21(1)). If that support cannot be ensured in an accelerated or border procedure, those procedures must not be applied (Article 21(2)). For persons in return procedures, if removal is postponed or a period of voluntary departure granted, the special needs of victims of torture and other serious forms of violence must be taken into account (Return Directive, Article 14(1)(d)).

The Victims' Rights Directive contains a broad definition of the term 'victim'. Under Article 2(1)(a), a victim is 'a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence'. The directive thus also covers victims of torture. Victims also include family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death. The status of victim is not conditional on the victim's residence status, citizenship or nationality (recital 10).

Under the ECHR, Article 3 requires member states to take into account, throughout the duration of immigration-related procedures, the particular vulnerability of asylum applicants who have been victims of torture and/or inhuman and degrading treatments in their country of origin. This implies, for example, providing them access to medical examinations and specialists, assessing the adequacy of detention conditions taking into account their vulnerability caused by previous stressful events and adapting procedures to their particular needs.

For further information on the assessment of the risk for applicants to be subject to inhuman and degrading treatment if removed from a member state, see Section 4.1.3.

> Example: in *R. R. and others v. Hungary* ([707]), the ECtHR noted the absence in a transit zone of professional psychological assistance for traumatised asylum seekers. In this case, one of the applicants had had mental health problems caused by trauma in Afghanistan but did not receive any psychological or psychiatric treatment in the transit zone.

([707]) ECtHR, *R. R. and Others v. Hungary*, No 36037/17, 2 March 2021.

The UN Committee against Torture published updated standards on support and protection for torture victims in the context of migration in 2018 ([708]). They established key elements to ensure that torture victims receive the necessary protection and support.

9.5. Victims of gender-based violence

A particular category of victims of serious crimes is individuals who have been subjected to domestic violence. This may also occur in the domestic work environment ([709]).

Under the ECHR, the ECtHR has held that victims of domestic violence fall within the group of 'vulnerable individuals', along with children, and are entitled to protection in the form of effective deterrence against such serious breaches of personal integrity ([710]). The Court recognised that violence against women, including domestic violence, is a form of discrimination against women ([711]). The Court has also examined a number of cases where allegations had been made of various forms of gender-related persecution as a shield against expulsion ([712]).

([708]) UN Committee against Torture, General Comment No 4 (2017) on the implementation of Article 3 of the convention in the context of Article 22, 2018.

([709]) FRA has documented the risks that migrants in an irregular situation typically encounter when they are employed in the domestic work sector; see FRA, *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, Publications Office of the European Union, Luxembourg, 2011, and FRA, *Out of Sight: Migrant women exploited in domestic work*, Publications Office of the European Union, Luxembourg, 2018.

([710]) ECtHR, *Opuz v. Turkey*, No 33401/02, 9 June 2009, para. 160.

([711]) ECtHR, *Volodina v. Russia*, No 41261/17, 9 July 2019, para. 110; ECtHR, *Halime Kiliç v. Turkey*, No 63034/11, 28 June 2016, para. 114; ECtHR, *Opuz v. Turkey*, No 33401/02, 9 June 2009, paras 184–191.

([712]) ECtHR, *M. M. R. v. the Netherlands* (dec.), No 64047/10, 24 May 2016; ECtHR, *R. D. v. France*, No 34648/14, 16 June 2016; ECtHR, *A. A. and Others v. Sweden*, No 14499/09, 28 June 2012; ECtHR, *Sow v. Belgium*, No 27081/13, 19 January 2016.

In 2011, the CoE adopted the Istanbul Convention ([713]). The EU acceded to the Istanbul Convention on 1 October 2023 through Council Decisions (EU) 2023/1075 ([714]) and (EU) 2023/1076 ([715]), making its provisions binding on the EU and on Member States when they act within the scope of EU law. The Istanbul Convention is the first legally binding international instrument in force in the world to create a comprehensive legal framework to prevent violence, protect victims and end the impunity of perpetrators. The Istanbul Convention introduces the possibility of granting migrant women an autonomous residence permit if their residence status depends on their abusive spouse or partner (Article 59), and requires states to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the 1951 Geneva Convention (Article 60). It also reiterates the obligation to respect the principle of *non-refoulement*, including for victims of violence against women (Article 61) ([716]).

Under EU law, victims of domestic violence who are third-country-national family members of EEA nationals are entitled under the Free Movement Directive (Directive 2004/38/EC) to an autonomous residence permit in the event of divorce or termination of the registered partnership (Article 13(2)(c)). For family members of third-country-national sponsors, according to Article 15(3) of the Family Reunification Directive (Directive 2003/86/EC), 'Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances' following divorce or separation.

([713]) CoE, Istanbul Convention, CETS No 210, Istanbul, 2011.

([714]) Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union (OJ L 143I, 2.6.2023, p. 1, ELI: http://data.europa.eu/eli/dec/2023/1075/oj).

([715]) Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and *non-refoulement* (OJ L 143I, 2.6.2023, p. 4, ELI: http://data.europa.eu/eli/dec/2023/1076/oj).

([716]) CoE, *Gender-Based Asylum Claims and* Non-refoulement*: Articles 60 and 61of the Istanbul Convention*, Strasbourg, 2019. See also the decisions of the ECtHR in *N. v. Sweden*, No 23505/09, 20 July 2010, and *A. A. and Others v. Sweden*, No 14499/09, 28 June 2012 (honour-related crimes and domestic violence); *Jabari v. Turkey*, No 40035/98, 11 July 2000 (cruel sentences for adultery); *R. B. A. B. v. the Netherlands*, No 7211/06, 7 June 2016, and *Sow v. Belgium*, No 27081/13, 19 January 2016 (female genital mutilation); *A. A. and Others v. Sweden*, No 14499/09, 28 June 2012 (forced marriage); *M. M. R. v. the Netherlands* (dec.), No 64047/10, 24 May 2016 (widespread sexual violence in the country); *L. O. v. France* (dec.), No 4455/14, 26 May 2015 (forced prostitution and trafficking in human beings).

The EU adopted the Gender-based Violence Directive (Directive (EU) 2024/1385). The directive obliges Member States to criminalise female genital mutilation (Article 3), forced marriage (Article 4) and the non-consensual sharing of intimate images (Article 5). It obliges Member States to make specialist support services (Article 25) and safe accommodation available to all victims (Article 30), ensure free legal aid (Article 14) where needed and provide for restraining orders (Article 19). Under Article 2 of the directive, the definition of 'victim' applies to any person and is not conditional upon nationality or residence status.

Drawing expressly on the Convention on the Elimination of All Forms of Discrimination against Women and the Istanbul Convention, recent CJEU case-law affirms that gender-based violence or systemic discrimination against women may, in itself, amount to persecution giving rise to refugee status ([717]).

Example: in *Intervyuirasht organ na DAB pri MS* ([718]), a Cameroonian woman sought asylum in Bulgaria, alleging repeated domestic violence and forced marriage. The national authority dismissed her claim as a private dispute. The CJEU ruled that serious acts of gender-based violence perpetrated by family members may constitute persecution within the meaning of Article 9(1)(a) of the Qualification Directive (now Article 6(1)(a) of the Qualification Regulation) where state protection is absent or ineffective. Decision-makers must therefore carry out an individual assessment that fully considers the applicant's gender, the social context and the real risk of renewed violence on return.

Example: in *AH and FN* ([719]), the Court dealt with two Afghan women who challenged Austria's refusal of asylum. The Grand Chamber held that the Taliban's cumulative, systematic restrictions on Afghan women's education, work, movement and public life constitute persecution within the meaning of Article 9(1)(b) of the Qualification Directive. Hence, Afghan women and girls are eligible for refugee status once gender and nationality are established, without any further individual risk enquiry.

([717]) CJEU, C-646/21, *K and L v. Staatssecretaris van Justitie en Veiligheid* [GC], 11 June 2024.

([718]) CJEU, C-621/21, *WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 16 January 2024.

([719]) CJEU, Joined Cases C-608/22 and C-609/22, *AH and FN v. Bundesamt für Fremdenwesen und Asyl*, 4 October 2024.

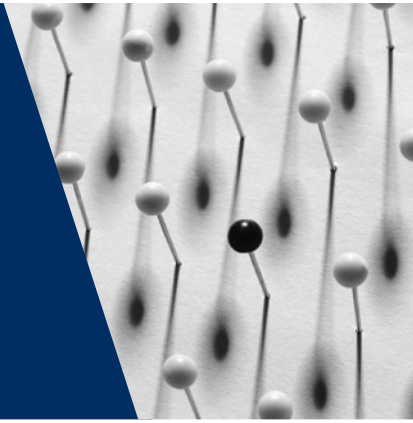
Key points

- The best interests of the child must be a primary consideration in all actions concerning children (see Section 9.1).
- Under EU law, the Asylum Procedure Regulation establishes safeguards for assessing the age of an asylum applicant whose age is disputed, allowing medical testing only after a multidisciplinary examination remains inconclusive (see Section 9.1.2).
- The ECtHR has examined age assessment procedures through the lens of Article 8 of the ECHR (see Section 9.1.2).
- Under EU law, as soon as identified, unaccompanied children have the right to be assisted by a guardian or, until appointed, another qualified person (see Section 9.1.3).
- The ECtHR examines the lack of designation of guardians for minor children in light of Articles 3 and 5 of the ECHR (see Section 9.1.3).
- Under both EU law and the ECHR, there is a positive obligation to put into place effective provisions for the protection of victims and potential victims of human trafficking in addition to criminal provisions punishing the trafficker (see Section 9.2).
- Both the ECHR and EU law protect against discrimination based on disability. Persons with disabilities, serious illnesses and/or mental disorders are considered vulnerable persons under EU migration and asylum law, and their specific needs, including those concerning their mental health, must be taken into account in asylum and return procedures (see Section 9.3).
- Under EU law, victims of torture, rape and other serious crimes are entitled to special procedural safeguards and, where necessary, to exemption from accelerated or border procedures (see Sections 9.4 and 9.5).
- Under the ECHR, member states are required to take into account the particular vulnerability of applicants to international protection who have been victims of torture (see Section 9.4).
- Under the ECHR, children and victims of domestic violence may be classed as vulnerable individuals and thereby be entitled to effective state protection (see Sections 9.1.1 and 9.5).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

10
Monitoring compliance with fundamental rights and investigations



EU	Issues covered	CoE
Return Directive (Directive 2008/115/EC), Article 8(6) European Border and Coast Guard Regulation (Regulation (EU) 2019/1896), Articles 10(1)(e), 32, 51, 109 and 110 European Union Agency for Asylum (EUAA) Regulation (Regulation (EU) 2021/2303), Chapter 5 (Monitoring) Schengen Evaluation and Monitoring Mechanism Regulation (Regulation (EU) 2022/922), Articles 2(10), 4(3)(c), 7(1), 16(1), 19(4) and 22(5) Screening Regulation (Regulation (EU) 2024/1356), Articles 1 and 10 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 43(4)	**Monitoring mechanisms**	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, ETS No 126 CoE Committee of Ministers, *Twenty Guidelines on Forced Return*, 2005, Nos 10(5) and 20 (monitoring pre-removal detention facilities and forced returns) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30th General Report of the CPT, 2021, paragraphs 20 and 21 (independent border monitoring) CoE, *Administrative Detention of Migrants and Asylum Seekers – Guide for practitioners*, 2023, Section 8.2 (independent monitoring)

EU	Issues covered	CoE
European Border and Coast Guard Regulation (Regulation (EU) 2019/1896), Article 111 EUAA Regulation (Regulation (EU) 2021/2303), Article 51 TFEU, Articles 20(2)(d), 24 and 228 (European Ombudsman)	**Complaints mechanisms**	ECtHR, *El-Masri* [GC], No 39630/09, 2012 (criminal complaint as effective remedy) CoE Committee of Ministers, Recommendation (98)13 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the ECHR, 1998 CPT, 27th General Report of the CPT, 2018, section on complaints mechanisms CoE, *Administrative Detention of Migrants and Asylum Seekers – Guide for practitioners*, 2023, Section 8.1 (complaints mechanisms)
TFEU, Article 19 (effective judicial protection in the fields coved by EU law) Screening Regulation (Regulation (EU) 2024/1356), Article 10 Asylum Procedure Regulation (Regulation (EU) 2024/1348), Article 43(4)	**Investigations into alleged rights violations**	ECtHR, *Alhowais v. Hungary*, No 59435/17, 2023 (effective investigations) ECtHR, *A. R. E. v. Greece*, No 15783/21, 2025 (effective investigations and effective remedy)

Introduction

International, regional and national bodies regularly monitor compliance with human and fundamental rights. These entities include the International Committee of the Red Cross (which holds a protection mandate in the context of armed conflicts), the United Nations High Commissioner for Refugees (mandated to protect refugees and oversee the implementation of the 1951 Geneva Convention) and the Office of the High Commissioner for Human Rights (which has a human-rights-monitoring role through its field presence), together with the special procedures of the UN Human Rights Council ([720]).

([720]) The special procedures of the UN Human Rights Council are independent human rights experts (special rapporteurs, independent experts or working groups) with mandates to report and advise on human rights from a thematic or country-specific perspective. As of June 2026, there were 46 thematic and 13 country mandates. For more information, see https://www.ohchr.org/en/special-procedures-human-rights-council.

In addition, the 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established monitoring bodies with unrestricted access rights to people, places and relevant documents. Several universal, regional and national bodies carry out regular monitoring visits to places of deprivation of liberty, including in the context of migration, such as the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the national preventive mechanisms that States Parties set up under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Monitoring compliance with fundamental rights is particularly important for state activities in places where the public has limited or no access, such as places of deprivation of liberty and borders. An effective and independent fundamental-rights-monitoring system helps prevent rights violations, enhances the protection of victims of fundamental rights violations by strengthening the application of human rights safeguards already in place and providing expert advice when needed. At the same time, it can support domestic investigations of allegations of rights violations by providing objective, evidence-based and unbiased analysis and reporting. This improves transparency and accountability and thus enhances trust in public authorities. Monitoring mechanisms ensure that asylum seekers, refugees and migrants can effectively exercise their rights, access protection and remedies and be safeguarded from ill treatment.

When implementing EU law, including all EU instruments regulating asylum, borders and migration, Member States must comply with the Charter of Fundamental Rights of the European Union (the Charter) and the ECHR. To ensure compliance, some EU legislation on asylum, borders and migration requires Member States to set up national monitoring mechanisms (see Section 10.1). In the event of credible allegations that fundamental rights have been violated, EU law and the ECHR, as interpreted by the ECtHR, also require that an effective investigation be conducted.

This chapter explains the obligations arising from EU law and CoE standards, including ECtHR case-law, to monitor compliance with fundamental rights, have complaints mechanisms and carry out investigations into alleged rights violations in relation to activities discussed in the previous chapters of this handbook.

10.1. Monitoring mechanisms

Under EU law, selected legal instruments require Member States to set up monitoring mechanisms to ensure compliance with fundamental rights. The Return Directive (Directive 2008/115/EC) was the first EU law instrument to include a provision about monitoring fundamental rights compliance in the area of freedom, security and justice. Article 8(6) of the directive requires Member States to provide for an effective forced return monitoring system. The directive does not provide further guidance on the functioning of such systems, but the Return Handbook sets out some non-legally binding points in this regard ([721]). Since 2014, FRA has been publishing an annual update of the forced return monitoring systems in Member States ([722]). These annual updates provide an overview of the situation across the EU based on different indicators for effective monitoring.

Since the adoption of the Return Directive, provisions relating to fundamental rights monitoring have been included in other secondary EU law instruments.

Article 10(1)(e) of the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) tasks the European Border and Coast Guard Agency (Frontex) with monitoring compliance with fundamental rights in all of its activities at the EU's external borders and in return operations.

Article 14 of the EUAA Regulation (Regulation (EU) 2021/2303) requires the EUAA to establish a mechanism to monitor the operational and technical application of the common European asylum system. While not focusing on fundamental rights compliance, such a monitoring mechanism is explicitly tasked with covering fundamental rights and child protection issues in the implementation of responsibility-sharing mechanisms (see Chapter 5), and reception conditions ([723]).

([721]) Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks (OJ L 339, 19.12.2017, p. 83, ELI: http://data.europa.eu/eli/reco/2017/2338/oj), Annex, p. 119.

([722]) See, for example, FRA, *Forced Return Monitoring Systems – 2025 update*, Publications Office of the European Union, Luxembourg, 2025.

([723]) See EUAA, *EUAA Monitoring Mechanism Explained*, 2025 and EUAA, Management Board Decision No 161/2024 on the monitoring mechanism, 2024.

Under the Schengen Evaluation and Monitoring Mechanism Regulation (Regulation (EU) 2022/922), a complex mechanism has been set up to regularly evaluate and monitor the application of the Schengen *acquis*, including respect for fundamental rights in this context, notably in the areas of external border management and returns.

The Screening Regulation (Regulation (EU) 2024/1356) (see Chapter 1) provides for the setting-up of an independent monitoring mechanism in each Member State to monitor compliance with EU and international law, including the Charter, during the screening (Article 1). Article 10 of the regulation further details different aspects of the monitoring, specifying, for example, that monitoring should, in particular, focus on access to the asylum procedure, the principle of *non-refoulement*, the best interests of the child and the relevant rules on detention during the screening. Recitals 27 to 29 and Article 10 of the regulation also address different aspects regarding the independence, financial means and activities of the monitoring mechanisms, specifying that FRA is to issue general guidance for Member States on the establishment of a monitoring mechanism and its independent functioning. These requirements also apply to fundamental rights monitoring in the context of the asylum border procedure (see Section 5.1.4): Article 43(4) of the Asylum Procedure Regulation (Regulation (EU) 2024/1348) requires each Member State to provide for a monitoring mechanism in relation to the asylum border procedure that meets the criteria set out in Article 10 of the Screening Regulation.

Following the requirements pursuant to Article 10 of the Screening Regulation, FRA published practical guidance for Member States in relation to setting up or designating national independent mechanisms to monitor compliance with fundamental rights during screening of third-country-nationals and the asylum border procedure ([724]). The guidance is organised around nine building blocks: the independence and autonomy of monitoring mechanisms; the mechanisms' thematic coverage; their powers; their role in facilitating investigations; staffing and expertise; resources and funding; reporting, transparency and accountability obligations; synergies with existing monitoring mechanisms; and cooperation with other authorities and actors.

According to **the CoE** Committee of Ministers' *Twenty Guidelines on Forced Return*, there should be effective systems for monitoring forced returns (Guideline 20). The commentary to Guideline 20 of the *Twenty Guidelines on Forced Return* describes

([724]) FRA, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms*, Publications Office of the European Union, Luxembourg, 2024.

some of the activities that may be undertaken by the monitoring body. These include receiving information about planned removals and returnees concerned; discussing the removal with the authorities involved, including by pointing to changes in the situation of returnees that may be an obstacle to removal; accompanying the authorities during removal; accessing all areas used for removal; documenting removal operations and reporting to relevant stakeholders, such as authorities and NGOs.

According to Guideline 10(5), the functioning of detention facilities where returnees are kept pending removal should be regularly monitored, including by recognised independent monitors, which, according to the commentary to the guidelines, can be national commissions, ombudspersons or members of parliament.

In immigration detention facilities, the CPT also plays a monitoring role, as it organises visits to places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the state concerned, including its findings and recommendations, requesting a response to the issues raised in its report. These reports and responses form part of the CPT's ongoing dialogue with the states concerned ([725]).

The CPT's mandate also covers the treatment of persons deprived of their liberty in the context of border control activities. Its main task consists of preventing acts of torture, physical ill treatment and other forms of inhuman and degrading treatment by law enforcement officials against foreign nationals who are intercepted, apprehended or otherwise, *de jure* or de facto, deprived of their liberty. The CPT developed a methodology to scrutinise violent pushbacks ([726]).

10.2. Complaints mechanisms

Under EU law, individual complaints against inappropriate behaviour, misconduct or ill treatment by any EU agency, including Frontex at the borders, can be lodged with the European Ombudsman ([727]). The European Ombudsman represents an independent, impartial and easily accessible control mechanism over the EU administration that investigates cases of alleged maladministration by EU institutions, offices,

([725]) Most CPT reports and the response by the national authorities are made public on the CPT's website.

([726]) See CPT, *Pushbacks of Foreign Nationals,* CoE, Strasbourg, 2023.

([727]) Treaty on the Functioning of the European Union, Arts 20, 24 and 228.

agencies or other bodies. The European Ombudsman cannot deal with complaints against non-EU institutions or national governments but passes such complaints to an appropriate authority if received.

Specifically in the context of border management and return operations carried out by Frontex, the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) mandates Frontex to have a complaints mechanism to monitor and ensure respect for fundamental rights in all Frontex activities (Article 111). Frontex has been deploying operational staff on the ground, who may have direct interactions with migrants, asylum seekers and refugees at the EU's external borders. Frontex's complaints mechanism allows anybody directly affected by the actions of staff involved in a Frontex operation to submit a complaint if the person considers their fundamental rights to have been breached by those actions. A third party representing such a person could also submit a complaint.

The Frontex Fundamental Rights Officer reviews the admissibility of a complaint and registers admissible complaints. The Fundamental Rights Officer then forwards all registered complaints to Frontex's Executive Director and forwards complaints against national officers deployed to Frontex operations to the officer's home Member State. In addition, the Fundamental Rights Officer informs the relevant authority or body responsible for fundamental rights in the Member State in question and should recommend a follow-up by Frontex or that Member State (Article 111(4) to (6)).

The EUAA, which is tasked with supporting Member States in applying the EU asylum *acquis*, is also mandated to set up a complaints mechanism to ensure that fundamental rights are respected in all of its activities (EUAA Regulation, Article 51). A complaints mechanism was established in 2024 ([728]) and allows anybody who considers that their rights have been violated by EUAA-deployed staff to submit a complaint. A third party representing such person could also submit a complaint.

The EUAA Fundamental Rights Officer assesses whether the complaint complies with the admissibility criteria (Article 6 of EUAA Management Board Decision No 159 of 24 May 2024). The EUAA Fundamental Rights Officer sends admissible complaints to EUAA's Executive Director and, if relevant, to the authorities of involved Member States to investigate the complaint and take appropriate measures (Article 8 of EUAA Management Board Decision No 159 of 24 May 2024). If EUAA deployed

([728]) EUAA, Management Board Decision No 159 on the setting up of the complaints mechanism, 2024.

staff are found to have violated fundamental rights, they will be removed from the EUAA's operational activities and may also be subject to other sanctions in accordance with administrative, civil or criminal law (Article 11 of EUAA Management Board Decision No 159 of 24 May 2024). Complainants are kept informed of their complaint's progress and result (Article 12 of EUAA Management Board Decision No 159 of 24 May 2024).

Under the ECHR, Article 13 provides that everyone whose rights and freedoms set forth in the ECHR are violated must have an effective remedy. To access an effective remedy within the meaning of Article 13, individuals must first be able to lodge a complaint before a complaints mechanism capable of establishing the violation of an ECHR right and any liability of state officials or bodies for that violation ([729]).

The following are characteristics of an effective complaints mechanism.

- The complaints mechanism does not need to be a judicial body ([730]). Where it is not a judicial body, it should adhere to similar standards, namely with regard to independence, procedural safeguards and the power to deliver an enforceable decision.

- The mechanism should enjoy a level of independence capable of protecting against any abuse of authority ([731]).

- The mechanism should provide procedural safeguards to the complainant ([732]), access to judicial review of the authorities' decisions and, where necessary, access to legal representation ([733]).

([729]) ECtHR, *Lithgow and Others v. United Kingdom*, Nos 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81, 8 July 1986, para. 205; ECtHR, *T. P. and K. M. v. the United Kingdom* [GC], No 28945/95, 10 May 2001, para. 107; ECtHR, *El-Masri v. the Former Yugoslav Republic of Macedonia* [GC], No 39630/09, 13 December 2012, paras 140–144.

([730]) ECtHR, *Klass and Others v. Germany*, No 5029/71, 6 September 1978, para. 67; ECtHR, *Rotaru v. Romania* [GC], No 28341/95, 4 May 2000, para. 69; ECtHR *Driza v. Albania*, No 33771/02, 13 November 2007, para. 116.

([731]) ECtHR, *Khan v. the United Kingdom*, No 35394/97, 4 October 2000, paras 44–47.

([732]) ECtHR, *De Souza Ribeiro v. France* [GC], No 22689/07, 13 December 2012, para. 79; ECtHR, *Allanazarova v. Russia*, No 46721/15, 14 February 2017, para. 93.

([733]) ECtHR, *Chahal v. the United Kingdom* [GC], No 22414/93, 15 November 1996, paras 152–154.

- The mechanism should be capable of delivering a legally binding, enforceable decision ([734]).

- Complaints mechanisms should process complaints thoroughly and expeditiously ([735]). Where complaints are upheld, they should lead to the violations identified being remedied, responsibility for the violations being determined and, where necessary, a sanction being imposed on those responsible ([736]).

- There should be no excessively restrictive barriers to lodging a complaint, and the mechanism should be genuinely accessible ([737]).

Example: in *El-Masri* ([738]), the ECtHR noted that a criminal complaint is an effective remedy that should be used in cases of alleged violations of Article 3 of the ECHR. It is for the prosecuting authorities of the respondent state to identify and punish the perpetrators. In particular, the authorities have an obligation to act as soon as an official complaint has been lodged. However, even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill treatment might have occurred. The authorities must act of their own motion once the matter has come to their attention ([739]).

The CPT provides further guidance on complaints mechanisms. To maintain independence, complaints mechanisms should be, in so far as is possible, unconnected and separate from law enforcement agencies ([740]). Where a complaint is found to be inadmissible, the complainant should be informed of the reasons for the inadmissibility and, where applicable, be provided with information on further options

([734]) ECtHR, *Silver and Others v. the United Kingdom* [GC], Nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75, 25 March 1983, paras 114–115.

([735]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 292.

([736]) ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 291. See also CPT, *27th General Report of the CPT*, CoE, Strasbourg, 2018, 'Complaints mechanisms', para. 86.

([737]) ECtHR, *Camenzind v. Switzerland*, No 136/1996/755/954, 16 December 1997, para. 54; ECtHR, *M. S. S. v. Belgium and Greece* [GC], No 30696/09, 21 January 2011, para. 290.

([738]) ECtHR, *El-Masri v. the Former Yugoslav Republic of Macedonia* [GC], No 39630/09, 13 December 2012.

([739]) See also ECtHR, *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, No 71156/01, 3 May 2007, para. 97; ECtHR, *Hassan v. the United Kingdom* [GC], No 29750/09, 16 September 2014, para. 62.

([740]) CPT, *27th General Report of the CPT*, CoE, Strasbourg, 2018, para. 87.

to address their concerns ([741]). Individuals should receive information in a language they understand, and should have a clear understanding of the ways they can exercise their right to lodge a complaint ([742]). Individuals lodging complaints should be free from intimidation and reprisals; attempts by authorities to prevent complaints reaching the complaints body, intimidatory behaviour and retaliatory actions should be subject to sanctions ([743]).

In **CoE** member states, national human rights institutions and/or ombudspersons can provide support for individuals to enforce their rights by facilitating individuals' access to legal remedies and receiving individual complaints ([744]).

10.3. Investigations

Under EU law, Article 10 of the Screening Regulation (Regulation (EU) 2024/1356) requires Member States to adopt relevant provisions to investigate allegations of failure to respect fundamental rights in relation to screening. Recital 27 further clarifies that Member States should investigate allegations of fundamental rights breaches during screening, including by ensuring that complaints are dealt with expeditiously and appropriately. Article 43(4) of the Asylum Procedure Regulation (Regulation (EU) 2024/1348) equally requires Member States to set up independent monitoring mechanisms with the power to trigger, where necessary, investigations into allegations of disrespect for fundamental rights and to monitor the progress of such investigations. FRA has published guidance on investigating alleged ill treatment at borders, which can assist Member States in this regard ([745]).

([741]) CPT, *27th General Report of the CPT*, CoE, Strasbourg, 2018, para. 88.

([742]) CPT, *27th General Report of the CPT*, CoE, Strasbourg, 2018, paras 79 and 80.

([743]) CPT, *27th General Report of the CPT*, CoE, Strasbourg, 2018, para. 85.

([744]) CoE Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member states on the development and strengthening of effective, pluralist and independent national human rights institutions, 2021, Part II; CoE Committee of Ministers, Recommendation CM/Rec(2019)6 of the Committee of Ministers to member states on the development of the ombudsman institution, 2019, paras 5 and 8.

([745]) FRA, *Guidance on Investigating Alleged Ill-treatment at Borders*, Publications Office of the European Union, Luxembourg, 2024. See also FRA, *Investigating alleged ill-treatment at the European Unions' external borders – 2025 update*, Publications Office of the European Union, Luxembourg, 2025.

Under the ECHR, states must carry out an effective official investigation when individuals make arguable complaints of rights violations, notably under Articles 2, 3, 4, and 5 of the ECHR. The general principles developed primarily under these ECHR provisions may in certain circumstances also be applicable in the context of forced returns and border control operations. There must be some form of effective and official investigation when an individual loses their life or suffers serious injury at the hands of the member state, or when this occurs in circumstances where the member state may be held responsible, such as if the individual is in custody. National authorities are required to seriously consider all the documents and evidence submitted by the applicant ([746]). An investigation must not depend on a complaint from the victim or next of kin, and authorities should act on their own initiative where reasonable allegations of ill treatment arise ([747]). Particularly stringent scrutiny must be applied by the relevant authorities to the ensuing investigation ([748]). Those responsible for carrying out the investigation must be independent from those implicated in the events ([749]).

The state may remain liable even if it outsources parts of its work in removal situations to private companies. A minimum level of effectiveness must be satisfied, which depends on the circumstances of the case ([750]). In this regard, the investigation must be thorough and make serious attempts to uncover what happened ([751]). There must be effective accountability and transparency to ensure respect for the rule of law and to maintain public confidence ([752]). In cross-border cases, it is particularly crucial that investigating authorities cooperate with the relevant authorities of other states regarding the investigation of events that occurred outside their territories ([753]).

([746]) ECtHR, *A. R. E. v. Greece*, No 15783/21, 7 January 2025, para. 199.

([747]) ECtHR, *Al-Skeini and Others v. the United Kingdom* [GC], No 55721/07, 7 July 2011, para. 165.

([748]) ECtHR, *Armani Da Silva v. the United Kingdom* [GC], No 5878/08, 30 March 2016.

([749]) See ECtHR, *Halat v. Turkey*, No 23607/08, 8 November 2011, para. 51; ECtHR, *Najafli v. Azerbaijan*, No 2594/07, 2 October 2012, paras 52–54; ECtHR, *Mocanu and Others v. Romania* [GC], Nos 10865/09, 45886/07 and 32431/08, 17 September 2014, para. 320.

([750]) ECtHR, *McCann and Others v. the United Kingdom* [GC], No 18984/91, 27 September 1995, para. 161; ECtHR, *Velikova v. Bulgaria*, No 41488/98, 18 May 2000, para. 80.

([751]) ECtHR, *El-Masri v. the Former Yugoslav Republic of Macedonia* [GC], No 39630/09, 13 December 2012, para. 183.

([752]) ECtHR, *Ramsahai and Others v. the Netherlands* [GC], No 52391/99, 15 May 2007, para. 325.

([753]) ECtHR, *Rantsev v. Cyprus and Russia*, No 25965/04, 7 January 2010, paras 241 and 245.

Example: in *M. H. and Others v. Croatia* ([754]), the ECtHR found a violation of the procedural aspect of Article 2 of the ECHR. In this case, the Croatian authorities failed to effectively investigate the death of a six-year-old Afghan girl who died after being hit by a train on the border between Croatia and Serbia. The death allegedly occurred after the girl was denied the opportunity to seek asylum in Croatia and was ordered to return to Serbia following the train track.

Example: in *A. R. E. v. Greece* ([755]), the ECtHR found that a Turkish national who was summarily returned from Greece to Türkiye did not have access to an effective remedy regarding her allegations of risk to life (Article 2 of the ECHR) and ill treatment (Article 3 of the ECHR), which occurred during her summary removal. According to the Court, no effective remedy with respect to her alleged violations of Articles 2 and 3 was available in the domestic legal system. The Court also found that the investigation conducted by the national authorities after she lodged a criminal complaint was not effective, as (among other issues) the preliminary investigation into her complaint was manifestly inadequate, since it did not allow witnesses to testify and did not seriously examine the material proof submitted.

Example: in *Safi and Others v. Greece* ([756]), the ECtHR found a violation of Article 2 of the ECHR due to the ineffective investigation carried out by national authorities in the sinking of a boat transporting migrants that resulted in the deaths of 11 persons, including relatives of the applicants.

Example: in *Alhowais v. Hungary* ([757]), the ECtHR found a violation of the procedural aspect of Article 2 of the ECHR because the Hungarian authorities failed to carry out an effective investigation into the death of a migrant who drowned during a border surveillance operation in the river border between Hungary and Serbia.

Where an individual is found dead or injured and is or has been subject to the custody or control of the member state, the burden lies on the member state to provide a satisfactory and convincing account of the events in question. For example, a breach of Article 2 of the ECHR was found when the authorities asserted death

([754]) ECtHR, *M. H. and Others v. Croatia*, Nos 15670/18 and 43115/18, 18 November 2021.

([755]) ECtHR, *A. R. E. v. Greece*, No 15783/21, 7 January 2025.

([756]) ECtHR, *Safi and Others v. Greece*, No 5418/15, 7 July 2022.

([757]) ECtHR, *Alhowais v. Hungary*, No 59435/17, 2 February 2023.

from natural causes without any other satisfactory explanation for death or with a defective post-mortem examination ([758]). Similarly, Article 2 of the ECHR was found to have been breached in cases where, despite their sufficient knowledge of the existing dangers, national authorities failed to organise their border surveillance operations to minimise the risk to life ([759]) or failed to put in place an adequate legal and administrative framework governing the use of potentially lethal force in maritime surveillance operations ([760]).

For investigations relating to breaches of Article 2 of the ECHR, the essential criteria are that they should be independent, adequate and effective, carried out promptly and with reasonable expedition, and open to public scrutiny ([761]). They should also involve the victim's family and the results should be open to the public. The onus is on authorities to launch an investigation of their own initiative, without waiting for a complaint to be made. The investigation should be conducted by an officer or body that is independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence ([762]).

Key points

- Several instruments require EU Member States to set up monitoring mechanisms to ensure compliance with fundamental rights (see Section 10.1).
- The CoE *Twenty Guidelines on Forced Return* asks for effective systems for monitoring forced returns to be implemented, including monitoring the functioning of detention facilities where returnees are kept pending removal (see Section 10.1).
- Under EU law, complaints against inappropriate behaviour, misconduct or ill treatment by any EU entity can be lodged with the European Ombudsman (see Section 10.2).
- EU law mandated Frontex and the EUAA to set up complaints mechanisms to monitor and ensure respect for fundamental rights in their activities (see Section 10.2).
- Under the ECHR, Article 13 provides for the right to an effective remedy before a national authority (see Section 10.2).

([758]) ECtHR, *Tanlı v. Turkey*, No 26129/95, 10 April 2001, paras 143–147.

([759]) ECtHR, *Alhowais v. Hungary*, No 59435/17, 2 February 2023, paras 131–144.

([760]) ECtHR, *Alkhatib and Others v. Greece*, No 3566/16, 16 January 2024.

([761]) ECtHR, *Armani Da Silva v. the United Kingdom* [GC], No 5878/08, 30 March 2016, paras 232–237.

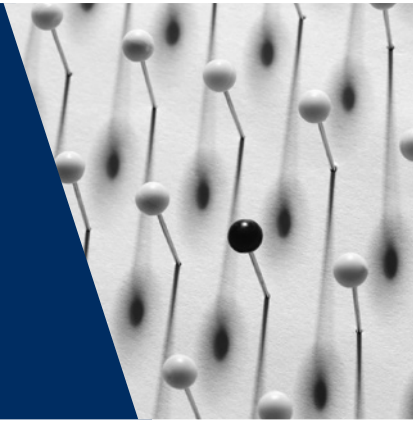
([762]) ECtHR, *Finucane v. the United Kingdom*, No 29178/95, 1 July 2003, para. 68.

- The Screening Regulation requires Member States to investigate allegations of failure to respect fundamental rights during screening (see Section 10.3).
- The Asylum Procedure Regulation requires Member States to investigate allegations of failure to respect fundamental rights in relation to the asylum border procedure (Section 10.3).
- Under the ECHR, authorities are required to investigate credible allegations of human rights violations during removal and border control operations (see Section 10.3).

Further case-law and reading

To access further case-law, please consult the section 'How to find case-law of the European courts'. Additional materials relating to the issues covered in this chapter can be found in the 'Further reading' section.

List of cases



Case-law of the Court of Justice of the European Union

Case-law of EFTA Court

Case-law of the European Commission of Human Rights

Case-law of the European Court of Human Rights

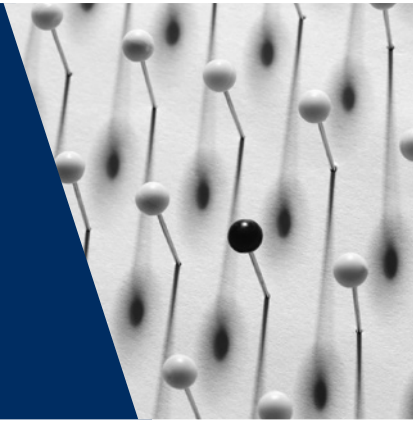
Case-law of the European Committee of Social Rights

Case-law of the UN Human Rights Committee

Case-law of the UN Committee on the Rights of the Child

Case-law of national courts

How to find case-law of the European courts



Knowledge-sharing platform: ECHR-KS database

The ECtHR's knowledge-sharing platform **ECHR-KS** (https://ks.echr.coe.int/web/echr-ks/home) provides detailed and contextualised case-law analysis on all of the key subjects of the ECHR, article by article, and through cross-cutting themes, such as the environment, terrorism, data protection, immigration and prisoners' rights. Designed with an intuitive and user-friendly interface, the platform helps both legal professionals and the general public understand the fundamental principles and latest developments in the Court's case-law. The platform contextualises that case-law analysis by linking it to relevant international standards and doctrine. Crucially, content is updated every week and evolves to reflect new case-law issues as they emerge.

The platform is available in Romanian, Turkish and Ukrainian as well as the Court's official languages, English and French.

European Court of Human Rights: HUDOC case-law database

The **HUDOC database** provides free access to ECtHR case-law (http://HUDOC.echr.coe.int).

The database is available in Armenian, Bulgarian, English, French, Georgian, Romanian, Russian, Spanish, Turkish and Ukrainian and provides a user-friendly search engine that makes finding case-law easy.

Video tutorials and user manuals are available on the HUDOC Help page. For details and examples of how to use filters and search fields, the user can place the mouse pointer on the ? at the right of every search tool in the HUDOC interface.

The case-law references in this handbook provide the reader with comprehensive information that will enable them to easily find the full text of the judgment or decision cited.

Before starting a search, please note that the default settings show the Grand Chamber and Chamber judgments in the order of the latest judgment published. To search in other collections such as decisions, the user should tick the appropriate box in the **Document Collections** field appearing on the upper left side of the screen.

The simplest way to find cases is by entering the application number into the **Application Number** field under the **Advanced Search** on the upper right side of the screen and then clicking the blue search button.

To access further case-law pertaining to other issues, for example asylum-related issues, the user can use the search field indicated with a magnifying glass in the top right part of the screen. In the search field, the user can search in the text using a:

- single word (e.g. asylum, refugees);
- phrase (e.g. 'asylum seekers');
- case title;
- state;
- Boolean phrase (e.g. aliens NEAR residence).

To help the user perform a text search, a simple Boolean search is available by clicking on the arrow appearing inside the search field. The simple Boolean search offers six search possibilities: 'This exact word or phrase', 'All of these words', 'Any of these words', 'None of these words', 'Near these words' and 'Boolean search'.

Once the search results appear, the user can easily narrow the results using the filters appearing in the **Filters** field on the left side of the screen, for example 'Language' or 'State'. Filters can be used individually or in combination to further narrow the results. The 'Keywords' filter can be a useful tool, as it often includes terms extracted from the text of the ECHR and is directly linked to the Court's reasoning and conclusions.

Example: finding the Court's case-law on the issue of expulsion of asylum seekers putting them at risk of torture or inhuman or degrading treatment or punishment under Article 3 ECHR.

1. The user first enters the phrase 'asylum seekers' into the search field and clicks the blue **Search** button.

2. After the search results appear, the user then selects the '3' under the **Violation** filter in the **Filters** field to narrow the results to those related to a violation of Article 3.

3. The user can then select the relevant keywords under the **Keywords** filter to narrow the results to those relevant to Article 3, such as the keyword '(Article 3) Prohibition of torture'.

For more significant cases, a legal summary is available in HUDOC. The summary comprises a descriptive head note, a concise presentation of the facts and the law, with emphasis on points of legal interest. If a summary exists, a link called **Legal Summary** will appear in the results together with the link to the judgment text or decision. Alternatively, the user can search exclusively for legal summaries by ticking the 'Legal Summaries' box in the **Document Collections** field.

If non-official translations of a given case have been published, a link labelled **Language Versions** will appear in the results together with the link to the judgment text or decision. HUDOC also provides links to third-party internet sites that host other translations of ECtHR case-law. For more information, see 'Language versions' on the HUDOC Help page.

Court of Justice of the European Union: CURIA case-law database

The CURIA case-law database provides free access to ECJ/CJEU case-law.

The search engine is available in all official EU languages ([763]). The **language** can be selected at the upper right side of the screen. The search engine can be used to search for information in all documents related to concluded and pending cases by the Court of Justice, the General Court and the Civil Service Tribunal.

There is a Help document available. Each search box also has a help page that can be accessed by clicking the icon and contains useful information to help the user make the best possible use of the tool.

The simplest way to find a specific case is to enter the full case number into the search box entitled **Case number** and then clicking the 'Search' button. It is also possible to search for a case using a part of the case number. For example, entering '122' in the **Case number** field will find case number 122 for cases from any year and before any of the three courts: Court of Justice, the General Court and the Civil Service Tribunal.

Alternatively, one can also use the **Name of the parties** field to search with the common name of a case. This is usually the simplified form of the names of the parties to the case.

([763]) The following languages: since before 30 April 2004, Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish; since 1 May 2004, Czech, Estonian, Hungarian, Latvian, Lithuanian, Polish, Slovak and Slovene; since 1 January 2007, Bulgarian and Romanian; since 30 April 2007, Maltese; since 31 December 2011, Irish; since 1 July 2013, Croatian.

There are 16 multifunctional search fields available to help narrow the search results. The different search fields are user-friendly and can be used in various combinations. The fields often have search lists that can be accessed by clicking the icon and selecting available search terms.

For more general searches, using the **Text** field produces results based on keyword searches in all documents published in the European Court Reports since 1954, and since 1994 for the European Court Reports – Staff Cases (ECR-SC).

For more subject-specific searches, the **Subject-matter** field can be used. This requires clicking the icon to the right of the field and selecting the relevant subject(s) from the list. The search results will then produce an alphabetised list of selected documents related to the legal questions dealt with in the decisions of the Court of Justice, the General Court and the Civil Service Tribunal and in the Opinions of the Advocates General.

The CURIA website also has additional case-law tools:

List of cases. This section is a collection of case information for any case brought before one of the three courts. The cases are listed by their case number and in the order in which they were lodged at the relevant registry. Cases can be consulted by clicking on their case number.

Case-law digest. This section offers a systematic classification of case-law summaries on the essential points of law stated in the decision in question. These summaries are based as closely as possible on the actual wording of that decision.

Fact sheets. This section contains documents produced by the Court's Research and Documentation Directorate identifying, in respect of particular subjects, the most relevant points of law from a selection of judgments.

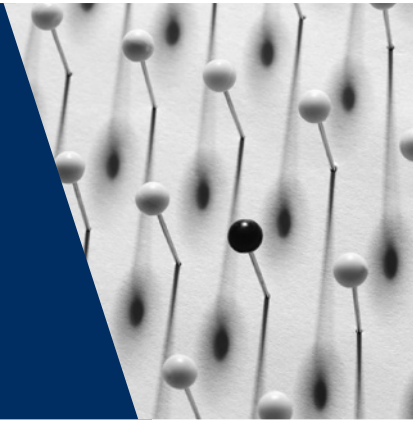
Monthly case-law digest. This section contains summaries of the Court of Justice's and the General Court's particularly important decisions. The decisions are classified thematically.

Yearly selection of major judgments. This section contains the summaries of the main decisions of the Court of Justice and the General Court for every year since 2022. The compilation of the main decisions of the year is published on a yearly basis, and the decisions are classified thematically according to a system inspired by the structure of the Treaties of the EU.

Annotation of judgments. This section contains references to annotations by legal commentators relating to the judgments delivered by the three courts since they were first established. The judgments are listed separately by court or tribunal in chronological order according to their case number, while the annotations by legal commentators are listed in chronological order according to their appearance. References appear in their original language.

National case-law. This external database can be accessed through the CURIA website. It offers access to relevant national case-law concerning EU law. The database is based on a collection of case-law from Member State national courts and/or tribunals. The information has been collected by a selective trawl of legal journals and direct contact with numerous national courts and tribunals. The national case-law database is available in English and in French.

EU instruments and selected agreements



EU instruments

Note: The table below does not list the individual acts amending each of the relevant EU instruments. The most up-to-date consolidated version of each instrument can be accessed on EUR-Lex by clicking on the link 'Current consolidated version'.

Short name	Full title
Asylum	
Asylum and Migration Management Regulation	Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L 2024/1358, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1351/oj)
Asylum Procedure Regulation	Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L 2024/1348, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1348/oj)
Safe Third Countries Regulation	Regulation (EU) 2026/463 of the European Parliament and of the Council of 24 February 2026 amending Regulation (EU) 2024/1348 as regards the application of the concept of safe third country (OJ L 2026/463, 26.2.2026, ELI: http://data.europa.eu/eli/reg/2026/463/oj)
Safe Countries of Origin Regulation	Regulation (EU) 2026/464 of the European Parliament and of the Council of 24 February 2026 amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level (OJ L 2026/464, 26.2.2026, ELI: http://data.europa.eu/eli/reg/2026/464/oj)

Short name	Full title
Crisis and *Force Majeure* Regulation	Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L 2024/1359, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1359/oj)
EUAA Regulation	Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/2303/oj)
Eurodac Regulation	Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L 2024/1358, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1358/oj)
Commission Implementing Regulation (EU) 2025/2055	Commission Implementing Regulation (EU) 2025/2055 of 2 October 2025 laying down rules for the application of Regulation (EU) 2024/1351 of the European Parliament and of the Council, as regards asylum and migration management and repealing Commission Regulation (EC) No 1560/2003 (OJ L, 2025/2055, ELI: http://data.europa.eu/eli/reg_impl/2025/2055/oj)
Qualification Regulation	Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L 2024/1347, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1347/oj)
Reception Conditions Directive	Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (OJ L 2024/1346, 22.5.2024, ELI: http://data.europa.eu/eli/dir/2024/1346/oj)
Union Resettlement and Humanitarian Admission Framework Regulation	Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L 2024/1350, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1350/oj)

Short name	Full title
Temporary Protection Directive	Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12, ELI: http://data.europa.eu/eli/dir/2001/55/oj)
Trafficking	
Anti-trafficking Directive	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/36/oj)
Gender-based Violence Directive	Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence (OJ L 2024/1385, 24.5.2024, ELI: http://data.europa.eu/eli/dir/2024/1385/oj)
Residence Permits for Victims of Trafficking Directive	Council Directive 2004/81/EC of 29 April 2004 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 (OJ L 261, 6.8.2004, p. 19, ELI: http://data.europa.eu/eli/dir/2004/81/oj)
Victims' Rights Directive	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57, ELI: http://data.europa.eu/eli/dir/2012/29/oj)
Borders and Schengen	
Advance Passenger Information Directive	Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24, ELI: http://data.europa.eu/eli/dir/2004/82/oj)
Advance Passenger Information Regulation	Regulation (EU) 2025/12 of the European Parliament and of the Council of 19 December 2024 on the collection and transfer of advance passenger information for enhancing and facilitating external border checks, amending Regulations (EU) 2018/1726 and (EU) 2019/817, and repealing Council Directive 2004/82/EC (OJ L, 2025/12, 8.1.2025, ELI: http://data.europa.eu/eli/reg/2025/12/oj)

Short name	Full title
Advance Passenger Information Regulation for the Prevention, Detection, Investigation and Prosecution of Terrorist Offences and Serious Crime	Regulation (EU) 2025/13 of the European Parliament and of the Council of 19 December 2024 on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 (OJ L, 2025/13, 8.1.2025, ELI: http://data.europa.eu/eli/reg/2025/13/oj)
Carriers Sanctions Directive	Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45, ELI: http://data.europa.eu/eli/dir/2001/51/oj)
Decision (EU) No 1105/2011	Decision (EU) No 1105/2011 of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9, ELI: http://data.europa.eu/eli/dec/2011/1105/oj)
European Border and Coast Guard Regulation	Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/1896/oj)
Local Border Traffic Regulation	Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1, ELI: http://data.europa.eu/eli/reg/2006/1931/oj)
Passenger Name Record Directive	Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132, ELI: http://data.europa.eu/eli/dir/2016/681/oj)
Schengen Borders Code	Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/681/oj)
Schengen Evaluation Mechanism Regulation (EU) 2022/922	Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/922/oj)

Short name	Full title
Screening Regulation	Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L 2024/1356, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1356/oj)
Sea Borders Regulation	Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93, ELI: http://data.europa.eu/eli/reg/2014/656/oj)
Large-scale EU IT systems and data protection	
AI Act	Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (OJ L 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj)
Council Decision 2013/157/EU	Council Decision of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen information system (SIS II) (OJ L 87/8, 27.03.2013, p. 8, ELI: http://data.europa.eu/eli/dec/2013/157(1)/oj)
Council Decision 2013/158/EU	Council Decision of 7 March 2013 fixing the date of application of Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen information system (SIS II) (OJ L 87, 27.3.2013, p. 10, ELI: http://data.europa.eu/eli/dec/2013/158(1)/oj)
Law Enforcement Directive	Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89, ELI: http://data.europa.eu/eli/dir/2016/680/oj)
ECRIS-TCN Regulation	Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European criminal records information system and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/816/oj)

Short name	Full title
EES Regulation	Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an entry/exit system (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and regulations (EC) No 767/2008 and (EU) No 1077/11 (OJ L 327, 9.12.2017, p. 20, ELI: http://data.europa.eu/eli/reg/2017/2226/oj)
ETIAS Regulation	Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European travel information and authorisation system (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1240/oj)
EU Institutions Data Protection Regulation	Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj)
eu-LISA Regulation	Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99, ELI: http://data.europa.eu/eli/reg/2018/1726/oj)
Europol Regulation	Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53, ELI: http://data.europa.eu/eli/reg/2016/794/oj)
General Data Protection Regulation	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj)

Short name	Full title
Interoperability – Borders and Visa Regulation	Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EU) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27, ELI: http://data.europa.eu/eli/reg/2019/817/oj)
Interoperability – Police and Judicial Cooperation, Asylum and Migration Regulation	Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85, ELI: http://data.europa.eu/eli/reg/2019/818/oj)
SIS Border Checks Regulation	Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen information system (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14, ELI: http://data.europa.eu/eli/reg/2018/1861/oj)
SIS Regulation	Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen information system (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56, ELI: http://data.europa.eu/eli/reg/2018/1862/oj)
SIS Returns Regulation	Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen information system for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1860/oj)
Council Decision 2008/633/JHA	Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the visa information system (VIS) by designated authorities of Member State and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129, ELI: http://data.europa.eu/eli/dec/2008/633/oj)
VIS Regulation	Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the visa information system (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60, ELI: http://data.europa.eu/eli/reg/2008/767/oj)

Short name	Full title
Visa	
Long-stay Visa Regulation	Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/265/oj)
Visa Code	Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/810/oj)
Visa Format Regulation	Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1, ELI: http://data.europa.eu/eli/reg/1995/1683/oj)
Visa List Regulation	Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification) (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj)
Irregular migration and return	
Council Decision 2004/191/EC	Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (OJ L 60, 27.2.2004, p. 55, ELI: http://data.europa.eu/eli/dec/2004/191/oj)
Council Decision 2004/573/EC	Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L 261/28, 6.8.2004, p. 28, ELI: http://data.europa.eu/eli/dec/2004/573/oj)
Council Directive 2003/110/EC	Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26, ELI: http://data.europa.eu/eli/dir/2003/110/oj)
Employers Sanctions Directive	Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24, ELI: http://data.europa.eu/eli/dir/2009/52/oj)

Short name	Full title
EU Travel Document Regulation	Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994 (OJ L 311, 17.11.2016, p. 13, ELI: http://data.europa.eu/eli/reg/2016/1953/oj)
Facilitation Directive	Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17, ELI: http://data.europa.eu/eli/dir/2002/90/oj)
Regulation (EU) 2025/2611	Regulation (EU) 2025/2611 of the European Parliament and of the Council of 16 December 2025 amending Regulation (EU) 2016/794 as regards the strengthening of Europol's support and enhancing police cooperation, for preventing and combating migrant smuggling and trafficking in human beings (OJ L 2025/2611, 22.12.2025, ELI: http://data.europa.eu/eli/reg/2025/2611/oj)
Immigration Liaison Officers Regulation	Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast) (OJ L 198, 25.7.2019, p. 88, ELI: http://data.europa.eu/eli/reg/2019/1240/oj)
Marriages of Convenience Council Resolution, 1997	Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (OJ C 382, 16.12.1997, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31997Y1216(01))
Mutual Recognition of Expulsion Orders Directive	Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, 2.6.2001, p. 34, ELI: http://data.europa.eu/eli/dir/2001/40/oj)
Return Border Procedure Regulation	Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148 (OJ L, 2024/1349, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1349/oj)
Return Directive	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 (OJ L 348, 24.12.2008, p. 98, ELI: http://data.europa.eu/eli/dir/2008/115/oj)
Legal migration	
Blue Card Directive	Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (OJ L 382, 28/10/2021, p. 1, ELI: http://data.europa.eu/eli/dir/2021/1883/oj)

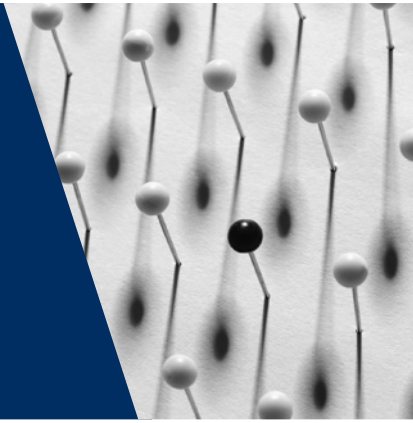
Short name	Full title
Directive 2011/51/EU	Directive 2011/51/EU of the European Council and the Parliament of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection (OJ L 132, 19.5.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/51/oj)
Family Reunification Directive	Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification(OJ L 251, 3.10.2003, p. 12, ELI: http://data.europa.eu/eli/dir/2003/86/oj)
Intra-corporate Transferees Directive	Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1, ELI: http://data.europa.eu/eli/dir/2014/66/oj)
Long-term Residents Directive	Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44, ELI: http://data.europa.eu/eli/dir/2003/109/oj)
Resident Permits Format Regulation	Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1, ELI: http://data.europa.eu/eli/reg/2002/1030/oj)
Seasonal Workers Directive	Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375, ELI: http://data.europa.eu/eli/dir/2014/36/oj)
Single Permit Directive	Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast) (OJ L 2024/1233, 30.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1233/oj)
Students and Researchers Directive	Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) (OJ L 132, 21.5.2016, p. 21, ELI: http://data.europa.eu/eli/dir/2016/801/oj)

Short name	Full title
Free movement, social security and equality	
Coordination of Social Security Systems Regulation	Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/883/oj)
Free Movement Directive	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj)
Posted Workers Directive	Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1, ELI: http://data.europa.eu/eli/dir/1996/71/oj)
Professional Qualifications Directive	Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22, ELI: http://data.europa.eu/eli/dir/2005/36/oj)
Racial Equality Directive	Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22, ELI: http://data.europa.eu/eli/dir/2000/43/oj)
Regulation (EU) No 1231/2010	Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/1231/oj)
Regulation (EU) No 492/2011	Regulation (EU) No 492/2011 of the European Council and the Parliament of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.05.2011, p. 1, ELI: http://data.europa.eu/eli/reg/2011/492/oj)
Security of Identity Cards and Residence Documents Regulation	Council Regulation (EU) 2025/1208 of 12 June 2025 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ L, 2025/1208, 20.6.2025, ELI: http://data.europa.eu/eli/reg/2025/1208/oj)

Selected agreements

Short name	Full title
Ankara Protocol	Additional protocol and financial protocol signed on 23 November 1970, annexed to the agreement establishing the association between the European Economic Community and Turkey and on measures to be taken for their entry into force – final act – declarations (OJ L 293, 29.12.1972, p. 3, ELI: http://data.europa.eu/eli/prot/1972/2760(1)/oj)
Convention Implementing the 1985 Schengen Agreement	The Schengen *acquis* – Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19, ELI: http://data.europa.eu/eli/convention/2000/922/oj)
EU–UK Trade and Cooperation Agreement	Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10, ELI: http://data.europa.eu/eli/agree_internation/2021/689(1)/oj)
EU–UK Withdrawal Agreement	Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7, ELI: http://data.europa.eu/eli/treaty/withd_2020/sign)
European Community–Switzerland Agreement	Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons – Final act – Joint declarations – Information relating to the entry into force of the seven agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products (OJ L 114, 30.4.2002, p. 6, ELI: http://data.europa.eu/eli/agree_internation/2002/309(1)/oj)
EEA Agreement	Agreement on the European Economic Area – Final act – Joint declarations – Declarations by the Governments of the Member States of the Community and the EFTA states – Arrangements – Agreed minutes – Declarations by one or several of the contracting parties of the agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3, ELI: http://data.europa.eu/eli/agree_internation/1994/1/oj)
Samoa Agreement	Partnership agreement between the European Union and its Member States, of the one part, and the members of the Organisation of African, Caribbean and Pacific States, of the other part (OJ L, 2023/2862, 28.12.2023. ELI: http://data.europa.eu/eli/agree_internation/2023/2862/oj)

Online sources

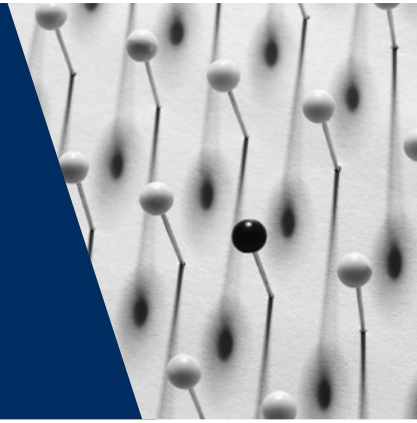


Sources	Web address
UN level	
International treaties deposited with the UN Secretary-General	http://treaties.un.org
Office of the High Commissioner for Human Rights and migration	https://www.ohchr.org/en/migration
UN treaty bodies jurisprudence – JURIS database	https://juris.ohchr.org
Refworld (the United Nations High Commissioner for Refugees refugee law database)	https://www.refworld.org
Special Procedures of the UN Human Rights Council	https://www.ohchr.org/en/special-procedures-human-rights-council
UN Migration Network	http://migrationnetwork.un.org/
UN Special Rapporteur on the human rights of migrants	https://www.ohchr.org/en/special-procedures/sr-migrants
UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	https://www.ohchr.org/en/special-procedures/sr-torture
UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	https://www.ohchr.org/en/treaty-bodies/spt/introduction-committee

Sources	Web address
CoE level	
CoE Commissioner for Human Rights	http://www.coe.int/en/web/commissioner
CoE Department for the Execution of Judgments of the ECtHR	https://www.coe.int/en/web/execution
CoE Division on Migration and Refugees	https://www.coe.int/en/web/migration-and-refugees
ECtHR	https://www.echr.coe.int/
ECtHR case-law database (HUDOC)	https://hudoc.echr.coe.int/
ECtHR knowledge-sharing platform (ECHR-KS)	https://ks.echr.coe.int/web/echr-ks/home
ECtHR library	https://www.echr.coe.int/about-the-library
ECtHR thematic factsheets and other thematic material	https://www.echr.coe.int/factsheets https://www.echr.coe.int/press
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	https://www.coe.int/en/web/cpt
European Committee on Social Rights – Decisions and conclusions	https://hudoc.esc.coe.int
European Network on Statelessness	https://www.statelessness.eu/
European Social Charter	https://www.coe.int/en/web/european-social-charter
Expert Council on NGO Law	https://www.coe.int/en/web/ingo/expert-council
Group of Experts on Action against Trafficking in Human Beings (GRETA)	https://www.coe.int/en/web/anti-human-trafficking
Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)	https://www.coe.int/en/web/istanbul-convention/grevio
EU level	

Sources	Web address
Court of Justice of the European Union (Curia)	https://curia.europa.eu/jcms/jcms/j_6/en/
EU Immigration Portal	https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal_en
EU Treaties Office	https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html
European Border and Coast Guard Agency (Frontex)	https://www.frontex.europa.eu/
European Commission, Migration and Home Affairs	https://home-affairs.ec.europa.eu/index_en
European Council on Refugees and Exiles (ECRE)	http://www.ecre.org/
European Legal Network on Asylum (ELENA)	https://elenaforum.org/about-elena/
European Migration Network	https://home-affairs.ec.europa.eu/networks/european-migration-network-emn_en
European Migration Network, Platform of Statelessness	https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/expert-groups_en
European Union Agency for Asylum (EUAA)	https://euaa.europa.eu/
EUAA training curriculum	https://www.euaa.europa.eu/training
European Union Agency for Fundamental Rights (FRA)	http://fra.europa.eu
European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)	https://www.eulisa.europa.eu/
Public register of authentic identity and travel documents online (PRADO)	https://www.consilium.europa.eu/prado/en/prado-start-page.html
Quarterly overviews of CJEU judgments and pending cases on asylum, borders and immigration	https://cmr.jur.ru.nl/cjeu/

Further reading



The following selection of references includes publications by international organisations, academics and NGOs as well as by the ECtHR and FRA. The list of further reading has been grouped in nine broad categories (general literature, asylum and refugee law, migrants in an irregular situation and return, detention, free movement in the EU, children, persons with disabilities, border management and large-scale EU IT systems, and stateless persons). In some cases, it can be noted from the title that the publication relates to more than one area. In addition, articles on the topics covered in this handbook can be found in various journals, such as the *European Journal of Migration and Law*, the *International Journal of Refugee Law* and the *Refugee Survey Quarterly*.

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Annex 1: Applicability of EU legal instruments cited in this handbook

Country	AT	BE	BG	CY	CZ	DK	DE	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	CH	IS	LI	NO
Asylum																															
Asylum and Migration Management Regulation (Regulation (EU) 2024/1351)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Commission Implementing Regulation (EU) 2025/2055	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Eurodac Regulation (Regulation (EU) 2024/1358)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Reception Conditions Directive (Directive (EU) 2024/1346)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Asylum Procedure Regulation (Regulation (EU) 2024/1348)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Qualification Regulation (Regulation (EU) 2024/1347)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Temporary Protection Directive (Directive 2001/55/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Union Resettlement and Humanitarian Admission Framework Regulation (Regulation (EU) 2024/1350)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Crisis and *Force Majeure* Regulation (Regulation (EU) 2024/1359)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
European Union Agency for Asylum Regulation (Regulation (EU) 2021/2303)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Trafficking in human beings																															
Anti-trafficking Directive (Directive 2011/36/EU)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×

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Country	AT	BE	BG	CY	CZ	DK	DE	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	CH	IS	LI	NO
Victims' Rights Directive (Directive 2012/29/EU)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Residence Permits for Victims of Trafficking Directive (Directive 2004/81/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Borders and Schengen																															
European Border and Coast Guard Regulation (Regulation (EU) 2019/1896)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Schengen Borders Code (Regulation (EU) 2016/399)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sea Borders Regulation (Regulation (EU) No 656/2014)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Screening Regulation (Regulation (EU) 2024/1356)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Schengen Evaluation Mechanism Regulation (Regulation (EU) 2022/922)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Local Border Traffic Regulation (Regulation (EC) No 1931/2006)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advance Passenger Information Regulation I (Regulation (EU) 2025/13)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Advance Passenger Information Regulation II (Regulation (EU) 2025/12)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advance Passenger Information Directive (Directive 2004/82/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Passenger Name Record Directive (Directive (EU) 2016/681)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Carrier Sanctions Directive (Directive 2001/51/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

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Large-scale EU IT systems																															
Interoperability – Police and Judicial Cooperation, Asylum and Migration Regulation (Regulation (EU) 2019/818)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Interoperability – Borders and Visa Regulation (Regulation (EU) 2019/817)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ECRIS-TCN Regulation (Regulation (EU) 2019/816)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
SIS Regulation (Regulation (EU) 2018/1862)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SIS Border Checks Regulation (Regulation (EU) 2018/1861)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SIS Returns Regulation (Regulation (EU) 2018/1860)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
eu-LISA Regulation (Regulation (EU) 2018/1726)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ETIAS Regulation (Regulation (EU) 2018/1240)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Entry/Exit System Regulation (Regulation (EU) 2017/2226)	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
VIS Regulation (Regulation EC) No 767/2008)	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
AI Act (Regulation (EU) 2024/1689)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Visa																															
Visa List Regulation (Regulation (EU) 2018/1806)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Long-stay Visa Regulation (Regulation (EU) No 265/2010)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

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Visa Code (Regulation (EC) No 810/2009)	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Irregular migration and return																															
Immigration Liaison Officers Regulation (Regulation (EU) 2019/1240)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU Travel Document Regulation (Regulation (EU) 2016/1953)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Employers Sanctions Directive (Directive 2009/52/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Return Directive (Directive 2008/115/EC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Return Border Procedure Regulation (Regulation (EU) 2024/1349)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Facilitation Directive (Directive 2002/90/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓
Legal migration																															
Students and Researchers Directive (Directive 2016/801/EU)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Intra-corporate Transferees Directive (Directive 2014/66/EU)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Seasonal Workers Directive (Directive 2014/36/EU)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Single Permit Directive (Directive (EU) 2024/1233)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Blue Card Directive (Directive (EU) 2021/1883)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Long-term Residents Directive (Directive 2003/109/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Family Reunification Directive (Directive 2003/86/EC)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×

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Resident Permits Format Regulation (Regulation (EC) No 1030/2002)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓
Free movement, social security and equality																															
Security of Identity Cards and Residence Documents Regulation (Regulation (EU) 2025/1208)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Professional Qualifications Directive (Directive 2005/36/EC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Coordination of Social Security Systems Regulation (Regulation (EC) No 883/2004)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Regulation (EU) No 1231/2010	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Free Movement Directive (Directive 2004/38/EC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓
Racial Equality Directive (Directive 2000/43/EC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Directive 2014/54/EU	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	×
Posted Workers Directive (Directive 96/71/EC)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓

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Notes:

EU law instruments in the area of freedom, security and justice (Title V of the TFEU) indicate if they apply to **Denmark** and/or **Ireland** as well as the four Schengen associated countries, **Iceland**, **Liechtenstein**, **Norway** and **Switzerland**. Some instruments listed under the heading 'Free movement, social security and equality' mention in their title if they are relevant to the EEA and Switzerland. Where the EU instrument itself is not clear, the reader may consult the relevant legal sources listed in this note.

Cyprus

Cyprus is not a full member of the Schengen area. Secondary EU legal instruments or parts of instruments that cover matters falling under Article 3(2) of the 2003 Act of Accession require a Council decision to be extended to Cyprus. The individual EU instrument typically contains recitals clarifying when this is the case.

Pursuant to recital 44 of the **Schengen Borders Code**, Title III of this code ('Internal borders') does not apply to Cyprus. See also recital 38 of the **Visa Code** (Regulation (EC) No 810/2009); recital 33 of the **VIS Regulation** (Regulation (EC) No 767/2008); and recital 57 of the **EES Regulation** (Regulation (EU) 2017/2226). For the applicability of the **SIS Regulation** (Regulation (EU) 2018/1862) to Cyprus, see Council Decision (EU) 2023/870 (OJ L 113, 25.4.2023, p. 44).

Denmark

Under Article 3 of Protocol (No 19) to the EU Treaties on the Schengen *acquis* integrated into the framework of the European Union and Articles 1 and 2 of Protocol (No 22) on the Position of Denmark, EU law instruments adopted in the field of freedom, security and justice do not apply to Denmark. Under Article 4 of Protocol (No 22), Denmark may decide within six months to implement EU instruments that build on the Schengen *acquis*.

In application of the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention, signed on 10 March 2005 and entered into force on 1 April 2006 (OJ L 66, 8.3.2006, p. 38) as approved by Council Decision 2006/188/EC (OJ L 66, 8.3.2006, p. 37), Denmark notified the Council of the EU and the European Commission on 11 June 2024 that it implements the **Eurodac Regulation** (Regulation (EU) 2024/1358) and those parts of the **Asylum and Migration Management Regulation** (Regulation (EU) 2024/1351) and the **Crisis and *Force Majeure* Regulation** (Regulation (EU) 2024/1359) that fall within the scope of that agreement.

Denmark also notified the European Commission on 26 April 2019 that it opts in to the **SIS Returns Regulation** (Regulation (EU) 2018/1860), **SIS Border Checks Regulation** (Regulation (EU) 2018/1861) and **SIS Regulation** (Regulation (EU) 2018/1862); on 10 May 2019 to the **eu-LISA Regulation** (Regulation (EU) 2018/1726); on 23 October 2019 to the **Interoperability Regulations** (Regulations (EU) 2019/817 and 2019/818) and **Immigration Liaison Officers Regulation** (Regulation (EU) 2019/1240); on 14 November 2024 to the **Screening Regulation** (Regulation (EU) 2024/1356) and **Return Border Procedure Regulation** (Regulation (EU) 2024/1349); on 10 October 2025 to the **EES Regulation** (Regulation (EU) 2017/2226); and on 22 December 2021 to the **ETIAS Regulation** (Regulation (EU) 2018/1240) and **VIS Regulation** (Regulation (EC) No 767/2008).

Ireland

Under Article 4 of Protocol (No 19) to the EU Treaties on the Schengen *acquis* integrated into the framework of the European Union and Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, EU law instruments adopted in the field of freedom, security and justice do not apply to Ireland. Under Article 3 of Protocol (No 21), Ireland may notify the Council of the EU that it wishes to take part in a specific instrument. Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20) lists several provisions of the Schengen *acquis* in which Ireland participates. Pursuant to it, Ireland participates in the **SIS Regulation** (Regulation (EU) 2018/1862) (see its recital 75).

For other EU instruments on Ireland's participation, see Commission Decision 2003/690/EC of 2 October 2003 confirming participation in the **Temporary Protection Directive** (Directive 2001/55/EC) (OJ L 251, 3.10.2003, p. 23); Commission Decision (EU) 2023/1576 of 28 July 2023 confirming participation in the **EUAA Regulation** (Regulation (EU) 2021/2303) (OJ L 192, 31.7.2023, p. 32); Commission Decision (EU) 2024/2100 of 31 July 2024 confirming participation in the **Eurodac Regulation** (Regulation (EU) 2024/1358) (OJ L, 2024/2100, 2.8.2024); Commission Decision (EU) 2024/2088 of 31 July 2024 confirming participation in the **Asylum and Migration Management Regulation** (Regulation (EU) 2024/1351) (OJ L, 2024/2088, 2.8.2024); Commission Decision (EU) 2024/2087 of 31 July 2024 confirming participation in the **Reception Conditions Directive** (Directive (EU) 2024/1346) (OJ L, 2024/2087, 2.8.2024); Commission Decision (EU) 2024/2092 of 31 July 2024 confirming participation in the **Crisis and *Force Majeure* Regulation** (Regulation (EU) 2024/1359) (OJ L, 2024/2092, 2.8.2024); Commission Decision (EU) 2024/2099 of 31 July 2024 confirming participation in the **Qualification Regulation** (Regulation (EU) 2024/1347) (OJ L, 2024/2099, 2.8.2024); Commission Decision (EU) 2024/2089 of 31 July 2024 confirming participation in the **Asylum Procedure Regulation** (Regulation (EU) 2024/1348) (OJ L, 2024/2089, 2.8.2024); and Commission Decision (EU) 2024/2093 of 31 July 2024 confirming participation in the **Union Resettlement and Humanitarian Admission Framework Regulation** (Regulation (EU) 2024/1350) (OJ L, 2024/2093, 2.8.2024).

Iceland and Norway

Iceland and Norway are not bound by the EU asylum *acquis*, except for the **Union Resettlement and Humanitarian Admission Framework Regulation** (Regulation (EU) 2024/1350) and Parts III, V and VII of the **Asylum and Migration Management Regulation** (Regulation (EU) 2024/1351) and the **Eurodac Regulation** (Regulation (EU) 2024/1358), which constitute new legislation in the field covered by the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway – Declarations, signed on 19 January 2001 and entered into force on 1 April 2001 (OJ L 93, 3.4.2001, p. 40), as approved by Council Decision 2001/258/EC of 15 March 2001 (OJ L 93, 3.4.2001, p. 38). For law enforcement access to Eurodac, see the Protocol between the European Union, Iceland and the Kingdom of Norway to the agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway regarding access to Eurodac for law enforcement purposes, signed on 24 October 2019 and entered into force on 4 March 2020 (OJ L 64, 3.3.2020, p. 3), as approved by Council Decision (EU) 2020/276 of 17 February 2020 (OJ L 64, 3.3.2020, p. 1).

Under Article 6 of Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, Iceland and Norway must be associated with the implementation of the Schengen *acquis* and its development. The Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*, signed on 18 May 1999 and entered into force on 26 June 2000 (OJ L 176, 10.7.1999, p. 36), and Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two states with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31) set out further details.

The **ECRIS-TCN Regulation** (Regulation (EU) 2019/816) is not part of the Schengen *acquis* and does not apply to Iceland and Norway.

Iceland and Norway are part of the EEA. EU law instruments listed under the heading 'Free movement, social security and equality' apply to them when the instruments have '(text with EEA relevance)' in their title. For the **Posted Workers Directive** (Directive 96/71/EC), such mention features in the amendments introduced through Directive (EU) 2018/957.

See also Annex VI to the EEA Agreement (OJ L 1, 3.1.1994, p. 3), as amended by the EEA Joint Committee Decisions No 208/2025 of 19 September 2025 (OJ L, 2026/39, 15.1.2026) and No 95/2025 of 8 May 2025 (OJ L, 2025/1383, 24.7.2025).

Liechtenstein

Under Article 2 of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, signed on 28 February 2008 and entered into force on 19 December 2011 (OJ L 160, 18.6.2011, p. 3), as approved by Council Decision 2011/350/EU of 7 March 2011 (OJ L 160, 18.6.2011, p. 19), Liechtenstein applies most of the EU law instruments of the Schengen *acquis*, as listed in Annexes A and B of the 2004 agreement between the EU and Switzerland (OJ L 53, 27.2.2008, p. 52) and in the Annex to the protocol.

The **ECRIS-TCN Regulation** (Regulation (EU) 2019/816) is not part of the Schengen *acquis* and does not apply to Liechtenstein**.**

The **Eurodac Regulation** (Regulation (EU) 2024/1358) and Parts III, V and VII of the **Asylum and Migration Management Regulation** (Regulation (EU) 2024/1351) constitute new acts building on the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein to the agreement between the European Community, and the Swiss Confederation concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a Member State or in Switzerland, signed on 28 February 2008 and entered into force on 19 December 2011 (OJ L 160, 18.6.2011, p. 39), as approved by Council Decision 2011/351/EU of 7 March 2011 (OJ L 160, 18.6.2011, p. 37). For law enforcement access to Eurodac, see the Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes, signed on 27 June 2019 and entered into force on 5 February 2020 (OJ L 32, 4.2.2020, p. 3), as approved by Council Decision (EU) 2020/142 of 21 January 2020 (OJ L 32,4.2.2020, p. 1).

Liechtenstein is part of the EEA. EU law instruments listed under the heading 'Free movement, social security and equality' apply to Liechtenstein when the instruments have '(text with EEA relevance)' in their title. For the **Posted Workers Directive** (Directive 96/71/EC), such mention features in the amendments introduced through Directive (EU) 2018/957.

See also Annex VI to the EEA Agreement (OJ L 1, 3.1.1994, p. 3), as amended by the EEA Joint Committee Decisions No 208/2025 of 19 September 2025 (OJ L, 2026/39, 15.1.2026) and No 95/2025 of 8 May 2025 (OJ L, 2025/1383, 24.7.2025).

Switzerland

Under Article 2 of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, signed on 26 October 2004 and entered into force on 1 March 2008 (OJ L 53, 27.2.2008, p. 52), as approved by Council Decision 2008/146/EC of 28 January 2008 (OJ L 53, 27.2.2008, p. 1), Switzerland applies most EU law instruments of the Schengen *acquis*, as listed in Annexes A and B of the agreement and instruments that amend or build upon these.

The **ECRIS-TCN Regulation** is not part of the Schengen *acquis* and does not apply to Switzerland.

The **Eurodac Regulation** (Regulation (EU) 2024/1358) and Parts III, V and VII of the **Asylum and Migration Management Regulation** (Regulation (EU) 2024/1351) constitute new legislation in the field covered by the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland – Final act – Declarations, signed on 26 October 2004 and entered into force on 1 March 2008 (OJ L 53, 27.2.2008, p. 5), as approved by Council Decision 2008/147/EC of 28 January 2008 (OJ L 53, 27.2.2008, p. 3), and apply to Switzerland. For law enforcement access to Eurodac, see the Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes, signed on 27 June 2019 and entered into force on 5 February 2020 (OJ L 32, 4.2.2020, p. 3), as approved by Council Decision (EU) 2020/142 of 21 January 2020 (OJ L 32, 4.2.2020, p. 1).

In the fields of free movement, social security and equality, see Annex II (coordination of social security schemes) of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed on 21 June 1999 and entered into force on 1 June 2002 (OJ L 114, 30.4.2002, p. 6; hereafter the European Community–Switzerland Agreement), as approved by the Decision of the Council, and of the Commission as regards the agreement on scientific and technological cooperation, of 4 April 2002, on the conclusion of seven agreements with the Swiss Confederation (2002/309/EC, Euratom) (OJ L 114, 30.4.2002, p. 1); as updated by Decision No 1/2020 of the Joint Committee established under the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of 15 December 2020 amending Annex II to that agreement on the coordination of social security schemes (2021/137) (OJ L 42, 5.2.2021, p. 15). The **Professional Qualification Directive** (Directive 2005/36/EC), with the exception of Title II, is provisionally applicable in Switzerland according to Decision No 2/2011 of the EU–Swiss Joint Committee established by Article 14 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, of 30 September 2011 replacing Annex III (Mutual recognition of professional qualifications) thereto (2011/702/EU) (OJ L 277, 22.10.2011, p. 20).

The **Posted Workers Directive** (Directive 96/71/EC) is not applicable to Switzerland; however, Switzerland is bound to follow similar rules by Article 22 of Annex I (free movement of persons) to the European Community–Switzerland Agreement.

Annex 2: Applicability of selected Council of Europe instruments

Applicability of selected Council of Europe instruments by EU Member State

Member State	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	
Total number of ratifications/ accessions	11	11	10	11	9	12	12	11	11	12	12	11	11	10	11	12	9	13	9	12	12	10	13	12	12	11	10	Total out of 27 Member States
ECHR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
ECHR Protocol No 1 (property, education, etc.)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
ECHR Protocol No 4 (freedom of movement, prohibition of collective expulsion of aliens, etc)	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	26
ECHR Protocol No 6 (abolition of death penalty)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
ECHR Protocol No 7 (procedural safeguards relating to expulsion of aliens etc)	✓	✓	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	25
ECHR Protocol No 12 (discrimination)	s	s	×	✓	s	s	×	s	s	✓	✓	×	✓	s	s	s	×	✓	s	✓	✓	×	✓	✓	×	✓	s	10
ECHR Protocol No 13 (abolition of death penalty)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
European Convention on Social and Medical Assistance (1953)	×	✓	×	×	×	✓	✓	✓	✓	✓	×	✓	×	×	✓	✓	×	✓	×	✓	✓	×	✓	×	✓	×	×	14
European Convention on Establishment (1955)	s	✓	×	×	×	✓	✓	×	✓	×	×	s	×	×	✓	✓	×	✓	×	×	✓	×	×	×	✓	×	×	9
European Convention on Nationality (1997)	✓	×	✓	×	✓	✓	✓	×	s	×	✓	s	s	✓	×	s	×	✓	s	s	✓	s	✓	✓	✓	×	✓	13
Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
Protocol amending the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (2018)	✓	s	✓	✓	s	✓	×	✓	✓	✓	✓	✓	✓	✓	s	✓	✓	s	s	✓	s	✓	✓	✓	s	✓	✓	19

✓ = State Party / applicable **s** = signed × = not signed

Member State	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	
Convention on Action against Trafficking in Human Beings (2005)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)	✓	✓	s	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	s	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	s	22
Framework Convention on Artifical Intelligence and Human Rights, Democracy and Rule of Law (2024)	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	0

✓ = State Party / applicable s = signed × = not signed

Applicability of selected Council of Europe instruments by other Council of Europe states

Member state	AD	AL	AM	AZ	BA	CH	GE	IS	LI	MC	MD	ME	MK	NO	RS	SM	TR	UA	UK	
Total number of ratifications/accessions	11	12	10	7	12	8	10	12	9	9	10	11	12	12	11	11	9	10	9	Total out of 19 member states
ECHR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
ECHR Protocol No 1 (property, education, etc.)	✓	✓	✓	✓	✓	s	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	17
ECHR Protocol No 4 (freedom of movement, prohibition of collective expulsion of aliens, etc)	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	s	✓	s	16
ECHR Protocol No 6 (abolition of death penalty)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
ECHR Protocol No 7 (procedural safeguards relating to expulsion of aliens etc)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	18
ECHR Protocol No 12 (discrimination)	✓	✓	✓	s	✓	×	✓	s	s	×	s	✓	✓	s	✓	✓	s	✓	×	10
ECHR Protocol No 13 (abolition of death penalty)	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	18
European Convention on Social and Medical Assistance (1953)	×	×	×	×	×	×	×	✓	×	×	×	×	×	✓	×	×	✓	×	✓	4
European Convention on Establishment (1955)	×	×	×	×	×	×	×	s	×	×	×	×	×	✓	×	×	✓	×	✓	3
European Convention on Nationality (1997)	×	✓	×	×	✓	×	×	✓	×	×	✓	✓	✓	✓	×	×	×	✓	×	8
Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
Protocol amending the Convention for the Protection of Individuals with Regard to automatic Processing of Personal Data (2018)	✓	✓	✓	×	✓	✓	×	✓	✓	✓	s	×	✓	s	✓	✓	×	×	s	10
Convention on Action against Trafficking in Human Beings (2005)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)	✓	✓	s	×	✓	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	15
Framework Convention on Artifical Intelligence and Human Rights, Democracy and Rule of Law (2024)	s	×	×	×	s	s	s	s	s	×	s	s	×	s	s	s	×	s	s	0

✓ = State Party / applicable s = signed × = not signed

Annex 3: Acceptance of European Social Charter provisions

Acceptance of European Social Charter provisions by EU Member States

	1996 European Social Charter																					1961 European Social Charter and 1988 Additional Protocol				
EU Member State	AT	BE	BG	CY	DE	EE	EL	ES	FI	FR	HU	IE	IT	LT	LV	MT	NL	PT	RO	SE	SI	SK	CZ	DK	HR	LU	PL
Total accepted	*14*	*26*	*20*	*16*	*23*	*22*	*29*	*31*	*26*	*31*	*17*	*26*	*30*	*24*	*25*	*20*	*30*	*31*	*17*	*23*	*29*	*26*	*15*	*18*	*15*	*16*	*10*
Art. 1 – right to work	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	✓	✓
Art. 2 – just conditions of work	o	✓	o	o	✓	o	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	o	o	✓	✓	✓	o	✓	✓	o
Art. 3 – safe and healthy work conditions	✓	✓	✓	o	✓	o	o	✓	o	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	o	✓	✓	✓	✓	×	✓	✓
Art. 4 – fair remuneration	o	✓	o	o	o	o	✓	✓	o	✓	×	✓	✓	✓	o	✓	✓	✓	✓	o	✓	✓	o	o	×	o	o
Art. 5 – right to organise	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 6 – right to bargain collectively	o	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	o
Art. 7 – protection of children and young persons	o	✓	✓	o	o	o	✓	✓	o	✓	o	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	✓	×	✓	✓	o
Art. 8 – protection of maternity of employed women	o	✓	✓	o	✓	✓	✓	✓	o	✓	✓	✓	✓	✓	✓	o	✓	✓	✓	o	✓	✓	o	o	✓	o	o
Art. 9 – vocational guidance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓
Art. 10 – vocational training	✓	✓	o	✓	o	o	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	×	✓	✓	✓	×	✓	×	✓	o
Art. 11 – protection of health	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 12 – social security	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	o	o	o	✓	✓	✓	o	✓	✓	✓	✓	×	✓	✓
Art. 13 – social and medical assistance	✓	✓	o	o	✓	o	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	✓	✓	o	✓	o	o	✓	✓	✓	✓	o
Art. 14 – benefit from social welfare services	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	o
Art. 15 – persons with disabilities	o	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	o	✓	✓	o	o	✓	×	✓	✓
Art. 16 – protection of the family	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 17 – protection of children and young persons	✓	✓	o	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 18 – work in the territory of other Parties	o	✓	o	o	✓	×	✓	✓	✓	✓	×	✓	✓	o	o	o	✓	✓	o	✓	o	o	o	✓	×	✓	o
Art. 19 – protection and assistance of migrant workers	o	o	o	✓	✓	✓	o	✓	o	✓	×	✓	✓	o	o	×	o	✓	o	✓	✓	o	o	×	×	✓	✓
Art. 20 – non-discrimination on the grounds of sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×

✓ = accepted o = partly accepted × = not accepted

	1996 European Social Charter																					1961 European Social Charter and 1988 Additional Protocol				
EU Member State	**AT**	**BE**	**BG**	**CY**	**DE**	**EE**	**EL**	**ES**	**FI**	**FR**	**HU**	**IE**	**IT**	**LT**	**LV**	**MT**	**NL**	**PT**	**RO**	**SE**	**SI**	**SK**	**CZ**	**DK**	**HR**	**LU**	**PL**
Total accepted	*14*	*26*	*20*	*16*	*23*	*22*	*29*	*31*	*26*	*31*	*17*	*26*	*30*	*24*	*25*	*20*	*30*	*31*	*17*	*23*	*29*	*26*	*15*	*18*	*15*	*16*	*10*
Art. 21 – information and consultation	×	✓	✓	×	o	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×
Art. 22 – participation in improvement of working conditions	×	✓	✓	o	o	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	×	✓	✓	×	✓	✓	✓	✓	✓	✓	×	×
Art. 23 – social protection of elderly persons	×	×	×	×	✓	×	✓	✓	✓	✓	×	✓	✓	×	×	✓	✓	✓	×	✓	✓	✓	✓	✓	×	×	×
Art. 24 – protection in cases of termination of employment	×	×	✓	✓	o	✓	✓	✓	✓	✓	×	×	✓	✓	✓	✓	✓	✓	✓	×	✓	✓					
Art. 25 – protection in case of employer's insolvency	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×	×	✓	✓	✓	✓	✓	✓	✓	✓	✓					
Art. 26 – dignity at work	o	✓	✓	×	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓					
Art. 27 – workers with family responsibilities	o	o	o	o	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	o	✓	✓	o	✓	✓	✓					
Art. 28 – protection of workers' representatives	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓					
Art. 29 – consultation in collective redundancy procedures	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓					
Art. 30 – protection against poverty and social exclusion	×	✓	×	✓	×	✓	✓	✓	✓	✓	×	✓	✓	×	✓	×	✓	✓	×	✓	✓	✓					
Art. 31 – housing	×	×	×	×	×	×	✓	✓	✓	✓	×	×	✓	o	o	×	✓	✓	×	✓	✓	×					

✓ = accepted o = partly accepted × = not accepted

Note: Yellow-shaded boxes indicate EU Member States that have ratified the 1996 European Social Charter only.

Acceptance of European Social Charter provisions by other Council of Europe member states that ratified the European Social Charter

	1996 European Social Charter													1961 European Social Charter and 1988 Additional Protocol	
Non-EU country	AD	AL	AM	AZ	BA	GE	MD	ME	MK	NO	RS	TR	UA	IS	UK
Total accepted	19	18	13	18	16	12	16	18	16	22	25	27	24	13	13
Art. 1 – right to work	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 2 – just conditions of work	✓	✓	o	×	✓	o	✓	o	✓	o	o	o	o	o	o
Art. 3 – safe and healthy work conditions	✓	✓	o	×	×	×	o	✓	o	o	✓	✓	✓	✓	✓
Art. 4 – fair remuneration	✓	✓	o	✓	o	o	o	o	o	✓	✓	o	o	✓	o
Art. 5 – right to organise	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓
Art. 6 – right to bargain collectively	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓
Art. 7 – protection of children and young persons	✓	✓	✓	✓	✓	✓	o	o	o	o	✓	✓	✓	×	o
Art. 8 – protection of maternity of employed women	✓	✓	✓	✓	✓	o	✓	✓	✓	o	✓	✓	✓	×	o
Art. 9 – vocational guidance	✓	×	×	✓	✓	×	✓	✓	×	✓	✓	✓	✓	×	✓
Art. 10 – vocational training	✓	×	×	×	×	o	✓	o	×	✓	o	✓	✓	×	✓
Art. 11 – protection of health	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 12 – social security	✓	×	o	×	o	o	✓	✓	✓	✓	✓	✓	o	✓	o
Art. 13 – social and medical assistance	✓	×	o	×	o	×	o	✓	✓	✓	✓	✓	×	✓	✓
Art. 14 – benefit from social welfare services	✓	×	o	✓	✓	✓	×	✓	×	✓	✓	✓	✓	✓	✓
Art. 15 – persons with disabilities	✓	×	o	×	×	o	✓	✓	o	✓	✓	✓	✓	✓	✓
Art. 16 – protection of the family	×	×	×	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓
Art. 17 – protection of children and young persons	✓	×	✓	×	✓	o	✓	✓	✓	✓	o	✓	✓	✓	✓
Art. 18 – work in the territory of other Parties	o	×	✓	×	×	✓	o	×	×	×	✓	✓	✓	✓	o
Art. 19 – protection and assistance of migrant workers	o	✓	✓	×	×	✓	o	o	o	o	o	✓	×	×	✓
Art. 20 – non-discrimination on the grounds of sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×
Art. 21 – information and consultation	×	✓	×	✓	✓	×	✓	×	✓	✓	✓	✓	✓	×	×

✓ = accepted o = partly accepted × = not accepted

	1996 European Social Charter													1961 European Social Charter and 1988 Additional Protocol	
Non-EU country	AD	AL	AM	AZ	BA	GE	MD	ME	MK	NO	RS	TR	UA	IS	UK
Total accepted	19	18	13	18	16	12	16	18	16	22	25	27	24	13	13
Art. 22 – participation in improvement of working conditions	✓	✓	✓	✓	✓	×	×	×	×	✓	✓	✓	✓	×	×
Art. 23 – social protection of elderly persons	✓	×	×	×	✓	×	×	✓	×	✓	✓	✓	✓	×	×
Art. 24 – protection in cases of termination of employment	×	✓	✓	✓	×	×	✓	✓	✓	✓	✓	✓	✓		
Art. 25 – protection in case of employer's insolvency	×	✓	×	×	×	×	×	×	×	✓	✓	✓	×		
Art. 26 – dignity at work	✓	✓	×	✓	×	✓	✓	o	✓	×	✓	✓	✓		
Art. 27 – workers with family responsibilities	×	×	✓	✓	×	✓	o	o	o	o	×	✓	✓		
Art. 28 – protection of workers' representatives	×	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓		
Art. 29 – consultation in collective redundancy procedures	×	✓	×	✓	×	✓	✓	✓	✓	×	✓	✓	✓		
Art. 30 – protection against poverty and social exclusion	✓	×	×	×	×	×	×	×	×	✓	✓	✓	✓		
Art. 31 – housing	o	×	×	×	×	×	×	×	×	✓	×	✓	o		

✓ = accepted o = partly accepted × = not accepted

Note: Yellow-shaded boxes indicate states that have ratified the 1996 European Social Charter only.

Annex 4: Acceptance of selected United Nations conventions

Acceptance of selected UN Conventions by EU Member States

EU Member State	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	Total out of 27
Total number of ratifications/ accessions	16	16	15	13	16	16	16	13	15	16	16	15	16	15	14	16	16	16	15	15	16	14	16	15	15	16	16	
Refugee Convention	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
Stateless Persons Convention	✓	✓	✓	×	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	24
Reduction of Statelessness Convention	✓	✓	✓	×	✓	✓	✓	×	×	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	×	✓	×	✓	✓	✓	✓	✓	21
ICED	✓	✓	s	s	✓	✓	✓	×	✓	✓	✓	✓	✓	×	s	✓	✓	✓	×	✓	✓	✓	✓	s	s	✓	✓	19
ICERD	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
ICCPR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
ICESCR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CEDAW	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CAT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CAT-OP	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CRC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CRC-OP1 (armed conflict)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
UNTOC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
UNTOC-OP1 (smuggling of migrants)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	26
UNTOC-OP2 (trafficking in human beings)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27
CRPD	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	27

✓ = State Party / applicable **s** = signed × = not signed

Acceptance of selected UN Conventions by other Council of Europe states

Member state	AD	AL	AM	AZ	BA	CH	GE	IS	LI	MC	MD	ME	MK	NO	RS	SM	TR	UA	UK	Total out of 19
Total number of ratifications/accessions	10	16	16	15	16	15	15	14	15	13	15	16	15	16	16	12	14	16	15	
Refugee Convention	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	17
Stateless Persons Convention	×	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	✓	×	✓	✓	✓	16
Reduction of Statelessness Convention	×	✓	✓	✓	✓	×	✓	✓	✓	×	✓	✓	✓	✓	✓	×	×	✓	✓	14
ICED	×	✓	✓	s	✓	✓	×	×	s	s	s	✓	s	✓	✓	×	×	✓	×	8
ICERD	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
ICCPR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
ICESCR	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	18
CEDAW	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
CAT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
CAT-OP	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
CRC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
CRC-OP1 (armed conflict)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
UNTOC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
UNTOC-OP1 (smuggling of migrants)	×	✓	✓	✓	✓	✓	✓	s	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	17
UNTOC-OP2 (trafficking in human beings)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19
CRPD	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19

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Refugee Convention - Convention Relating to the Status of Refugees (1951);
Stateless Persons Convention - Convention relating to the Status of Stateless Persons (1954);
Reduction of Statelessness Convention - Convention on the Reduction of Statelessness (1961);
ICED - International Convention for the Protection of All Persons from Enforced Disappearance (2006);
ICERD - International Convention on the Elimination of All Forms of Racial Discrimination (1965);
ICCPR - International Covenant on Civil and Political Rights (1966);
ICESCR - International Covenant on Economic, Social and Cultural Rights (1966);
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women (1979);
CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
CAT-OP - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002);
CRC - Convention on the Rights of the Child (1989);
CRC-OP 1 - Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000);
UNTOC - United Nations Convention against Transnational Organized Crime (2000);
UNTOC-OP1 - Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000);
UNTOC-OP2 - Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Conventions against Transnational Organized Crime (2000);
CRPD - Convention on the Rights of Persons with Disabilities (2006).

Annex 5: Country codes used in the annexes

Code	Country
AD	Andorra
AL	Albania
AM	Armenia
AT	Austria
AZ	Azerbaijan
BA	Bosnia and Herzegovina
BE	Belgium
BG	Bulgaria
CH	Switzerland
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
GE	Georgia
HR	Croatia
HU	Hungary
IE	Ireland
IS	Iceland

Code	Country
IT	Italy
LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
MC	Monaco
MD	Moldova
ME	Montenegro
MK	North Macedonia
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
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SE	Sweden
SI	Slovenia
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SM	San Marino
TR	Türkiye
UA	Ukraine
UK	United Kingdom

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website at fra.europa.eu.

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doi:10.2811/2075299 TK-01-26-008-EN-N

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COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

The European Convention on Human Rights and European Union law provide an increasingly important framework for the protection of the rights of foreigners. EU legislation relating to asylum, borders and immigration is developing fast. There is an impressive body of case law by the European Court of Human Rights relating in particular to Articles 3, 5, 8 and 13 of the European Convention on Human Rights. The Court of Justice of the European Union is asked more and more frequently to pronounce on the interpretation of EU law provisions in this field. The fourth edition of this handbook, updated to June 2026, presents this EU legislation and the body of case law by the two European courts in an accessible way. It is intended for legal practitioners, judges, prosecutors, immigration officials and non-governmental organisations in the EU and Council of Europe Member States.

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Publications Office of the European Union

ISBN 978-92-871-9730-6 (CoE)
ISBN 978-92-9489-719-0 (FRA)