EUAA Expert Panel: "Towards a common definition of public order and national security in international and temporary protection cases?"
30 November 2022
10:00 – 12:00
online via WebEx meetings

1. Background Information

The context

In accordance with its mandate to support judicial training in the field of international protection[1] and decisions adopted by the EUAA Courts and Tribunals Network[2], the EUAA is increasing the roll-out effect of their judicial activities through the EUAA expert panels. This activity was introduced in 2021 with the additional objective to address specialised topics in the field of international protection. It involves a panel of 3 judicial professionals and experts that engage in a discussion on a specific area of the CEAS, allowing attendees to deepen their expert knowledge on the respective field.

Feedback received from participants in previous expert panels and the EUAA Courts and Tribunals Network revealed that there is a high interest in *public order and national security issues in international protection cases, especially in withdrawal/revocation cases.* Based on this feedback the EUAA is organising an expert panel under the title '***Towards a common definition of public order and national security in international and temporary protection cases?'***

Experts / Format / Audience

The panel will comprise the following experts:

- Lars Bay Larsen, Vice President, Court of Justice of the EU
- Mattias Guyomar, Judge, European Court of Human Rights
- Liesbeth Steendijk, Judge, Judicial Department of the Council of State, Netherlands

The experts will lead a discussion on the topic structured around questions that participants will send in advance. The discussion will be transmitted online ***through the WebEx meetings platform***. The expert panel will take place on **30 November 2022**, from 10:00 to 12:00 a.m.

[1] See Article 8 of the EUAA Regulation: "The Agency shall establish, develop and review training for members of its own staff and members of the staff of relevant national administrations, **courts and tribunals**, and of national authorities responsible for asylum and reception" and Article 13: "The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law on asylum, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States."

[2] EASO Courts and Tribunals Network, Report of the Annual Coordination and Planning Meeting, 21-22 January 2021, p. 25; Report of the Annual Coordination and Planning Meeting, 23-24 January 2020, p. 17.

2. Framing the topic

Different terms are used in the legal instruments of the Common European Asylum System (CEAS) to describe the notions of national security and public order. Article 14(4)(a) and (b) of the Qualification Directive (hereinafter QD) speak of an applicant that may constitute '***danger to the security'*** or ***'the community'*** of a Member State, while articles 24(1) and (2) and 25(1) and (2) of '***compelling reasons of national security or public order'*** that may affect the issuance and duration of residence permits and travel documents. A table with the CEAS provisions that refer to these concepts is annexed to this note (see below Annex I).

An explicit definition of these notions cannot be found in any of the CEAS instruments, and their interpretation varies significantly across EU+ courts and tribunals. Recital 37 QD gives only an indication towards the meaning of the concept stating that '*the notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association'*.

Whilst not clearly defined, national security and public order considerations may have grave consequences for an international protection applicant that vary from ***ending their refugee status*** (Article 14 QD), ***excluding them from subsidiary*** (Article 17 QD) or ***temporary protection*** (Article 28(1)(b), Temporary Protection Directive), to limiting ***their right to be informed and defend themselves*** (Article 23(1) Asylum Procedures Directive) and eventually ***exceptions from the principle of non-refoulement*** (Article 33(2) Refugee Convention, Article 21(2)QD).

In this expert panel, first the meaning of the notions of national security and public order will be explored, followed by a discussion on the challenges in assessing evidence in cases where security and public order concerns have been raised. The discussion will then move on to how the principle of non-refoulement comes into play in cases where an applicant is faced with deportation because of the threat they pose to national security or public order.

The 3 broad areas to be discussed are as follows:

A. Could a common understanding of 'national security and public order' be achieved across EU+ Member States?

The Court of Justice of the EU (hereinafter CJEU) has held that the concept of 'public security' covers both **the internal security** of a Member State and **its external security** and that '*a threat to the **functioning of institutions** and **essential public services** and **the survival of the population**, as well as **the risk of a serious disturbance to foreign relations** or to **peaceful coexistence of nations, or a risk to military interests**, **may affect public security'***[3]. As to the public order, the CJEU has held that this concept 'presupposes, in any event, ***the existence,*** *in addition to the perturbation of the social order which any infringement of the law involves,* ***of***

[3] CJEU, HT v Land Baden-Württemberg, 24.06.2015, para 78.

a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society[4].

How this definition is further specified and applied in each international protection case, where national security and public order is presumably at stake, remains under question. In the afore-mentioned decision that concerned the revocation of a residence permit of an applicant, the CJEU went on to maintain that mere support shown by an applicant for a terrorist organisation cannot alone justify that there exist compelling reasons of national security and public order for the revocation of their residence permit, but is to be considered along with other factors, including inter alia the nature of support and the severity of danger to national security caused as a result[5].

Under the first part of the discussion, the experts will be invited to reflect on the relevant CJEU jurisprudence on the topic[6] and further discuss the constitutive elements of national security and public order, the evidentiary threshold that needs to be reached to prove that there exists danger for national security or/and public order as a result of the actions of an applicant[7] and whether common denominators can be found with regards to the actions and behaviours that could trigger such a danger.

B. *What are the particular challenges in assessing evidence in public order and national security cases, especially with regards to the use of classified information and access to information systems?*

Article 23(1) of the Asylum Procedures Directive (hereinafter APD) guarantees the right of the applicant to access information in their file 'upon the basis of which a decision is or will be made' introducing though an exception to this right 'where disclosure of information or sources would jeopardise national security'. Towards its end, the same article foresees the requirement that 'the applicant's rights of defence are respected'.

National security considerations are often relied on as a justification to limit the procedural right of an applicant to be informed as to the reasons why they are deemed to pose a threat to national security and defend themselves against this decision. Relevant jurisprudence both from the CJEU and the ECtHR has sought to strike a fair balance between the interests of national security and public order on the one hand and the applicant's right to an effective remedy on the other. In particular, the ECtHR has held that the applicant should be able to contest the authorities' decision that national security is at stake[8]. In relevant immigration cases,

[4] CJEU, HT v Land Baden-Württemberg, para 79. See also EUAA, Judicial Analysis on Exclusion from international protection, 2nd ed, 2021, pp. 123 – 124.
[5] CJEU, HT v Land Baden-Württemberg, paras 87 – 92.
[6] For which see ANNEX III.
[7] The CEAS instruments sometimes refer to 'serious grounds' for considering someone as danger to national security or public order (25(6)(b)(iii) APD), other times to 'reasonable grounds' (14(4)(a) QD) and other times to 'compelling reasons' of national security and or public order (Articles 24 and 25 QD).
[8] ECtHR, Ljatifi v the former Yugoslav Republic of Macedonia, 17.05.2018, para 35, according to which 'even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that deportation measures affecting fundamental human rights be subject to some form of adversarial proceedings before an independent authority or a court competent to effectively scrutinise the reasons for them and review the relevant evidence, if need be with appropriate procedural limitations on the use of classified information'.

the CJEU has ruled that in the light of Article 47 of the Charter of Fundamental Rights, the applicant should be informed, of the essence of the grounds that constitute the basis of a decision refusing him entry 'in a manner which takes due account of the necessary confidentiality of the evidence'[9].

A recent case before the CJEU[10] concerns the interpretation of Article 23(1)b that has been mentioned above and the issue – among others – of whether the applicant for international protection is entitled to have access to '*at least the essence of the confidential or classified information or data underpinning the decision against them*'. In this light, the experts will reflect on the use of classified information in the international protection context and, what can be deemed as essential information that needs to be communicated to the applicant under any circumstances and in which way, so as to safeguard the protection of national security and public order. The use of information systems, such as the Schengen Information System (SIS), as a source of information pertaining to the protection of national security could also be discussed in this respect[11].

C. How does the principle of non-refoulement come into play, when an applicant is deemed as posing threat to national security or the community of a Member State or the public order?

The principle of non-refoulement guarantees that a refugee is not returned to a country where '*his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*'. Whereas the Refugee Convention foresees exceptions to the principle of non-refoulement[12] for refugees who pose a danger to the security or the community of a country, the ECtHR has repeatedly affirmed that protection offered against il-treatment under Article 3 of the Convention, which safeguards the principle of non-refoulement under European Human Rights Law, is absolute. That is to say that this protection is not compromised even when the protection of national security or public order is at stake. Similarly, Article 19(2) of the Charter of Fundamental Rights foresees an absolute protection against refoulement under EU primary law.

In this respect, in a recent case the CJEU held that Member States may not remove, expel or extradite a foreign national who has lost his refugee status on the grounds of Article 14(4) of Directive 2011/95, where there are serious and substantial grounds for believing that he will

[9] CJEU, ZZ v Secretary of State for the Home Department, 04.06.2013, para 69.
[10] CJEU, GM v Országos Idegenrendeszeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ. 22.09.2022. See also the analysis on the use of classified information at EUAA, Judicial Analysis on Exclusion from international protection, 2021, pp. 127 – 133 and EUAA, Judicial Analysis on Asylum Procedures and the principle of non- refoulement, 2018, pp. 100 – 101.
[11] See specifically in the context of the activation of the Temporary Protection Directive C(2022) 1806 final of 21.3.2022, p. 9, 'The Commission strongly recommends that Member States, before issuing a residence permit to beneficiaries of temporary protection or adequate protection under national law, consult the relevant international, EU and national databases, and in particular the alerts on persons, and documents in the Schengen Information System (SIS), allowing them to proceed with the necessary security check'.
[12] Article 33(2) Refugee Convention. So does Article 21 QD.

face a genuine risk, in the country of destination, of being subjected to treatment prohibited by Articles 4 and 19 of the Charter[13].

To conclude the discussion, the experts are invited to reflect on how absolute protection against refoulement under EU primary law and the European Convention of Human Rights comes into play in cases where an applicant is indeed deemed to pose a threat to national security and public order, when the threshold of refoulement or il-treatment is met and the importance of carrying out a full and ex-nunc assessment in this respect.

The suggested topics and directions outlined above are indicative only and are further to be specified by the experts sitting on this panel, according to the input that will be received from participants. For this purpose, annexed to this note can be found:

- a table that outlines relevant CEAS provisions
- relevant EUAA and other material
- a table with relevant case law.

[13] CJEU, M v. Ministerstvo vnitra (C-391/16) (CZ), and X (C-77/17), X (C-78/17) v. Commissaire général aux réfugiés et aux apatrides, 14.5.2019, para 110.

ANNEX I

Table with the provisions of the legal instruments of the CEAS that refer to the concepts of national security, danger to community or public order.

Legal Instrument / Article		Reference to:		
		National Security	Community	Public Order
Refugee Convention				
General obligations	**2**			**X**
Provisional measures	**9**	**X**		
Travel Documents	**28(1)**	**X**		**X**
Expulsion	**32(1)**	**X**		**X**
	32(2)	**X**		
Prohibition of expulsion or return (“refoulement”)	**33(2)**	**X**	**X**	
Qualification Directive				
Revocation of, ending of or refusal to renew refugee status	**14(4)(a)**	**X**		
	14(4)(b)		**X**	
Exclusion from subsidiary protection	**17(1)(d)**	**X**	**X**	
Protection from refoulement	**21(2)(a)**	**X**		
	21(2)(b)		**X**	
Maintaining family unity	**23(4)**	**X**		**X**
Residence permits	**24(1)**	**X**		**X**
	24(2)	**X**		**X**
Travel document	**25(1)**	**X**		**X**
	25(2)	**X**		**X**
Asylum Procedures Directive				
Scope of legal assistance and representation	**23(1)**	**X**		
Guarantees for unaccompanied minors	**25(6)(a)(iii)**	**X**		**X**
	25(6)(b)(iii)	**X**		**X**
Examination procedure	**31(8)(j)**	**X**		**X**
Reception Conditions Directive				

Residence and freedom of movement	**7(2)**			**X**
Detention	**8(1)(e)**	**X**		**X**
Conditions of Detention	**10(4)**			**X**
Temporary Protection Directive				
Special provisions – Exclusion	**28(1)(b)**	**X**	**X**	

ANNEX II

Relevant Material

EUAA

- EUAA (2021), Judicial Analysis on Ending International Protection, 2nd edition
- EUAA (2020), Judicial Analysis on Exclusion from International Protection, 2nd edition
- EUAA (2018), Judicial Analysis on Evidence and Credibility Assessment
- EUAA (2018), Judicial Analysis on Asylum Procedures and the principle of non-refoulement
- EUAA (2017), Practical Guide: Exclusion
- EUAA (2016), Judicial Analysis on Exclusion from International Protection, 1st edition
- EUAA (2016), Judicial Analysis on Ending International Protection, 1st edition

UNHCR

- UNHCR (2019), Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees
- UNHCR (2010), UNHCR intervention before the United States Court of Appeals for the Ninth Circuit in the case of Delgado v. Holder, Attorney General
- UNHCR (2003), Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees
- UNHCR (2001), UNHCR intervention before the Supreme Court of Canada in the case of Manickavasagam Suresh (Appellant) and the Minister of Citizenship and Immigration, the Attorney General of Canada (Respondents)

ANNEX III

Relevant Case Law by the CJEU and the ECtHR

Court	Title/ Date	Summary / Key points
Defining the notions of National Security and Public Order		
CJEU	XXX v Commissaire général aux réfugiés et aux apatrides (CGRS) Pending	Questions referred for a preliminary ruling: 1. Must Article 14[(4)(b)] of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, 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, be interpreted as providing that danger to the community is established by the mere fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime or must it be interpreted as providing that a conviction by a final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community? 2. If a conviction by final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community, must Article 14[(4) (b)] of Directive 2011/95/EU be interpreted as requiring the Member State to establish that, since his or her conviction, the applicant continues to constitute a danger to the community? Must the Member State establish that the danger is genuine and present or is the existence of a potential threat sufficient? Must Article 14[(4)(b)], taken alone or in conjunction with the principle of proportionality, be interpreted as allowing revocation of refugee status only if that revocation is proportionate and the danger represented by the beneficiary of that status sufficiently serious to justify that revocation? 3. If the Member State does not have to establish that, since his or her conviction, the applicant continues to constitute a danger to the community and that the threat is genuine, present and sufficiently serious to justify the revocation of refugee status, must Article 14[(4)(b)] of Directive 2011/95/EU be interpreted as meaning that danger

		to the community is established, in principle, by the fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime [,] but that he or she may establish that he or she does not constitute, or no longer constitutes, such a danger?
CJEU	AA v Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA) pending	Questions referred for a preliminary ruling: 1. In the assessment as to whether the asylum status previously granted to a refugee by the competent authority can be revoked on the ground set out in Article 14(4)(b) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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 (recast), must the competent authority carry out a weighing up of interests in such a way that revocation requires that the public interests in forced return must outweigh the refugee's interests in the continuation of the protection afforded by the State of refuge, whereby the reprehensibility of a crime and the potential danger to society must be weighed against the foreign national's interests in protection – including with regard to the extent and nature of the measures with which he or she is threatened? 2. Do the provisions of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 5, 6, 8 and 9 thereof, preclude a situation under national law in which a return decision is to be adopted in respect of a third-country national whose previous right of residence as a refugee is withdrawn due to the revocation of asylum status, even if it is already declared at the time of adoption of the return decision that his or her removal is not permissible for an indefinite period of time on account of the principle of non-refoulement, and this is also declared capable of having legal force?
CJEU	Commission v Poland, Hungary and Czech Republic 02.04.2020	The Court upheld the actions for failure to fulfil obligations brought by the Commission against those three Member States seeking a declaration that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who could be relocated swiftly to their respective territories and by consequently failing to implement their subsequent relocation obligations, those Member States had failed to fulfil their obligations under European Union law, noting that 'the scope of the requirements relating to the maintenance of law and order or national security cannot therefore be determined unilaterally by each Member State, without any control by the institutions of the European Union'.

CJEU	Shajin Ahmed (Afghanistan) v Immigration and Asylum Office (HU, Bevándorlási És Állampolgársági Hivatal) 13.09.2008	An Afghan national obtained refugee status in 2000 in Hungary on account of the risk of persecution that he faced in his country of origin. His refugee status was withdrawn by the Hungarian authorities in the course of criminal proceedings in 2014. He applied again in 2016 for refugee status and for subsidiary protection. He was not granted subsidiary protection due to the existence of a ground for exclusion (the commission of a 'serious crime' for which Hungarian law provides a custodial sentence of five years or more). The Court ruled that EU law precludes legislation of a Member State pursuant to which an applicant for subsidiary protection is deemed to have 'committed a serious crime', which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under national law. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned. (Relevant to **14(4)(b) QD**)
CJEU	J.N. v State Secretary for Security and Justice (Staatssecretaris van Veiligheid en Justitie) 15.02.2016	In this case the Court ruled on the issue of detaining applicants for international protection when the protection of national security or public order so requires and whether this detention ground is in line with EU primary law and the level of protection granted by the European Convention on Human Rights. The Court reiterated that the concept of "public order" presupposes, in any event, the existence – in addition to the disturbance of the social order which any infringement of the law involves – of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. As regards "public security", it is apparent from the Court's case-law that this concept covers both the internal security of a Member State and its external security. Consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security. The Court found that there is no ground for calling in question the validity of the Reception Conditions Directive, in so far as it authorises detention measures of that kind, whose scope is strictly circumscribed so as to meet the requirements of proportionality.
CJEU	HT v Land Baden-Württemberg 24.06.2015	Support for a terrorist organisation included on the list annexed to Council Common Position 2001/931/ CFSP of 27 December 2001 on the application of specific measures to combat terrorism, in the version in force at the material date, may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) of Directive 2004/83, even if the conditions set out in Article 21(2) of that directive are not met. In order to be able to revoke, on the basis of Article 24(1) of that directive, a residence permit granted to a refugee on the ground that that refugee supports such a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an individual assessment of the specific facts concerning the actions of both the organisation and the refugee in question. Where a Member State

		decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that directive to deny access to the benefits guaranteed by Chapter VII of the same directive, unless an exception expressly laid down in the directive applies. (see also para. 71 for the interplay with the principle of non-refoulement)
Assessment of Evidence and Use of Classified Information		
CJEU	GM v Országos Idegenrendeszeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ 22.09.2022	The judgment concerns the interpretation of Articles 14 and 17 of the recast Qualification Directive, Articles 4, 10, 11, 12, 23 and 45 of the recast Asylum Procedures Directive, and Articles 41 and 47 of the EU Charter. The request for a preliminary ruling was made in proceedings brought by GM against the decision of the Hungarian National Directorate-General for Aliens Policing, which withdrew his refugee status and refused to grant him subsidiary protection. According to the CJEU Press release of 22 September 2022: "EU law precludes Hungarian legislation which provides that the person concerned or his or her legal representative can access the case file only after obtaining authorisation to that end, and without being provided with the grounds of the decision. EU rules do not allow the authority responsible for examining applications for international protection systematically to base its decisions on a non-reasoned opinion issued by bodies entrusted with specific functions linked to national security which have found that a person constitutes a danger to that national security".
ECtHR	Ljatifi v the former Yugoslav Republic of Macedonia 17.05.2018	In 1999 the applicant fled Kosovo to the former Yugoslav Republic of Macedonia (now North Macedonia), where in 2005 she was granted asylum status. Her residence permit was extended each year until 2014, when the Ministry of the Interior terminated her asylum status, stating merely that she was 'a risk to [national] security', and ordered her to leave the territory of the respondent State within 20 days of receipt of the final decision. The domestic courts upheld that decision, noting that it was based on a classified document obtained from the Intelligence Agency. They considered irrelevant the applicant's argument that the document had never been disclosed to her. As the classified document had not been available to the applicant and the Ministry's decision did not provide her with the slightest indication of the factual grounds for considering her a security risk, she had been unable to present her case adequately in the ensuing judicial review proceedings. There was nothing to suggest that the domestic courts had been provided with the classified document or any further factual details for the purpose of verifying that the applicant really did represent a danger for national security. They had thus confined themselves to a purely formal examination of the impugned order. The domestic courts had furthermore not given any explanation of the importance of preserving the confidentiality of the classified document or

		indicated the extent of the review they had carried out. They had therefore failed to subject the executive's assertion that the applicant posed a national security risk to any meaningful scrutiny. The Court ruled that there has been a violation of paragraph 1 (a) and (b) of Article 1 of Protocol No 7 to the Convention.
ECtHR	X. (Morocco) v Sweden 09.01.2018	The Court cannot rely on the findings of the domestic authorities if they did not have all essential information before them – for example for reasons of national security – when rendering the expulsion decisions. In more detail: A Moroccan national, residing in Sweden, complained that he would face torture in Morocco if Sweden deported him. In March 2016 the Swedish Security Service applied to the Migration Agency for an order to expel him, stating that he was a national security threat. He applied for asylum and international protection during the Migration Agency's examination of the case, arguing that as the Security Service had labelled him as a terrorist, he would risk torture and at least 10 years' prison if deported to Morocco. The Migration Agency granted the Security Service's request and rejected the applicant's asylum application, and its decision was upheld by the Migration Court of Appeal and the Swedish government. The Court considered that the circumstance that the migration authorities appear not to have received all relevant and important information to make their decision, which raises concern as to the rigour and reliability of the domestic proceedings. Moreover, having regard to the efforts made by the Moroccan authorities to improve the human rights situation in the country over several years, the Court noted that no assurances by the Moroccan authorities relating to the treatment of the applicant upon return, or if he were to be detained, access to him by Swedish diplomats, have so far been obtained in order to help eliminate, or at least substantially reduce, the risk of the applicant being subjected to ill-treatment once returned to his home country. Consequently, in the present circumstances, the applicant's expulsion to Morocco would involve a violation of Article 3 of the Convention. (also relevant to the interplay with the principle of non – refoulement)
CJEU	ZZ v Secretary of State for the Home Department 04.06.2013	The case concerns an applicant with French and Algerian nationality, lawfully residing in the United Kingdom from 1990 to 2005, whose residence permit was cancelled by the Secretary of State for the Home Department in 2005 on the ground that his presence was not conducive to the public good. The applicant appealed against this decision before the Special Immigration Appeals Commission that dismissed the appeal. Invoking national security considerations, the Commission objected to disclosing the basis of the decision to the applicant or his advisers but only to 2 special advocates, who were then precluded from seeking further instructions from, or providing information to the applicant without the permission of the Commission. The Court ruled that the mere fact that a decision taken by a competent national authority concerns State security cannot result in European Union law being inapplicable and that it is incumbent upon the national court with jurisdiction, first, to ensure that the person concerned is informed of the essence of the grounds which constitute the basis of the decision in

		question in a manner which takes due account of the necessary confidentiality of the evidence and, second, to draw, pursuant to national law, the appropriate conclusions from any failure to comply with that obligation.
ECtHR	A and OTHERS v. THE UNITED KINGDOM 19.02.2009	It is essential that as much information about the allegations and evidence against each applicant was disclosed as was possible without compromising national security or the safety of others. Where full disclosure was not possible, Article 5(4) ECHR [right to liberty] required that the difficulties this caused were counterbalanced in such a way that each applicant still had the possibility effectively to challenge the allegations against him (para. 218) The principal allegations against the first and tenth applicants were that they had been involved in fund-raising for terrorist groups linked to al-Qaeda. In the first applicant's case there was open evidence of large sums of money moving through his bank account and in respect of the tenth applicant there was open evidence that he had been involved in raising money through fraud. However, in each case the evidence which allegedly provided the link between the money raised and terrorism was not disclosed to either applicant. In these circumstances, the Court does not consider that these applicants were in a position effectively to challenge the allegations against them. There has therefore been a violation of Article 5 § 4 in respect of the first and tenth applicants (para. 223).
The interplay with the non-refoulement principle		
ECtHR	K.I. v France 15.04.2021	The applicant, K.I., is a Russian national of Chechen origin. He arrived in France when he was still a minor and he was granted refugee status. After being convicted for terrorism, the French Office for Refugees and Stateless Persons (OFPRA) withdrew his refugee status in July 2020 and his deportation to Russia was ordered as his presence in France was considered to be a serious threat to French society. Relying on Article 3 of the Convention, the applicant argued that his deportation to Russia would expose him to torture in Russia because of his family ties with individuals who took a position in favour of Chechen guerrilla, his refusal to cooperate with the authorities and that the authorities were already after him, because of his links with a jihadist group in Syria. The ECtHR noted that although serious human rights violations have been reported in Chechnya, the situation was not such that any referral back to the Russian Federation would constitute a breach of Article 3 of the Convention. The court further noted that certain categories of the population may be particularly at risk. Regarding the applicant's individual situation, the court found that there was no indication that the Russian authorities were still looking for him, as argued by the applicant, as his relatives were able to obtain his domestic passport from the Russian authorities. In addition, Russia never requested from France the extradition of the applicant or a copy of the judgment condemning the applicant for acts related to terrorism. In line with the CJEU case law, the ECtHR

		concluded that the applicant retained, despite the revocation of his status, the status of refugee. However, this quality was not taken into account by the French authorities in the framework of adopting and reviewing the removal to Russia, who thus did not assess the risks possibly incurred in light of this circumstance and the fact that, at least when he arrived in France in 2011, the applicant was identified as belonging to a targeted group. In conclusion, there would be a violation of Article 3 in its procedural aspect if the applicant were returned to Russia in the absence of an ex nunc assessment by the French authorities of the risk he alleges to incur in the event of execution of the removal order.
CJEU	M v. Ministerstvo vnitra (C-391/16) (CZ), and X (C-77/17), X (C-78/17) v. Commissaire général aux réfugiés et aux apatrides 14.05.2019	The Court ruled that the fact of being a 'refugee' is not dependent on the formal recognition of that fact through the granting of 'refugee status'. Member States may not remove, expel or extradite a foreign national who has lost his refugee status on the grounds of Article 14(4) of Directive 2011/95, where there are serious and substantial grounds for believing that he will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by Articles 4 and 19 of the Charter. In such circumstances, the Member State concerned may not derogate from the principle of non-refoulement (paragraph 95). Finally, the CJEU ruled at paragraph 99 that when paragraph 4 of Article 14 of Directive 2011/95 applies, a third-country national may be deprived of refugee status and, thus, of all the rights and benefits set out in Chapter VII of this directive, in so far as these are associated with that status. However, as long as the conditions for asylum are fulfilled, the person concerned remains a refugee and benefits from the rights guaranteed by the Geneva Convention, as explicitly provided for in Article 14, paragraph 6, of the said directive.
ECtHR	A.M. v France 29.04.2019	The Court held, unanimously, that: if the decision to deport the applicant to Algeria is enforced there would be no violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights. The case concerns the applicant's planned deportation to Algeria after he was convicted in France in 2015 for participating in acts of terrorism and was permanently banned from French territory. The Court found that the general situation in Algeria as regards the treatment of individuals linked to terrorism did not in itself preclude the applicant's deportation. The Court agreed with the conclusion of the French courts. It found that their assessment had been appropriate and sufficiently substantiated by domestic data and information from other reliable and objective sources. The Court took the view that there were no serious, proven grounds to believe that if he were returned to Algeria the applicant would run a real risk of being subjected to treatment in breach of Article 3 of the Convention and it found that his deportation would not entail a violation of that provision.
ECtHR	M.A. v. France 1.02.2018	The case concerned an Algerian national who was sentenced to seven years' imprisonment and was made the subject of a permanent exclusion order from French territory for involvement in a conspiracy to prepare acts of terrorism. In December 2014 the applicant lodged an asylum application, which was rejected by the French Office

		for the Protection of Refugees and Stateless Persons (OFPRA). On 20 February 2015 the applicant's lawyer was informed that the applicant was being expelled and submitted a fresh request for interim measures to the ECtHR, which demanded the French government not to remove the applicant before 25 February 2015. Yet, the applicant was removed to Algeria and taken into police custody. The applicant submitted that his removal to Algeria exposed him to a serious risk of treatment contrary to Article 3 ECHR, that the French government had failed in its obligations under Article 34 ECHR by not complying with the interim measure, and that his expulsion violated his right to respect for private and family life under Article 8 ECHR. With regard to his complaint under Article 3 ECHR, the Court reaffirmed that it was legitimate for Contracting States to take a very firm stand against those who contributed to terrorist acts (Daoudi v. France). However, several reports by the UN Committee against Torture and by NGOs described that suspects of terrorism in Algeria were often detained, ill-treated or tortured. Therefore, France had violated Article 3 ECHR by sending the applicant to Algeria. The ECtHR also ruled that the authorities had breached Article 34 ECHR by carrying out the applicant's transfer despite the Court's interim measure. It also affirmed that the applicant had become aware that his asylum application had been rejected and that he would be returned on the same day that the flight was scheduled, leaving him with no time to apply to the Court for a second interim measure. The ECtHR also stated that it was incumbent on the French Government to do their utmost to obtain from the Algerian authorities a concrete and precise assurance that the applicant had not been, and would not be, subjected to treatment contrary to Article 3 ECHR.
ECtHR	X (Morocco) v The Netherlands 10.07.2018	The Court ruled that the expulsion of a Moroccan national, who resided in Netherlands, to his home country would not give rise to a violation of article 3. The applicant was convicted of preparing terrorist offences and sentenced to 12 months' imprisonment. In the meantime, he applied for asylum, claiming that he would be at risk of being detained and ill-treated if he were removed to Morocco where he was considered a terror suspect. His application was rejected and his removal was ordered in addition to an entry ban as he has been determined to constitute a danger to national security and public safety. Relying on Article 3, the applicant alleged in particular that, as a known terror suspect, he belonged to a group systematically exposed to torture and/or ill-treatment in Morocco. The Court concluded that the expulsion would not violate Article 3 in light of the seemingly improving situation in Morocco in respect of torture detainees and the fact that the Moroccan authorities, who should be assumed aware of the applicant's existence, have not taken any steps to demonstrate any interest in the applicant.
ECtHR	A.S. (Morocco) v France 19.04.2018	The case concerned the expulsion to Morocco of a Moroccan national who had been convicted in France of conspiracy to carry out terrorist acts, and who had previously been deprived of his French nationality for the same reason. The Court noted in particular that Morocco had adopted general measures to prevent risks of treatment contrary to Article 3. The present application was therefore different from the case of M. A. v. France. Furthermore,

		despite his release, the applicant had failed to provide any evidence that his conditions of detention had exceeded the requisite severity threshold for a violation of Article 3. As regards Article 34, the Court found that the expulsion order had not been served on the applicant until 22 September 2015, the day of his release, more than one month after the decision had been taken, and that he had been immediately taken to the airport for expulsion to Morocco. The applicant had therefore not had sufficient time to request that the Court suspend the decision, even though the French authorities had taken it a long time previously.
ECtHR	Othman (Abu Qatada) v. the United Kingdom 09.5.2012	The case concerns a recognised as a refugee in the United Kingdom, who was to be deported in the interests of national security to Jordan. The UK Government obtained assurances from Jordan that he would not be subjected to ill-treatment and would be tried fairly by the Jordanian State Security Court. However, the applicant alleged that, if deported to Jordan, he would be at real risk of ill-treatment and an unfair trial. The Court ruled that in light of the reassurances and guarantees obtained the applicant's return to Jordan would not expose him to a real risk of ill-treatment under Article 3 of the Convention. The Court found a violation of Article 6 of the Convention on account of the real risk of the admission at the applicant's retrial of evidence obtained by torture of third persons.
ECtHR	Saadi v Italy 28.2.2008	Mr. Saadi was a Tunisian national who entered Italy between 1996 and 1999. On 9 October 2002 he was arrested on suspicion of involvement in international terrorism. On 9 May 2005 the Milan Assize Court sentenced him to four years and six months' imprisonment on the charges of criminal conspiracy, forgery of a large number of documents, and receiving stolen goods. The Assize Court also ordered that he was to be deported after serving his sentence. The Court ruled that the absolute nature of Article 3 means that there can be no distinction between treatment inflicted by a signatory state and treatment that might be inflicted by another state, and that protection against the latter cannot be weighed against the interests of the community as a whole – i.e., the conduct of the person is irrelevant. The threat that the person poses to the community is not related to the degree of risk of ill-treatment that he may be subjected to on return, and so it would be incorrect to require a higher standard of proof when the person is considered to represent a serious danger to the community. Such an approach would also be incompatible with the absolute nature of Article 3. The Court found that there were substantial grounds for believing that there is a real risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia. Therefore, the decision to deport the applicant to Tunisia would breach Article 3 if it were enforced – the Court accepted the applicant's submission under Article 3.

Court	Title/ Date	Summary / Key points
Austria Supreme Administrative Court	Ro 2018/01/0014 04.04.2019	Ending asylum status because of danger to security: Whether a refugee constitutes a danger to security requires an assessment of their overall behaviour and does not presuppose that they have already been criminally convicted for it. For this reason, the asylum authority must assess on its own initiative whether a member of a radical Islamist association that runs a mosque in which, according to police reports, young people are radicalised for armed jihad constitutes a danger to security for the host country. (Relevant paras. 16, 19-20)
Austria Supreme Administrative Court	Ra 2018/19/0522 29.08.2019	Ending refugee protection due to conviction for a particularly serious crime/danger to the community (Article 14(4)(b) QD): Four cumulative conditions must be met. Firstly, the refugee must have committed a particular serious crime; secondly, they must have been convicted of it by a final decision of a criminal court; thirdly, they must be a danger to the community; and fourthly, the danger to the host country must outweigh the interest of the refugee in being protected by the host country. Only offences which objectively violate particularly important legal interests can be considered particularly serious. These include, for example, murder, rape, child abuse, drug trafficking, armed robbery and the like. Nevertheless, it is necessary to assess whether, in the individual case, the criminal act can be considered as objectively and subjectively particularly serious. (Relevant paras. 11, 16-19)
Czech Republic Supreme Administrative Court	No 5 Azs 189/2015-127, *M.* v *Ministry of Interior* 23.04.2020	The crime committed by the claimant, in this case robbery, is qualified as a particularly serious crime in national criminal law. The terms 'serious crime' (Article 17(1)(b) QD (recast)) and 'particularly serious crime' (Article 14(4)(b) QD (recast)) are autonomous notions of EU and international refugee law. Until this judgment, the Czech case-law only concerned the term 'serious crime' with respect to exclusion from subsidiary protection, but the court found that the conclusions of this judgment may also be applied to the latter term ('particularly serious crime') in Article 14(4) QD (recast). The court noted that this provision has its origins in Article 33(2) of the Geneva Convention and must be interpreted with due regard to that Convention. The court recalled that in *Ahmed* (para. 56), which concerned the term 'serious crime' in Article 17(1)(b) QD (recast), the CJEU stated that the possible factors to consider include the nature of the act at issue, the consequences

		of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and the taking into account of whether most jurisdictions also classify the act at issue as a 'serious crime'. Article 33(2) Geneva Convention also indicates that only crimes of particular gravity fall under this provision.
France Council of State	No 450618 28.03.2022	The applicant, B.M. Russian national, was provided international protection in 2003. In 2018, protection was withdrawn. B.M. asked the Administrative Tribunal of Toulouse to cancel the decree of 13 June 2019 by which the prefect of Haute-Garonne withdrew protection and obliged him to leave the French territory. By judgment of 1 October 2019, the Administrative Court of Toulouse rejected his request. By a judgment of 1 March 2021, the Administrative Court of Appeals of Bordeaux rejected the appeal brought against this judgment. The applicant appealed before the Council of State. The Council noted that the person whose refugee protection has been withdrawn, but who has retained refugee status, can only be expelled if the administration, after an in-depth examination of his personal situation taking particular account of this status, concludes that there is no risk for the person concerned to be subjected to ill-treatment in the country of origin. The Council held that the court of appeal erred when it rejected the appeal, as the authorities did not provide an individual assessment of the risk of being subjected to ill-treatment in Russia.
France Council of State	No 440383 10.06.2021	The Council of State held that the criminal offenses committed by a refugee cannot, by themselves, legally justify a decision to terminate refugee status, and it is up to OFPRA and, in the event of appeal, to the National Court of Asylum, to examine the seriousness of the threat posed by the presence of the person concerned in France, taking into account, among other elements, the nature of the offenses committed, the fundamental interests of society to which the repetition of these offenses would expose society and the risk of such repetition. The only circumstance that a refugee, convicted of acts which, when committed, establish that his presence constituted a serious threat to society, has refrained, after his release, from any reprehensible behaviour, does not imply, by itself, at least before the expiration of a certain period, and in the absence of any other significant positive element in this sense, that this threat has disappeared. In this case, the refugee was sentenced for his involvement in the organization of an illegal immigration network destined for various European countries of which he was one of the main instigators, and was, moreover, at the date of the contested decision, still subject to a ten-year legal ban from French territory. Although he claimed to have ceased all ties with the members of his network and has not attracted the attention of the authorities since his release, these circumstances, as well as his family situation, the fact that he exercises a professional activity as a temporary worker and his learning of the French language, do not allow it to be taken for granted that his presence in France no longer constituted, at the date of the contested decision, a serious threat to French society. The Council thus held that the OFPRA was justified in maintaining that the CNDA incorrectly qualified the facts submitted to it. The Council sent the case back to the CNDA.

France Council of State	No. 431239 12.02.2021	The applicant is a national of Russia of Chechen origin. The applicant was granted international protection in France in 2011. On 20 February 2017, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) decided to end refugee status as the applicant was convicted four times between 2011 and 2016, including a conviction on 18 February 2015 for publicly supporting a terrorist act (punishable by 5 to 7 years of imprisonment), and considered that the applicant's presence on French territory constituted a serious threat to society. The applicant appealed against the decision to the National Court of Asylum. The court annulled the decision on 2 April 2019 and OFPRA appealed before the Council of State to overturn this decision. On 20 February 2021, the Council of State dismissed OFPRA's appeal. The Council held that according to national legislation, refugee status can be revoked when two cumulative conditions are fulfilled: firstly, a person must be convicted for an act of terrorism or punished with a sentence of ten years' imprisonment; and secondly, the person's presence should constitute a serious threat to society. In this case, M.A. was convicted for publicly supporting an act of terrorism, which is punishable by less than ten years' imprisonment. The Council concluded that the first condition was not fulfilled and given that the two conditions are cumulative and thus necessary to justify the termination of refugee status, OFPRA's request for annulment was rejected.
France Council of State	No 422740 19.06.2020	Referring to Article 14(4), (5) and (6) QD and the CJEU judgment in *M, X and X* (C-391/16, C77/17 and C-78/17), the Council of State ruled that loss of refugee status under the equivalent of Article 14(4) or (5) QD (recast) in national legislation does not have an impact on refugee status, which the person concerned is deemed to have retained in the event that the OFPRA and, where appropriate, the asylum judge, apply the provision within the limits laid down in Article 33(1) of the Geneva Convention and Article 14(6) QD (recast). Considering the 10-year prison sentence imposed on the appellant for the attempted assassination of his brother-in-law, his subsequent good behaviour in prison, for which he obtained several reductions in his prison sentence, the court ruled that the CNDA had not wrongly assessed the circumstances in concluding that he no longer constituted a serious threat to society. (Relevant paras. 5 and 8)
France Council of State	No 428140 B 19.06.2020	The Council of State ruled that the CNDA had inaccurately qualified the facts of the case when it had quashed a decision by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) to end the refugee status of someone who had committed serious and repeated crimes, including rape and attempted rape, also taking into account his consciousness of his acts and his efforts to integrate into French society. However, the Council of State took into account the time that had elapsed, the person's behaviour and the expertise produced before the judge, and concluded that at the current time he no longer constituted a serious threat to society and therefore that the decision ending his refugee status must be quashed.

		(Relevant paras. 3 and 6)
France Council of State	No 426283 12.02.2020	The applicant is a Russian national from Ingushetia whose refugee status had been recognized on 31 May 2012. On 20 December 2017, the OFPRA decided to end the applicant's refugee status as it was considered that there were serious reasons to consider that the applicant's presence in France is a threat to national security. The CNDA annulled the decision of the OFPRA. It considered that the applicant's remarks praising terrorism had not been made publicly and considered that the elements relied on by OFPRA, relating in particular to the existence of proceedings against the applicant in Ukraine for criminal association in relation to a terrorism, could not be held to be established, as the applicant had stated that she had been called to the police in Ukraine but she had been left free. The Council of State considered that the CNDA erred when it considered that there was no national security concern simply due to the fact that the applicant's statements had not been made in public. With regard to the procedure in Ukraine, the Council of State held that the CNDA should have made use of its competence to further investigate and not make a decision based only on the applicant's statements. The Council of State annulled the decision of the CNDA and sent the case back to the CNDA for reconsideration.
Ireland High Court	Morris Ali v Minster for Justice, Equality and Law Reform 1.03.2012	Refugee status had been revoked as the appellant was considered a person whose presence in the state posed a threat to national security or public policy. The appellant had received a conviction for the possession of drugs for sale and supply. The High Court found, however, that the decision to revoke could not stand as it was not based on a fair and accurate assessment of the admitted facts. (Relevant paras. 11, 23-25 and 28)