MIGRATION AND ASYLUM

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

November 2021

MIGRATION AND ASYLUM

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

Migrants, asylum seekers and refugees enjoy the human rights and fundamental freedoms enshrined in the European Convention on Human Rights given that, under Article 1 of the Convention, Contracting States undertake to secure to everyone within their jurisdiction the rights and freedoms defined therein. Also, under Article 14 of the Convention and the Court's case-law, no difference in treatment based exclusively or to a decisive extent on a person's ethnic origin can be justified in a contemporary democratic society.

The Court has stressed that the problems which States may encounter in managing migratory flows or in the reception of asylum-seekers cannot justify recourse to practices which are not compatible with the Convention or the Protocols thereto. Particular attention has been paid by the Court to asylum-seekers considered as a "particularly underprivileged and vulnerable population group in need of special protection" as well as to children whose extreme vulnerability takes precedence over considerations relating to the status of irregular migrant.

Over the years, the European Court has developed a very rich body of case-law concerning migration and asylum and the execution of the relevant judgments by respondent States has advanced the human rights protection of migrants, asylum seekers and refugees at national level. The present factsheet sets out examples of general and, where possible, individual measures adopted and reported by States, in the context of the execution of the European Court's judgments, concerning notably: access to territory and forced returns; reception and protection of migrants and asylum seekers; protection from discrimination and hate crimes; family life and family reunification; detention of migrants and asylum seekers; victims of trafficking in human beings.

1. ACCESS TO TERRITORY AND FORCED RETURNS

1.1. Prohibition of ill-treatment

In order to prevent recurrence of similar violations due to non-compliance with an expulsion-related interim measure issued by the Court, in May 2010, the Ministry of Justice sent a circular to all Italian courts of appeal stressing their obligation to comply with the interim measures indicated by the Court under Rule 39 and to assess whether there are any impediments to expulsion, such as the risk of a violation of Article 3 of the Convention in the country of destination. The Court of Cassation, by decision No. 10636 of 3 May 2010, held that all courts should assess – prior to expulsion and including on terrorism-related grounds – the concrete risks that the migrant would face in the country of destination.

In *Saadi*, following the Court's judgment finding a risk of torture and ill-treatment should deportations to Tunisia be enforced, all expulsion orders against the applicants were annulled. In the *Ben Khemais* group, the expulsion orders in respect of all the applicants were annulled, but none applied for residence permits in Italy.

ITA / *Saadi*
(37201/06)

Judgment final on 28/02/2008

Final Resolution CM/ResDH(2014)215

ITA / *Ben Khemais (246/07)*

Judgment final on 06/07/2009

Final Resolution CM/ResDH(2015)204

Following the Court's judgment finding a violation of Article 3 due to the authorities' rejection of the applicant's asylum request, the modalities for assessing an alleged risk of ill-treatment in asylum procedures were changed in 2007 by a directive of the Minister of Justice. Individuals are still required to show that they have been singled out for persecution, but the overall situation in a country, including general circumstances (i.e., the fact of being a member of a minority), were included in the assessment. Furthermore, specific groups of asylum seekers ("vulnerable minority groups", including, *inter alia* the *Reer Hamar* (*Ashraf*) in Somalia) were identified where the general situation in their country of origin suggested that upon their return they would be at risk of ill-treatment. These asylum seekers only have to adduce minor indications to qualify for a residence permit for asylum purposes under the Aliens Act 2000. Finally, assessment is no longer based solely on the country reports of the Ministry of Foreign Affairs but also increasingly on other sources.

The applicant has been granted a new residence permit for asylum purposes, which was renewable. In addition, the Dutch authorities gave assurances that they would abide by the principle of non-refoulement in conformity with Article 3 of the Convention.

NLD / *Salah Sheekh*
(1948/04)

Judgment final on 23/05/2007

Final Resolution CM/ResDH(2010)10

In this case the Court found that the expulsion of the applicant and his family to Syria, where the first applicant had been sentenced to death *in absentia*, would be in violation of Article 3. The authorities indicated that, by virtue of the direct effect granted to the Convention and to the case-law of the European Court in Swedish law, the dissemination of the judgment to the competent authorities would be a sufficient measure for execution. Besides, the appeal procedure in cases concerning aliens was changed in March 2006. The Aliens Appeal Board was replaced by specialised Migration Courts, thus creating a three-level appeal system, with the Administrative Court of Appeal in Stockholm (*Kammarrätten I Stockholm*) as the highest instance. Moreover, a new Aliens Act entered into force at the same time. It provided clearer rules on the issuance of residence permits and placed more emphasis on grounds for protection.

SWE / *Bader and Kanbor*
(13284/04)

Judgment final on 08/02/20006

Final Resolution CM/ResDH(2010)112

As to the applicants, they were granted a permanent residence permit in October 2005.

In this case the Court found that the asylum-seeking applicant's expulsion to Iran without adequately examining the implications of his conversion to Christianity after arrival in Sweden would lead to violations of Articles 2 and 3 of the Convention. Following the Court's judgment, since the applicant did not reapply for a residence permit, the Migration Agency made use of the extraordinary remedy of applying for relief to the Migration Court of Appeal which, in July 2016, referred the case back to the Migration Agency for re-examination.

The Migration Agency found that there was no reason to question that the applicant had, for several years, participated in Christian gatherings which had become public via the Internet. Furthermore, the fact that the applicant's case has come before the European Court of Human Rights has also attracted attention.

In light of this, the Migration Agency concluded that the applicant had demonstrated that his conversion could plausibly have come to the Iranian authorities' attention. The applicant was hence at risk of being subjected to persecution on grounds of religious belief upon return to Iran. Under those circumstances, a permanent residence permit, together with refugee status, was granted to the applicant in September 2016.

SWE / *F.G.*
(43611/11)

Judgment final on 23/03/2016

Final Resolution CM/ResDH(2016)355

In response to the Court's findings of risk of exposure to ill-treatment of the asylum-seeking applicants if removed to Somalia, the authorities informed that no removal action would be taken against them as long as the situation in the country remained largely unchanged and if they would be exposed to a real risk of ill treatment in breach of Article 3 of the Convention. The applicants were granted limited periods of leave to remain in accordance with the Discretionary Leave policy of the United Kingdom Border Agency. Should the Secretary of State conclude that the situation in Somalia had changed since the promulgation of the Court's judgment and that the Article 3 risk no longer existed, the applicants would also be granted a suspensive in-country right of appeal against that decision.

On a general level, besides the publication and wide dissemination, both cases were set out in the Operational Guidance Note (OGN) on Somalia, providing asylum caseworkers and decision makers with guidance on handling the main categories of claims from the country concerned.

UK. / *Sufi and Elmi*
(8319/07***,*** 1144/07***)***

Judgment final on 01/12/2011

Final Resolution CM/ResDH(2013)197

1.2. Prohibition of collective expulsion

In order to prevent recurrence of similar violations related to asylum seekers' unlawful detention and collective expulsion, since 2002, upon arrival in a detention centre run by the Aliens Office, each foreigner is to receive an information booklet setting out, *inter alia* the possibilities of appeal against detention or complaint about the circumstances of detention, and to request legal aid. A lawyer's visit cannot be forbidden. In July 2002, the Minister of Interior notified a circular to the Director General of the *Office des étrangers* Aliens Office noting that "in the event of a request for a stay of execution under extremely urgent procedure of an order to leave the territory issued in respect of an unsuccessful asylum seeker, the order shall not be executed until the *Conseil d'État* has ruled on this request". Proceedings relating to aliens were reorganised and a new administrative court, the *Conseil du contentieux des étrangers*, was created by new legislation in 2007. The *Conseil* decides on appeals against

BEL / *Čonka*
(51564/99)

Judgment final on 05/05/2002

Final Resolution CM/ResDH(2011)191

decisions of the *Commissariat général aux réfugiés et aux apatrides* (CGRA). Appeals against these decisions now have the effect, *ipso jure* of staying execution. The *Conseil* holds jurisdiction over the withdrawal and granting of refugee status or subsidiary protection and confirmation of refusal or the setting aside of the decision with referral to the CGRA. Further effective remedies have been put in place in the framework of the execution of the Court's judgment in *M.S.S.*.

In order to prevent recurrence of similar Article 3 violations due to the applicants' collective expulsion to Libya after their interception at sea, the authorities informed the Committee in July 2012 that interception and forced returns of vessels would not be resumed. Also, guarantees as regards the treatment of asylum seekers, in particular as regards their access to relevant domestic procedures, would be consistently applied in all circumstances, including during military and coast guard operations on the high seas. Naval units have the necessary instructions to this effect and, when migrant boats are intercepted, all passengers are to be disembarked in Italy where they can request asylum. Legislative Decree 142/2015 was adopted to implement Directive 2013/33/EU on laying down standards for the reception of persons seeking international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. This Decree provided, *inter alia* for special training for police officers dealing with migrants.

As to the applicants, the whereabouts of nine of them remained unknown at the time of the adoption of the Final Resolution. The Italian authorities contacted the Libyan authorities who signalled the names of the applicants to their regional authorities, raised the issue at ministerial level and undertook to protect the applicants from ill-treatment, if found.

ITA / *Hirsi Jamaa and Others*
(27765/09)

Judgment final on 23/03/2012

Final Resolution CM/ResDH(2016)221

1.3. Effective remedies concerning forced returns

To remedy the lack of suspensive effect of follow-up (second-time) asylum applications against forced transfers under the EU Dublin II Regulation, the Constitutional Court of Austria, in its judgment of 26/02/2013 (G59/2013), explicitly referring to the Court's judgment in this case, found that a general absence of protection against expulsion was contrary to the principle of the rule of law and therefore unconstitutional. The relevant provision of Asylum Act was repealed and subsequently amended in 2013 and 2015. The Asylum Act Article 12a now provides for an appropriate examination of the interests legally protected by Articles 3 and 8 of the Convention in each individual case. Thus, Austrian authorities and courts are now bound to examine follow-up asylum applications under Articles 3 and 8 of the Convention, whereas the (second-time) asylum-seekers no longer risk a forced transfer until the domestic court has examined the risks under Articles 3 and 8 of the Convention.
As for the applicant in this case, following an interim measure under Rule 39 of the Rules of the Court, his transfer to Hungary was stopped. In June 2013, the applicant voluntarily left Austria and the asylum procedure was closed.

AUT / *Mohammed*
(2283/12)

Judgment final on 06/09/2013

Final Resolution CM/ResDH(2018)376

In response to the violation found by the Court due to the detained asylum-seeking applicant's limited access in practice to a remedy to challenge his removal decision, procedural guarantees for asylum applications filed in detention were strengthened by the asylum law reform of 2015. The new legislation provided for the automatic registration of an asylum application filed in detention under a simplified fast-track procedure and procedural guarantees to ensure the

FRA / *I.M.*
(9152/09)

Judgment final on 02/05/2012

effectiveness of appeals of detainees including the possibility of appeals to administrative courts.
The applicant obtained refugee status.

Final Resolution CM/ResDH(2017)340

In 2010, the Court found a potential violation of the Convention in the event of the deportation of the applicants to Iran or Iraq, without any assessment by the authorities of the risks which they might face as former members of the People's Mojahedin Organisation. Besides, the Court criticised the applicants' unlawful detention pending deportation and lack of access to a judicial review thereof. To prevent recurrence of similar violations, the 2013 Law on Aliens and International Protection (LFIP) defined the principles and established the procedures related to entry, stay and exit of foreigners from Turkey and set out the General Directorate of Migration Management under the authority of the Ministry of Interior. This law, together with its Application Regulation of 2016, and amendments of 2019 provide for the necessary safeguards against any arbitrary detention, as well as the remedies for a judicial review thereof and compensation for unlawful detention. Thus, a foreigner can only be removed on the basis of a removal decision, which may be accompanied by a decision for an administrative detention pending removal. The foreigner, his legal representative or his lawyer may appeal against the expulsion decision to the administrative court within fifteen days of the date of notification. The appeal is decided within fifteen days and the decision is final. The foreigner may not be removed during the period of judicial appeal or until completion of the appeal procedure. Further clarification is still needed on the automatic suspensive effect after the entry into force of Emergency Decree No. 676 on 29 October 2016. In this sense, examples of decisions of the Constitutional Court as well as of other national courts rendered before and after Decree No. 676 have been requested from the authorities by the Committee of Ministers of the Council of Europe.

As for the applicants, they were granted residence permits. Upon the acceptance of asylum request, the applicant Karimnia moved to Sweden in January 2010. The whereabouts of the applicant Abdolkhani are unknown since 1 November 2010 when his last residence permit was issued.

TUR / *Abdolkhani and Karimnia*
(30471/08)

Judgment final on 01/03/2010

Final Resolution CM/ResDH(2021)419

In response to the Court's finding of a potential violation of the Convention due to the authorities' rejection of the applicants' asylum requests without considering the real risk of ill-treatment in case of return to Iran, the deadline for requesting asylum was increased from five to 10 days following the 1999 amendments introduced in the Regulations on asylum seekers. The 10-day deadline starts from the day when a political asylum seeker enters Turkey through legal or illegal ways. Furthermore, the competent authorities are under an obligation to carry out an assessment as to whether a person risks ill treatment or torture if expelled to his or her country of origin. The authorities provided a number of examples of the Council of State decisions in this respect. It appears from these examples that aliens are not automatically expelled following the expiry of the ten-day deadline and that courts interpret domestic law in compliance with Turkey's international commitments.

The authorities granted the applicants refugee status.

TUR / *Jabari*
(40035/98)

Judgment final on 11/10/2000

TUR / *D. and Others*
(24245/03)

Judgment final on 23/10/2006

Final Resolution CM/ResDH(2011)311

1.3.1 Effective remedies concerning forced returns on national security grounds

The Court found that the Belgian authorities had failed, prior the applicant's forced return, to obtain diplomatic assurances that the applicant, who was subject to an arrest warrant in Iraq on the basis of anti-terrorism laws, would not be subject to ill-treatment upon his return. The law of 15 December 1980 was amended by the Law of 19 January 2012, pursuant to the European Directive 2008/115/EC315, and provided that expulsion must be postponed if this expulsion would breach the principle of "non-refoulement". Further, in case of impossibility to expel, preventive alternative measures to detention can be adopted to prevent absconding. Also, in order to explain the competence *ratione loci* of domestic courts, the information sheet at the disposal of migrants placed in detention centres has been clarified, in order to inform them of the proceedings to be followed to lodge an application for release.	**BEL / *M.S.*** (50012/08) Judgment final on 30/04/2012 **Final Resolution CM/ResDH(2015)84**
To prevent recurrence of violations due to the lack of protection against arbitrariness in expulsion proceedings on security grounds, judicial review of expulsion orders on national security grounds has been developed since 2003 through the Supreme Administrative Court's practice and was later expressly provided for by the 2007 Aliens Act. Further legislative reforms of 2009 and 2013 introduced the possibility to challenge the lawfulness of the detention pending expulsion and time-limits for the detention of aliens pending expulsion, with the obligation for the courts to review the lawfulness and necessity of continued detention at six-month intervals and upon request of the detainee or on the courts' own motion. The outstanding questions related to the functioning of the remedies concerning expulsion of foreigners based on national security considerations are dealt with in *C.G. and Others* group which remains under the supervision of the CM. All the applicants who were detained pending expulsion have been released.	**BGR / *Al-Nashif and Others*** (50963/99) Judgment final on 20/09/2002 **Final Resolution CM/ResDH(2015)44**
In response to the Court's judgment finding arbitrary the applicants' detention "on security grounds" without a valid deportation order, and the risk of ill-treatment in the event of deportation to their country of origin, Section 99(2) of the 2008 Aliens Act was amended in October 2012. Now it is only possible to detain an alien on security grounds after a detention order has been issued. The deportation order, in *Al Husin and Al Husin No 2,* was annulled and a new deportation order without country indication was issued. The applicant was released from detention in 2016 but obliged to regularly report to the police until leaving the country. In *Al Hamdani*, the applicant was released from detention in 2011 and put on a more lenient measure. However, on 2 May 2012, the applicant failed to report to the relevant authorities and has since been out of reach of the BIH authorities. Accordingly, although a final deportation order has been issued, the Aliens Service has never issued the removal order.	**BIH / *Al Hamdani*** **BIH / *Al Husinn*** **BIH / *Al Husin No 2*** (31098/10, 3727/08, 10112/16) Judgments final on 09/07/2012, 09/07/2012, 25/09/2019 **Final Resolution CM/ResDH(2014)186**
The Court found that there had been a failure to provide the minimum safeguards in asylum proceedings due to the lack of meaningful judicial scrutiny of the Intelligence Agency's assertion – based on classified information – that the applicant posed a risk to national security, resulting in an expulsion order. In response, there has been a change of case-law of the Higher Administrative Court, quashing similar decisions of administrative courts and remitting the cases for fresh consideration. The judgment was published, translated and widely disseminated. It is also used in training and awareness-raising activities for judges and lawyers. The authorities have confirmed that the applicant still resides in the country with non-regularised residence status, and that she would not be expelled. To this end, the Government	**MKD / *Ljatifi*** (19017/16) Judgment final on 08/10/2018 **Final Resolution CM/ResDH(2019)192**

Agent informed the relevant services of migration, asylum and expulsion, of their obligations under Article 46 of the Convention. Besides, the applicant has been granted permission to leave, stay outside the national territory and re-enter many times. She is also entitled to apply for a residence permit or nationality.

In order to prevent recurrence of a violation due to the authorities' interference with the applicants' private life resulting from expulsion measures for security reasons without legal basis and breach of procedural guarantees, the Emergency Ordinance No.194/2002 has been amended to provide that the Bucharest Court of Appeal would be competent to decide on an alien's undesirability for security reasons in adversarial proceedings. The Court of Appeal should give a reasoned decision within 10 days of the prosecutor's request. An appeal may be introduced within 10 days before the High Court of Cassation and Justice. This court is required to give a decision within five days of the receipt of the request for an appeal. In justified cases, to avoid imminent harm, the alien may request the suspension of the enforcement of the decision declaring them undesirable, until the end of the cassation proceedings.

As for the applicants, the prosecutor's orders declaring the applicants as undesirable aliens and denying them access to the Romanian territory were annulled (*Lupsa* and *Kaya*). As regards the applicants in *Abou Amer*, the authorities informed the Committee of Ministers of their readiness to re-examine the impugned decisions, but the applicants did not lodge any request in that sense.

ROM / *Lupsa* (10337/04)
ROM / *Kaya* (33970/05)
ROM / *Abou Amer* (14521/03)
Judgments final on 08/09/2006, 12/01/2007, 24/08/2011

Final Resolution CM/ResDH(2015)50

2. RECEPTION AND PROTECTION OF MIGRANTS AND ASYLUM SEEKERS

2.1 Access to reception services and asylum procedures

After the Court's judgment criticising returns from Belgium to Greece based on the "Dublin II Regulation", in spite of the risk notably of poor living conditions and the lack of domestic remedies to challenge the deportation decision, the Belgian authorities have stopped returning asylum seekers to Greece, applying the "sovereignty clause" of the "Dublin II Regulation" (which provides that Belgium can itself deal with asylum requests in case a return would result in a situation violating Article 3 of the Convention). Also, the practice of the "*Conseil du contentieux des étrangers*" (CCE), in the context of the interim measures' procedure ("*en référé*"), developed its case-law and issued a series of decisions in February 2011, ensuring that this procedure meet the effective remedy requirements of the Convention. Also, the Law of 10 April 2014 further codified and developed the asylum practice, notably underlining the CCE's obligation to take into account all evidence at their disposal when assessing allegations of violations of Article 3. Also, in the context of imminent expulsion procedures, all asylum seekers (whether detained or not) may appeal their deportation with an automatic suspensive effect.
As to the applicant, he received refugee status in Belgium in May 2012.

BEL / *M.S.S.* (30696/09)
Judgment final on 20/01/2011

Final Resolution
CM/ResDH(2014)272

In response to criticisms by the Court, notably concerning access to the asylum procedure and the examination and judicial review of asylum applications, the Greek authorities carried out a reform of the asylum system in several stages. At first, Law 3907/2011 established an independent Asylum Service, an Appeals Authority and a First Reception Service (FRS), operational as of 7 June 2013, through the Presidential Decree 113/13. The unprecedented influx of refugees, asylum seekers and migrants in 2015-2016, necessitated the adoption of Law 4375/2016, which transposed into national law Directive 2013/32 EU and introduced, *inter alia* an effective remedy through the examination of asylum applications by Appeal Committees. This law was further amended by Law 4540/2018, to improve the management and increase the capacity of regional asylum offices and autonomous asylum units, as well as the staff of the Asylum Service. This law transposed Directive 2013/33/EU, laying down standards for the reception of applicants for international protection [Reception Conditions Directive], including, *inter alia* the right to apply for legal assistance and to submit additional evidence before Appeal Committees. Additional Regional Asylum Offices and autonomous Asylum Units, as well as Reception and Identification Centres (RIC), replacing former FRS, were set up, while the reception of asylum seekers and migrants was carried out by internally trained staff and by the European Asylum Support Office (EASO), in particular in interview techniques with minors, vulnerable persons and in evidence assessment. An information brochure for refugees, third-country nationals and stateless persons on access to asylum procedures was made available in 19 languages and also published on the Asylum Service website. Interpretation services in some 37 languages can be provided on request by the NGO METAdrasi and EASO.
Over the period 2017-2019, there has been a significant increase in the number of registered asylum applications and their examination time at first and second instance has decreased,

GRC / *M.S.S.* (30696/09)
Judgment final on 21/01/2011

Action Plan

Status of execution: pending

showing an improvement following the previously adopted reforms. In 2020, the influx of refugees dropped considerably, implying a reduction in applications. In January 2021, the number of pending decisions both at first and second instance was reduced by 44% compared to January 2020, while the average time from pre-registration to the issuance of a first instance decision increased in 2020 (205 days) compared to 2019 (189 days). In view of the persistence of delays in the asylum procedures and the still limited legal aid that is provided during these procedures, further efforts are needed to enhance access to and operation of asylum procedures, notably at second instance, and the provision of legal aid.

ITA / *Sharifi and Others*
(16643/09)
Judgment final on 21/01/2015

Final Resolution
CM/ResDH(2020)201

To remedy the shortcomings in the access to asylum procedures, resulting in the collective expulsion to Greece of migrants intercepted as stowaways on ferries arriving in the port of Ancona between January 2008 and February 2009, Italian authorities transposed Directives 2013/33 EU and 2013/32 EU through Legislative Decree No 142/2015 which also incorporated into Italian legislation the migrants' right to effective access to asylum procedures and, to this end, to receive adequate information upon their arrival. In addition, Legislative Decree No 13 of 17 February 2017 provided for international protection within the district court sections on immigration and international protection and three-judge panels to examine matters on protection of life and asylum. As to the procedure followed upon arrivals, the identification, health check-ups and administrative procedures relating to migrants arriving in the Adriatic ports are ensured by the setting-up of an emergency care point within the ports (Bari, Ancona and Venice). Once the status of these persons has been ascertained (asylum seekers or persons awaiting expulsion), they are addressed to the reception centres. The personnel of the Border Police admit into the national territory those who express their wish, even indirectly, to request international protection and direct them to the authorities designated to formalise, process and examine the asylum applications (*Questura* and Territorial Commissions for the Recognition of International Protection). Presence of public officials in the ports of the Adriatic Sea, NGOs and international organisations ensure that information about the asylum procedure, interpretation and cultural mediation are available to migrants. The scope of their presence is assessed by the local Prefect considering the size of migrant arrivals. Agreements between the Ministry of Interior and the above organisations are therefore concluded for a duration of one year to allow the necessary flexibility to adapt them to developments and changes in the arrivals of migrants. Police agents operating at border crossing points and agents responsible for receiving asylum applications receive specific training in the field of human rights and international protection in conformity with EU and national law.

2.2 Reception and protection of minors

GRC / *Rahimi* (8687/08)
Judgment final on 05/07/2011

Final Resolution
CM/ResDH(2023)259

In response to the Court's judgment, the authorities have adopted a series of measures intended to improve the reception conditions and ensure better protection for unaccompanied minors (UM), including the establishment in 2019 of the "No Child Alone" scheme and the appointment, pursuant to Law 4554/2018, of a Special Secretary for the Protection of Unaccompanied Minors (Ministry of Migration and Asylum) as the competent body for the implementation of the guardianship system. The implementation of the system of "professional guardians" is expected to follow in different areas in the country for the purpose of effectively safeguarding UMs' best interests. Protection measures for UM over 16 years, aiming to enhance their social integration and self-reliance have been put in place on the

basis of the 2019 Ministerial Decision on the semi-independent living / accommodation of UM over 16 years old.

3. PROTECTION FROM DISCRIMINATION AND HATE CRIME

The case concerns discrimination of the applicants – Russian nationals with irregular immigration status – in the enjoyment of their right to education because they had to pay school fees in order to continue their secondary education in public schools in Bulgaria. Following the Court's judgment and referring to it, the Supreme Administrative Court annulled the Education Minister's order of 2009 setting education fees. This decision was confirmed in June 2014 by a five-member panel of the Supreme Administrative Court. It appears still necessary to introduce rules allowing students in need – whether lawful residents or not – to be exempt from such fees.
As regards individual measures, the Bulgarian authorities informed that both applicants have finished their secondary education without paying any school fees, there were no enforcement proceedings initiated against them in that respect and they have since obtained residence permits.

BGR / *Ponomaryovi*
(5335/05)
Judgment final on 28/11/2011

Action Plan

Status of execution: pending

The case concerns the rejection of the applicant's request for a disability-related allowance on the grounds that he was a national of a country which had not signed a relevant reciprocity agreement with France. Starting from 17/12/1991, the applicant received the minimum welfare benefit (RMI). To prevent recurrence of this discrimination, a Law adopted on 11 May 1998 abolished the impugned nationality requirement.
The applicant was granted the disability allowance as from 1 June 1998.

FRA / *Koua Poirrez*
(40892/98)
Judgment final on 30/12/2003

Final Resolution CM/ResDH(2010)99

To prevent future discriminatory treatment of permanent and non-permanent foreign residents regarding their access to child allowance, in July 2004, the Federal Constitutional Court held that Section 1(3) of the Child Benefits Act, effective from January 1994 to December 1995, was incompatible with the right to equal treatment under Article 3(1) of the German Basic Law and invited the legislator to amend the Child Benefits Act by 1 January 2006. The new law concerning entitlement of foreigners to child benefits entered into force retroactively on 1 January 2006 and eliminated the shortcomings found by the Court.

GER / *Niedzwiecki*
(58453/00)
Judgment final on 15/02/2006

Final Resolution CM/ResDH(2011)11

In response to the Court's judgments criticising the racist character of the assaults on the applicant, and the subsequent failures in the investigation proceedings by the police and the courts, a wide range of measures have been adopted to combat hate crime, notably through police and prosecutors specialised in hate crime investigations. Also, a 24-hour hotline and an online platform for reporting potentially racist acts have been put in place. In addition, Law No. 4356/2015 established the National Council against Racism and Intolerance - an advisory inter-ministerial body developing policies and promoting initiatives for the protection of individuals and groups against hate crime, while a working group consisting of representatives of all relevant stakeholders in this field has been established within the Ministry of Justice for the purpose of collecting and consolidating data on racist incidents. Lastly, in December 2018, the

GRC / *Sakir* (48475/09)
Judgment final on 24/06/2016

Status of execution: pending

GRC / *Gjikondi and Others*
(17249/10)
Judgment final on 21/03/2018

Final Resolution CM/ResDH(2019)366

Prosecutor of the Court of Cassation issued a circular recalling the obligations stemming from the Convention and the Greek Constitution and inviting all prosecutors to display appropriate severity when responding to racially motivated acts of violence. Detailed and updated statistical data concerning racist violence, including information on the results achieved in this area are still needed from the authorities to allow a thorough assessment by the Committee of Ministers of the Council of Europe of the progress achieved in the implementation of these judgments.

4. FAMILY LIFE AND FAMILY REUNIFICATION

4.1 Measures aiming to protect family life and reunification

In 2013, following the facts of the case, the impugned provision of the Law on Drugs was repealed to prevent recurrence of a violation due to the applicant's life-long expulsion and subsequent lifelong prohibition to re-enter Greece, following a criminal conviction for drug-trafficking. The life-long expulsion which existed in the Criminal Code was repealed. Courts may now order expulsions as a security measure, which can last up to a maximum of 10 years. Also, re-entry is possible upon a request which can be lodged as from three years following expulsion. Convicted persons with family ties in Greece are exempt from this time limit and expelled persons can lodge a new application for re-entry one year after the rejection of their previous application.
As to the applicant, married to a Greek national and father of two children, in 2017 the competent misdemeanours council of Corfu allowed his return to Greece.

GRC / *Kolonja* (49441/12)
Judgment final on 19/08/2016

Final Resolution CM/ResDH(2018)206

In these cases, the Court criticised notably the delays in family reunification proceedings and the authorities' failure to consider the best interests of the applicants' children. In response, measures were adopted to reduce the processing time of applications for family reunification, especially of beneficiaries of international protection - suppression, in 2009, of formalities in France and simplified proof of family relationship by Law n°2015-925 of 29 July 2015. The majority of diplomatic or consular posts adopted measures to reduce and control the processing time for visa applications concerning family reunification. In addition, consular officers or officers of the Refugee Families Office received specific training on civil status matters and visa regulations. The system providing information to potential visa applicants was improved (including on the website of the Office of Immigration and Integration).

FRA / *Senigo Longue*
FRA / *Mugenzi*
FRA / *Tanda-Muzinga*
(19113/09, 52701/09, 2260/10)
Judgments final on 10/10/2014, 10/10/2014, 10/10/2014

Final Resolution CM/ResDH(2019)297

The case concerns the violation of the applicant's private and family life due to the non-renewal of his residence permit and subsequent expulsion from Lithuania, where his two children and wife lived, based solely on a State Security Department report, classified as "secret". In May 2007, the Constitutional Court had clarified the applicable legal provision, notably Article 57 of Law on Administrative Proceedings underlining that "no court decision can be based entirely on information classified as secret and which is unknown to the parties in the case".
As regards the applicant, in May 2009, the Migration Department removed the applicant from the national entry ban list.

LIT / *Guljiev* (10425/03)
Judgment final on 16/03/2009

Final Resolution CM/ResDH(2010)175

In order to ensure proportionality and the best interests of the children when refusing a residence permit to a migrant parent, the Government reminded the Immigration and Naturalisation Service of the importance of a thorough assessment of the particular circumstances of each individual case and instructed to make this assessment more visible in the decision-making process. The relevant guidelines for the Immigration and Naturalisation Service were consequently revised. The judgment's summary and the measures taken were summarised in the Government's annual report to parliament.
The applicant was issued a temporary residence permit, valid from 03/10/2014 until 03/10/2019.

NLD / *Jeunesse* (12738/10)
Judgment final on 03/10/2014

Final Resolution CM/ResDH(2015)145

The violation in this case stemmed from the authorities' refusal to allow the applicant's daughter to join her and her stepfamily in the Netherlands. In 2006, following the Court's judgment, a new policy on the right to family reunification of minors with a migrant parent legally residing in the Netherlands was adopted. The criterion of "factual family ties" used under domestic law to determine the right to family reunification is presumed if family life exists in the light of the ECHR's interpretation of Article 8.
An entry visa followed by a residence permit for the applicant's daughter were issued in 2010.

NLD / *Tuquabo-Tekle and Others* (60665/00)
Judgment final on 01/03/2006

Final Resolution CM/ResDH(2010)108

In order to prevent recurrence of violations to one's family life due to measures taken under the UN Security Council (UN SC) counter-terrorism resolutions leading to abusive restrictions of cross-border movement, the Court's judgment was published and largely disseminated to all cantons, federal authorities and to the courts which gave full effect to it. Also, Swiss authorities continued their efforts and made proposals to the UN Security Council aimed at improving respect of the rule of law when listing and delisting individuals on UN sanctions lists (listing/delisting) and strengthening the role of the Ombudsperson. In addition, the Swiss authorities have cooperated with the Ombudsperson in specific cases. These procedures have always resulted in the removal of the persons concerned from the UN list. On 25 February 2011, Switzerland and the Ombudsperson concluded an arrangement whereby the Ombudsperson has access to classified and/or confidential information underlying individual listings. Lastly, Switzerland undertook to endeavour to strengthen the legitimacy of sanctions and the consistency of the UN SC sanctions with the Convention.
The sanctions imposed against the applicant were lifted with effect from October 2009. The applicant was authorised to enter and transit the country.

SUI / *Nada* (10593/08)
Judgment final on 12/09/2012

Final Resolution CM/ResDH(2014)297

4.2 Elimination of discrimination in the context of family reunification

In May 2017, new legislation repealed the impugned 28-year rule in the Aliens Act, which had led to indirect discrimination of the treatment of family reunion applications for persons who had held Danish nationality for less than 28 years. Prior to this change, the Minister of Immigration and Integration had also published a memorandum regarding the legal consequences of the Court's judgment and the Immigration Service applied the Aliens Act in accordance with the interpretation described in the memorandum.
As to the applicants, their family reunification case was reopened in 2016 and referred to the Immigration Service for reconsideration. The family requested the termination of the case, however, as they resided in Sweden.

DNK / *Biao* (38590/10)
Judgment final on 24/05/2016

Final Resolution CM/ResDH(2018)155

In 2011, following the facts of the case, the Immigration Rules were amended in order to end discriminatory denial of family-reunification for post-flight spouses[1] of refugees, who had limited leave to remain in the UK, to join their spouse (as compared to spouses married abroad before the flight, who were not restricted to join their spouses). Thus, refugees with limited leave to remain could also be joined in the United Kingdom by post-flight spouses during the period of validity of their leave to remain. As to the applicant, she was issued a spouse settlement visa in July 2013. The couple's children were given indefinite leave to enter the UK in September 2013.	**UK. / *Hode and Abdi*** (22341/09) Judgment final on 06/02/2013 **Final Resolution CM/ResDH(2014)5**
In 2011, the Certificate of Approval scheme was abolished, ending the discriminatory practice requiring State approval and fees for marriages to persons subject to immigration control (unless those persons were willing to marry in the Church of England). As to the applicants, before the judgment, the authorities had granted them a certificate of approval giving them permission to marry and they had married.	**UK. / *O'Donoghue*** (34848/07) Judgment final on 14/03/2011 **Final Resolution CM/ResDH(2011)288**

[1] "Post-flight spouse" refers to a person who was not a refugee's spouse before the former's arrival in a country of asylum.

5. DETENTION OF MIGRANTS AND ASYLUM SEEKERS

5.1 Prevention of ill-treatment and improvement of conditions of detention

In 2013, in response to Court's judgment concerning the applicant's ill-treatment while detained in the Vienna Police Prison pending expulsion, the explicit prohibition of torture was introduced into the Austrian Criminal Code (new section 312a). The crime of torture became punishable by up to 15 years' imprisonment if bodily injury caused serious permanent damage or by life imprisonment if torture resulted in death. The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) entered into force in January 2013, while the Ombudsman Board was designated in July 2012 as the National Preventive Mechanism (NPM). The NPM monitors all types of detention centres where it conducts regular visits. Also, in 2010, the Ministry of the Interior issued several circulars and instructions to regulate the use of force in detention facilities.
As to the applicant, he was released in May 1994 and his asylum request was subsequently granted.

AUT / *Palushi* (27900/04)
Judgment final on 22/03/2010

Final Resolution CM/ResDH(2018)275

In this case, the Court found violations due to the authorities' failure to adequately protect the applicant's health, suffering from AIDS, detained in view of deportation. In response to the Court's judgment, instructions were given by the *Office des étrangers* to the medical services operating in the detention centres to guarantee aliens permanent access to medical staff and doctors to ensure better follow-up of their medical care. Also, doctors of the *Office des étrangers* are now entrusted to make a prognosis of the evolution of a health problem and to complete the standard medical certificate indicating the disease, its degree of severity and the treatment deemed necessary. Moreover, following the transposition in 2012 of Directive 2008/115/EC ("Return Directive") into Belgian law, voluntary return as well as the application of alternatives to detention are favoured. Finally, new provisions concerning procedures before the *Conseil du contentieux des étrangers* and the *Conseil d'État* were introduced following the amendment, in 2014, of the Aliens' Law of 1980, obliging the authorities to consider the most recent medical certificates when assessing the situation.
As for the applicant, she was granted a residence permit for family reunification on the basis of her legal cohabitation with a Dutch resident.

BEL / *Yoh-Ekale Mwanje* (10486/10)
Judgment final on 20/03/2012

Final Resolution CM/ResDH(2016)213

In order to prevent similar violations due to the asylum-seeking applicants' detention in the international airport waiting area for 20 days, the asylum legislation was amended in 1994 (after the facts of the case). According to the amended legislation, aliens cannot be held in an airport waiting area for more than 20 days, while detention beyond four and twelve days requires judicial authorisation. Moreover, while being held in a waiting area, aliens may request the assistance of an interpreter and a doctor and to communicate with a lawyer or any other person of their choice. The procedural rules and legal aid were regulated by Decree of 15 December 1992. Also, the Decree of 2 May 1995 lays down the conditions for access to waiting areas by a delegate of UNHCR and by humanitarian associations.

FRA / *Amuur* (19776/92)
Judgment final on 25/06/1996

Final Resolution DH(98)307

In response to the Court's findings *inter alia* of ill-treatment on account of poor detention conditions in police detention centres, in view of the applicant's expulsion, the Alexandras Avenue Police Headquarters (Athens) was no longer used for the detention of aliens awaiting expulsion. The Drapetsona Detention Centre was refurbished in 2005 and accommodates detainees awaiting expulsion for very short periods only. Moreover, new detention centres for aliens were opened in Athens, Chios, Samos, Lesbos and Corfu, while improvements to the installations in the existing detention centres in Rhodope, Mytilini and Piraeus, were carried out. Furthermore, legislation was passed to fix a maximum time-limit of three months for the length of detention pending expulsion. The detention of aliens under expulsion following a court order is now subject to review by the public prosecutor and the courts.

GRC / *Dougoz* (40907/98)
Judgment final on 06/06/2001

Interim Resolution DH(2005)21

Final Resolution CM/ResDH(2009)128

In response to the Court's judgment concerning, *inter alia,* degrading conditions of detention and subsistence of asylum seekers, in 2019 and 2020, the authorities, in close cooperation and coordination with organisations active in the field, took action to try to ensure that asylum seekers be accommodated in dignified conditions, adapted to their needs. Generally, a request for accommodation is examined with reference to certain criteria, of which the prevailing is vulnerability (e.g., pregnant women), as well as ethnic characteristics. Asylum seekers are accommodated both under the ESTIA Programme ('Emergency Support to Integration and Accommodation' run by UNHCR) and state-run structures. During their stay in state-run structures, all asylum seekers are provided with food, personal hygiene items, clothes and cleaning services. In addition, primary medical care and psycho-social support is provided at accommodation structures by special units functioning in each structure. Medical services are also available at out-patient clinics of state hospitals and medical units. Moreover, under the ESTIA Programme, since 2017, eligible refugees and asylum-seekers receive cash assistance.

GRC / *M.S.S.* (30696/09)
Judgment final on 21/01/2011

Action Plan

Status of execution: pending

5.2 Detention of minors

In order to prevent recurrence of violations related to the detention of an unaccompanied migrant child in an adult facility, a law adopted in 2012 prohibited the detention of unaccompanied migrant children. If a doubt exists as to the child's age, a law adopted in 2007 provided that the child may be exceptionally detained for a maximum period of six days, and that the determination of age would be carried out with the assistance of medical specialists. Furthermore, under a law of 2004, a guardian is appointed for each unaccompanied migrant child. The guardian has the capacity to challenge a deportation order and must be involved in the process of finding a durable solution for the child. In addition, under a Law adopted in 2012, the *Office des étrangers* has to make sure that an unaccompanied migrant child, once deported, will be properly received and cared for in the receiving country.
As for the applicants, as of end of October 2002 the child could reunite with her mother in Canada, following interventions made by the Belgian and Canadian Prime Ministers.

BEL / *Mubilanzila Mayeka and Kaniki Mitunga* (13178/03)
Judgment final on 12/01/2007

Final Resolution CM/ResDH(2014)226

Following the Court's judgment concerning the detention of migrant children and their mother subject to expulsion in a non-Convention compliant detention facility, a law adopted in 2011 provided that, in principle, migrant children and their families shall not be detained in closed facilities. Detention is permitted in places adapted to the needs of families with children and for a short period, only in specific circumstances or as a last resort if the family has not complied with the conditions concerning accommodation in open facilities. Furthermore, various options

BEL / *Muskhadzhiyeva and Others* (41442/07)
Judgment final on 19/04/2010

BEL / *Kanagaratnam and Others* (15297/09)
Judgment final on 13/03/2012

are now available for housing irregular migrant or asylum-seeking families with children, such as accommodation in open single-family houses, or in open centres for asylum seekers.	**Final Resolution CM/ResDH(2016)41**
To prevent the recurrence of detention pending deportation of unaccompanied minors (UM) in police centres, a series of measures were adopted and implemented by the Greek authorities. Pursuant to Law 4554/2018, transposing Directive 2013/33 EU, the Directorate General for Social Solidarity of the Ministry for Labour, Social Security and Social Solidarity (EKKA) was designated as the competent body for the implementation of the guardianship system, while a special regime for the legal representation of minors was in its final stages in 2020. To enhance the social integration and self-reliance of UM over 16 years of age, Ministerial Decision 60207/2717/31-12-2019 was issued, providing for their supervised semi-independent living in apartments. In November 2019, the Greek Prime Minister launched the scheme "No Child Alone" resulting, *inter alia,* in the relocation of UM to other member States with the assistance of the European Asylum Support Office (EASO) to implement the system of "professional guardians". In February 2020, a Special Secretary for the Protection of UM was appointed by the Ministry of Migration and Asylum. As for the applicant Rahimi, he was granted a residence permit with refugee status.	**GRC / *Rahimi*** (8687/08) Judgment final on 05/07/2011 **Final Resolution CM/ResDH(2019)154**
Following the facts of the case concerning the unlawful detention in poor conditions of minor asylum-seekers, an overall review of the national immigration policy took place, including the abolition of the practice of the automatic detention of migrants upon arrival. A new immigration policy, prepared in consultation with NGOs and the UNHCR, was published in December 2015: see CM/ResDH(2016)277 (*Suso Musa* group of cases). Appropriate facilities are dedicated to the initial reception of minors, which are no longer detained in closed, but in open centres, which cater for their specific needs. The age determination procedure criticised by the Court, *inter alia* for its length, has been improved in the sense that, when an asylum seeker informs the authorities of his/her minority status, that person is directly placed in an open reception centre and rapidly referred to the health authorities to undergo an age assessment. Both applicants were released from detention in April 2013.	**MLT / *Abdullahi Elmi*** (25794/13) Judgment final on 22/02/2017 **Final Resolution CM/ResDH(2017)366**

5.3 Lawfulness and judicial review of detention

Following the Court's judgment criticising the illegal detention of irregular aliens in an airport transit zone and the unlawful continuation of their detention for more than 10 days despite a release order, the General Directorate of the *Office des étrangers* decided, in October 2008, that no one would be placed in a transit zone following a release decision pronounced by courts.	**BEL / *Riad and Idiab*** (29787/03) Judgment final on 24/04/2008 **Final Resolution CM/ResDH(2014)92**
To counter the unlawful detention of asylum seekers, notably in airport transit zones, and ensure the effective access to judicial review thereof, the Asylum Law 325/1999 was amended in 2007, expressly providing that, if security, hygiene, capacity or other reasons prevent the alien from being placed in the reception centre at the international airport, other asylum facilities, designated by the Ministry of the Interior and located on the territory of the country, may also be considered as such reception centres. The same amendment extended the deadline for issuing a decision on the application for international protection to four weeks and established a specific decision-making process concerning the entry into state territory.	**CZE / *Rashed*** (298/07) Judgment final on 27/02/2009 **Final Resolution CM/ResDH(2014)99** **CZE / *Buishvili*** (30241/11) Judgment final on 25/01/2013 **Final Resolution CM/ResDH(2015)98**

As to the review of detention decisions, the new law No. 101/2014, which came into force on 24 June 2014, amended the legislation on asylum and residence of aliens in the Czech Republic. It provides that, if a court overturns the decision of the Ministry of Interior to refuse the entry of an alien into the territory (and thus, *de facto* orders the alien's detention in the reception centre of the airport transit zone), this will result in the immediate release of the foreigner and his/her transfer to an asylum facility located on the territory of the country.

To remedy shortcomings in the review of the arrest and the administrative detention pending deportation of an alien, the competence for review was transferred to the ordinary courts by Law 2016-274 of 7 March 2016, applicable as of 1 November 2016, on the rights of aliens in France amending the Code on entry and stay of aliens and the right to asylum. The administrative judge remains competent to assess the legality of the removal measure, whose enforcement is sought through detention.
No issue of individual measures arose as the applicant was expelled to Tunisia before the Court's judgment.

FRA / *A.M.* (56324/13)
Judgment final on 12/10/2016

Final Resolution CM/ResDH(2017)153

To prevent unlawful detention of asylum seekers, unaccompanied minors and irregular migrants and the lack of an effective remedy to challenge the lawfulness of detention, a series of measures have been adopted. As to the lawfulness of the detention of asylum seekers, following amendments to the Law 3907/2011, such detention must be exceptional and may occur only under the conditions specified by law. As for irregular migrants, since 2011, the detention of third country nationals against whom a deportation order has been issued, may only be ordered if less coercive measures are insufficient. Besides, any detention shall be as short as possible and only maintained during the execution of removal arrangements. Furthermore, after the amendment of Law 3389/2005, in force as of January 2011, third-country nationals can challenge the lawfulness of decisions ordering their detention. This law enables the applicants to also challenge the conditions of their detention, including allegations related to their state of health and age. When appropriate, a judge can order the applicant's release or transfer to a detention centre offering better detention conditions.

GRC / *S.D.* (53541/07)
Judgment final on 11/09/2009

Final Resolution CM/ResDH(2020)315

In response to the lack of foreseeability of the legislation and the absence of provisions setting the maximum period of detention of persons subject to a deportation order, criticised by the Court, Article 74 of the Criminal Code governing court deportation orders has been amended by Article 23 of law 4055/2012. That provision laid down maximum periods of detention for persons subject to a court deportation order, as well as a procedure for regular review of the lawfulness of their detention. Furthermore, time-limits were imposed on the authorities responsible for deciding on the extension of detention, and if those time-limits are exceeded, the person subject to a court deportation order must be released.
As to the applicant, the Indictment Division granted the applicant's request for release, which occurred in April 2007, considering that the reasonable time applicable to the detention of a person subject to a deportation order had expired.

GRC / *Mathloom*
(48883/07)
Judgment final on 24/07/2012

Final Resolution CM/ResDH(2014)232

To prevent recurrence of unauthorised detention of migrants subject to deportation, a working group was established in March 2012 by the Ministry of Interior in order to assess the national framework regulating asylum and immigration. The working group concluded that the amendments to the Immigration Law, carried out on 26 May 2011, after the facts of the case, already addressed the issues criticised by the Court in its judgment and implemented the European standards in this area as stated in the Council Directive 2008/115/EC of 16 December 2008. According to these amendments, the procedures and standards have been improved to

LVA / *Longa Yonkeu*
(57229/09)
Judgment final on 15/02/2012

Final Resolution CM/ResDH(2014)251

---

meet the Court's requirements of precision and foreseeability. In addition, training sessions for officials were organised within the *Office of Citizenship and Migration Affairs* and the *State Border Guard Service*, to ensure that due consideration be given to asylum seekers' rights and legitimate interests when deciding on asylum requests and adopting detention decisions.

In order to prevent recurrence of excessive length of appeal proceedings concerning asylum seekers' detention, a new Asylum Law entered into force in January 2016 providing for specific time-limits and a speedy review of an asylum seeker's detention. The law authorises the State Border Guard Service to detain an asylum seeker up to six days. The asylum seeker has a right to appeal against the detention to the district (city) court within 48 hours, to be decided by the court within 24 hours. The asylum seeker participates in the hearing and is assisted by an interpreter, if necessary. The decision of the district (city) court, which is not subject to an appeal, must be sent to the asylum seeker and the State Border Guard Service within 24 hours, if necessary, ensuring its translation. An asylum seeker may request that the court review the necessity of further detention at any time.
As to the applicant, he was released in October 2013 and issued a temporary one-year residence permit by virtue of the subsidiary protection status granted. Subsequently, the applicant left the country and his current whereabouts are unknown.

LVA / *Nassr Allah* (66166/13)
Judgment final on 21/10/2015

Final Resolution CM/ResDH(2016)192

In response to the lack of legal basis for the keeping migrants in detention in an airport transit zone beyond the statutory time-limit, the 2013 Law on Aliens was adopted. It provides, notably, that the initial detention of migrants may not exceed 90 days. This period may be extended up to one year. Placement in detention and its extension must be based on a judicial decision, which is subject to appeal in accordance with the provisions of the Code of Criminal Procedure. The law also provided for the award of compensation to foreigners who have been detained illegally.

POL / *Shamsa* (45355/99)
Judgment final on 27/02/2004

Final Resolution CM/ResDH(2008)15

This case concerns the unlawful detention of a rejected asylum-seeker pending deportation, due to the national authorities' failure to respect the criteria of the federal law on stay and residence of foreigners given the lack of concrete indications that the foreigner concerned would try to avoid removal. Following the facts of the case, the 2005 National Law on Aliens was modified with the entry into force of a new law in January 2008. Under the new law, the competent cantonal authority may order a foreigner not to leave the territory assigned to him/her or not to enter a specific region when "the foreigner is subject to a deportation or expulsion decision which has entered into force and concrete elements give rise to fear that he will not leave Switzerland within the prescribed period or he has not respected the time limit set for him to leave the territory." If the foreigner does not comply with such an injunction, the competent cantonal authority may order his/her detention during the preparation of the decision on his stay or in order to ensure the enforcement of the removal order.

SUI / *Jusic* (4691/06)
Judgment final on 02/03/2011

Final Resolution CM/ResDH(2011)302

To prevent recurrence of violations due to the unlawful detention of a foreign national pending deportation, on account of the authorities' failure to conduct regular review of the detention conditions, as provided for by national law, following the Court's judgment, the Government proceeded to a change of practice. The new practice provided clear procedures for compliance with the statutory review of detention every 28 days, including for countersignature by a member of management with an accompanying checklist and quality assurance checks. Also, there is a dedicated Learning & Development team within the Criminal Casework division of the

UK. / *Abdi* (27770/08)
Judgment final on 09/07/2013

Final Resolution CM/ResDH(2014)134

Home Office that provides comprehensive training to caseworkers on the importance of regular detention reviews and how to conduct them.

In order to prevent similar violations due to the authorities' failure to promptly inform the asylum-seeking applicant of the reasons for his arrest in the context of a "fast track" asylum procedure, the IS91R form ("Reasons for Detention and Bail Rights" notice) presented to asylum-seekers when they are detained was changed in 2002. It included a box indicating that detention was authorised for applications "which may be decided using the fast-track procedures". In addition, in July 2004, the Home Office circulated an instruction to immigration officers responsible for filling in the forms stating that they must include all the reasons why detention is considered appropriate and not just focus upon the sole reason that detention is authorised to process an asylum application under the fast-track procedure.	**UK. / *Saadi*** (13229/03) Judgment final on 29/01/2008 **Final Resolution CM/ResDH(2010)67**

6. VICTIMS OF TRAFFICKING IN HUMAN BEINGS

CYP & RUS / *Rantsev*
(25965/04)
Judgment final on 10/05/2010

Final Resolution CM/ResDH(2017)95

In order to prevent similar violations related to the applicant's daughter trafficking for sexual exploitation and death, human trafficking was criminalised in Cyprus in 2007, after the facts of the case. Subsequently, restrictions to the visa regime were introduced and the "artiste" visa was abolished. The Cypriot authorities undertook to continue their close cooperation with the monitoring bodies under the Council of Europe Convention on Action against Trafficking in Human Beings. Moreover, the Russian authorities have taken a number of general measures for the prevention of human trafficking. For instance, trafficking in human beings was criminalised in the Russian Federation in 2003, including also the recruitment of victims.
As regards individual measures, in 2009, three independent investigators conducted a new investigation in Cyprus, including into the allegations concerning human trafficking. A second investigation examined the circumstances of the applicant's recruitment in the Russian Federation. In 2013, the Attorney General of Cyprus decided to prosecute two police officers for abuse of power and Ms Rantsev's employer for abduction and kidnapping. However, the evidence did not disclose any criminal act at the origin of her death. In the context of the new investigations, legal assistance was also requested and obtained from the authorities of the Russian Federation.
The Russian authorities also opened criminal investigations into Ms Rantsev's death and the circumstances of her alleged recruitment in the Russian Federation in the light of the human trafficking allegations. The investigations did not reveal any support for the allegations that she had been recruited in the Russian Federation. In 2011, it was decided not to open a criminal case in the absence of objective elements supporting the allegations. The applicant did not seek judicial review of the decision. Nevertheless, the Russian authorities informed that the investigation can be reopened should the Cypriot authorities' investigation reveal any new information.

GRC / *Chowdury and Others*
(21884/15)
Judgment final on 30/06/2017

Final Resolution CM/ResDH(2020)179

In order to prevent similar violations related to the migrant applicants' trafficking and agricultural labour exploitation, the 2019 Criminal Code consolidated the previous provisions, criminalising the offences of trafficking in human beings (THB) and sex trafficking, extended the scope of criminal liability and enhanced victim protection. In 2019, following an appeal *pro lege* lodged by the Court of Cassation Prosecutor, the Court of Cassation's case-law evolved, and courts now apply a definition of 'human trafficking for the purpose of labour exploitation', which complies with the requirements of Article 4 of the European Convention on Action against Human Trafficking. Sentences imposed are among the heaviest imposed by courts in EU countries for comparable offences. Further legislative amendments widened the victims' right to claim redress from the State through civil action for damages.
To detect cases of THB for labour exploitation, the Labour Inspectorate carries out inspections at workplaces, including farms and agricultural activities. Furthermore, the Police Anti-Trafficking Unit regularly conducts inspections in brothels, bars, and massage parlours as well as in places of work such as industrial sites, artisanal workshops, laundries and car-wash enterprises, agricultural facilities, livestock and fish farms, hotels, construction sites etc. Relevant statistics submitted show an increased number of inspections as well as of resulting investigations, prosecutions and convictions in human trafficking.
Furthermore, an Office of the National Rapporteur on Action against THB was set up to prevent and detect THB victims in a timely manner, ensure the victims' protection and assistance,

coordinate and ensure effective co-operation of all the national and international actors involved in the field as well as improve data collection. The Office of the National Rapporteur, in cooperation with the National Centre for Social Solidarity of the Ministry of Labour launched, in 2019, a multi-disciplinary referral mechanism responsible for coordinating national resources available to support the victims, including their health care, accommodation, psychological support and assistance for voluntary return and for the collection of relevant data.
Following the Court's judgment, thirty-five of the applicants were identified by the Ministry of Migration either as victims of human trafficking or violence. They were all granted a renewable residence and work permit. Seven of the applicants never requested neither a residence nor a work permit, apparently because they had left the country.

In order to provide Convention-compliant protection to victims of human trafficking for sexual exploitation, the legislative framework on trafficking in human beings (THB) has been improved. In 2013, the Office of the National Rapporteur for the combating of the crime of THB for exploitative purposes was established in the Ministry of Foreign Affairs, to supervise and coordinate the establishment and operation of the National System of Recognition and Reference of Victims of Trafficking. The number of anti-trafficking police brigades was increased. In 2016, a parliamentary sub-committee on THB was established. In 2019, the National Orientation Mechanism became operative, providing training for all professionals (judges, prosecutors, law enforcement officers, social service workers etc.) called upon to deal with trafficking victims. In 2018-2020, the Court of Cassation Prosecutor issued three circulars addressed to all prosecutors calling on them to pay particular attention to THB cases and to submit information on action in this area on a regular basis. Also, Greek judges, prosecutors and police agents have participated in a large number of training courses focusing notably on the protection of THB victims. Statistics on the number of interventions, police investigations and judicial proceedings in the context of human trafficking were submitted showing the sustained efforts and results obtained in this domain.
Following the Court's judgments, the applicants were identified as victims of human trafficking and granted protection and a residence permit. In both cases, the police made all possible efforts to locate the suspects of the crimes committed.

GRC / *L.E.* (71545/12)
Judgment final on 21/04/2016

GRC / *T.I. and Others*
(40311/10)
Judgment final on 18/10/2019

Final Resolution
CM/ResDH(2020)314

INDEX OF CASES