European Asylum Support Office

Compilation of jurisprudence

Evidence and credibility assessment in the context of the Common European Asylum System

EASO Professional Development Series for members of courts and tribunals

Produced by IARLJ-Europe under contract to EASO

2018

SUPPORT IS OUR MISSION

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- asylum procedures and the principle of *non-refoulement*;
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Manuscript completed in November 2017

Luxembourg: Publications Office of the European Union, 2018

Print ISBN 978-92-9494-758-1 doi:10.2847/006566 BZ-07-17-014-EN-C
PDF ISBN 978-92-9494-757-4 doi:10.2847/64928 BZ-07-17-014-EN-N

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List of abbreviations

APD	Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
APD (recast)	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COI	Country of origin information
CREDO project	CREDO – Improved Credibility Assessment in EU Asylum Procedures project, led by the Hungarian Helsinki Committee with project partners UNHCR, IARLJ and Asylum Aid (UK)
DSSH	Difference, stigma, shame, harm
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
EASO	European Asylum Support Office
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EWCA	Court of Appeal of England and Wales (UK)
Family Reunification Directive	Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
IARLJ	International Association of Refugee Law Judges
IASFM	International Association for the Study of Forced Migration
IEHC	Irish High Court
IJRL	International Journal of Refugee Law
IP	Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment)
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organisation
OFPRA	Office français de protection des réfugiés et apatrides (French Office for the protection of refugees and stateless persons)

PTSD	Post-traumatic stress disorder
QD	Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
QD (recast)	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)
RAIO	Refugee, Asylum and International Operations Directorate (United States)
RCD (recast)	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
Refugee Convention	Convention relating to the Status of Refugees (1951), as amended by its Protocol (1967) [referred to in EU asylum legislation as 'the Geneva Convention']
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKIAT	UK Immigration and Asylum Tribunal
UKUT	UK Upper Tribunal
UNHCR	United Nations High Commissioner for Refugees

Contributors

This judicial analysis has been developed by a process having two components: an Editorial Team (ET) of judges and tribunal members with overall responsibility for the final product and a drafting team of experts.

In order to ensure the integrity of the principle of judicial independence and that the EASO Professional Development Series for members of courts and tribunals is developed and delivered under judicial guidance, an ET, composed of serving judges and tribunal members with extensive experience and expertise in the field of asylum law, was selected under the auspices of a joint monitoring group. The group is composed of representatives of the contracting parties, EASO and IARLJ-Europe. The ET reviewed drafts, gave detailed instructions to the drafting team, drafted amendments and was the final decision-making body as to the scope, structure, content and design of the work. The work of the ET was undertaken through a combination of face-to-face meetings in Oslo in May 2016, Valletta in January 2017 and Amsterdam in April 2017, as well as regular electronic/telephonic communication.

Editorial team of judges and tribunal members

The judges and tribunal members of the ET for this judicial snalysis were: **Hugo Storey** (United Kingdom, Chair), **Hilkka Becker** (Ireland), **Johan Berg,** (Norway), **Jakub Camrda** (Czech Republic), **Bernard Dawson** (United Kingdom), **Katelijne Declerck** (Belgium), **Harald Dörig** (Germany), **Florence Malvasio** (France), **Liesbeth Steendijk** (Netherlands) and **Boštjan Zalar** (Slovenia). The ET was supported and assisted in its task by Project Coordination Manager, **Clara Odofin**.

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Acknowledgements

Comments were received from Judge **Lars Bay Larsen** of the Court of Justice of the European Union (CJEU) and Judge **Ledi Bianku** of the European Court of Human Rights (ECtHR) in their personal capacities. The United Nations High Commissioner for Refugees (UNHCR), Division of International Protection, also expressed its views on the draft text.

Comments were also received from the following participants in the EASO network of court and tribunal members and members of the EASO Consultative Forum: **Dobroslav Rukov** (judge, Sofia City Administrative Court, Bulgaria); **Jacek Chlebny** (judge, Supreme Administrative Court, Poland); **Anne Kneer** (law clerk, Asylum Department IV of the Swiss Federal Administrative Court); **Binh Tschan** (law clerk, Asylum Department V of the Swiss Federal Administrative Court); **Anders Bengtsson** (senior lawyer (föredragande jurist), Administrative Court of Göteborg, Sweden); **Maria Déhn** (judge (rådman), Administrative Court of Göteborg, Sweden); **John Panofsky** (senior lawyer (föredragande jurist), Administrative Court of Göteborg, Sweden); **John Barnes** (retired judge, United Kingdom); **Allan Mackey** (retired judge, New Zealand and United Kingdom); **Debora Singer** (Asylum Aid/Migrants Resource Centre, United Kingdom); Asylum Research Consultancy (ARC), (United Kingdom); **Stinne Østergaard Poulsen** (legal adviser, Danish Refugee Council); **Hana Lupačová** (public defender of human rights, Czech Republic); **Gábor Gyulai** (refugee programme director, Hungarian Helsinki Committee); International Rehabilitation Council for Torture Victims (IRCT, Denmark); and **S. Chelvan** (barrister, No 5 Chambers, United Kingdom).

All these comments were taken into consideration by the ET in finalising the text for publication. The members of the ET and EASO are grateful to all those who have made comments, which have been very helpful in finalising this analysis.

This compilation will be updated, as necessary, by EASO in accordance with the methodology for the EASO Professional Development Series for members of courts and tribunals.

Compilation of jurisprudence

The purpose of this compilation of jurisprudence is to provide courts and tribunals in Member States with a helpful overview on the evidence and credibility assessment cases. It should serve as a source of inspiration also for the judicial trainers in drafting the case studies or to conduct small group discussions or moot court sessions. In addition to the many Member State jurisdictions that have extensive case law on evidence and credibility assessment, the ET decided to include jurisprudence in this Compilation from the **Court of Justice of the Euopean Union (CJEU), the European Court of Human Rights and national law**.

CJEU

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU	*P v S and Cornwall County Council* Case C-13/94 EU:C:1996:170 30.4.1996	Judgment after a reference for a preliminary ruling from the Industrial Tribunal, Truro (United Kingdom) on equal treatment for men and women. Gender — male and female workers — access to employment and working conditions — dismissal of a transsexual for a reason arising from the gender reassignment of the person concerned. **Para. 20:** 'Accordingly, the scope of the directive cannot be confined simply to discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, the scope of the directive is also such as to apply to discrimination arising, as in this case, from the gender reassignment of the person concerned.'	
CJEU	*Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA, Antonio Cannito v Fondiaria Sai SpA and Nicolò Tricarico and Pasqualina Murgolo v Assitalia SpA* Joined Cases C-295/04, C-296/04, C-297/04 and C-298/04 EU:C:2006:461 13.7.2006	Judgment after a reference for a preliminary ruling from the Gudice di pace di Bitonto (Italy) on the interpretation of Article 81 EC Treaty. Absence of EU rules — Member States' responsibility for procedural rules — time limits — Article 46(6) APD (recast) by analogy. **Para. 77:** 'As was pointed out in paragraph 62 of this judgment, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules observe the principles of equivalence and effectiveness.'	
CJEU	*Sopropé — Organizações de Calçado Lda v Fazenda Pública* Case C-349/07 EU:C:2008:746 18.12.2008	Judgment after a reference for a preliminary ruling from the Supremo Tribunal Administrativo (Italy) on the rights of defence in the contact of the General Tax Law. General principle of EU law — rights of the defence. **Paras 36-38:** '36. Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual. 37. In accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so […]. 38. The authorities of the Member States are subject to that obligation when they take decisions which come within the scope of Community law, even though the Community legislation applicable does not expressly provide for such a procedural requirement. As regards the implementation of that principle and, in particular, the periods within which the rights of the defence must be exercised, it must be stated that, where those periods are not, as in the main proceedings, fixed by Community law, they are governed by national law on condition, first, that they are the same as those to which individuals or undertakings in comparable situations under national law are entitled and, secondly, that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the Community legal order.'	CJEU — C-32/95, *Commission* v *Lisrestal and Others*; CJEU — C-462/98, *Mediocurso* v *Commission.*

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU	*Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie* Case C-465/07 EU:C:2009:94 17.2.2009	Judgment after a reference for a preliminary ruling from the Raad van State (Netherlands) on the relationship of Article 15(c) QD and Article 3 ECHR and interpretation of the terms 'individual threat' and 'indiscriminate violence' in Article 15(c) QD. Standard of proof — subsidiary protection — Article 15(c) QD. **Para. 43:** 'Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 15(c) of the Directive, in conjunction with Article 2(e) thereof, must be interpreted as meaning that: — the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances; — the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place — assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred — reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.'	
CJEU (Grand Chamber)	*Aydin Salahadin Abdulla and Others v Bundesrepublik Deutschland* Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 EU:C:2010:105 2.3.2010	Judgment after a reference for a preliminary ruling from Bundesverwaltungsgericht (Germany) on cessation of refugee status on the basis of Article 11 QD. Principles for the assessment of evidence — close and rigorous scrutiny — vigilance and care. **Paras 88-90:** '88. By contrast, the standard which must then guide the assessment of the elements present does not vary, either at the stage of the examination of an application for refugee status or at the stage of the examination of the question of whether that status should be maintained, when, after the circumstances which led to the granting of that status have ceased to exist, other circumstances which may have given rise to a well-founded fear of acts of persecution are assessed. 89. At both of those stages of the examination, the assessment relates to the same question of whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution. 90. That assessment of the extent of the risk must, in all cases, be carried out with vigilance and care, since what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the Union.'	

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU	*Virginie Pontin* v *T-Comalux SA* Case C-63/08 EU:C:2009:666 29.10.2009	Judgment after a reference for a preliminary ruling from the Tribunal du travail d'Esch-sur-Alzette (Luxembourg) on legality of restrictions to legal remedies following dismissal of pregnant workers. Effective judicial protection — principles of equivalence and effectiveness — time limits. **Paras 43-49:** '43. As regards the principle of effective judicial protection of an individual's rights under Community law, it is settled case-law that the detailed procedural rules governing actions for safeguarding an individual's rights under Community law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) […]. 44. Those requirements of equivalence and effectiveness embody the general obligation on the Member States to ensure judicial protection of an individual's rights under Community law. They apply both as regards the designation of the courts and tribunals having jurisdiction to hear and determine actions based on Community law and as regards the definition of detailed procedural rules […]. 45. The principle of equivalence requires that the national rule at issue be applied without distinction, whether the infringement alleged is of Community law or national law, where the purpose and cause of action are similar […]. However, that principle is not to be interpreted as requiring Member States to extend their most favourable rules to all actions brought in the field of employment law […]. In order to establish whether the principle of equivalence has been complied with, it is for the national court, which alone has direct knowledge of the procedural rules governing actions in the field of domestic law, to determine whether the procedural rules intended to ensure that the rights derived by individuals from Community law are safeguarded under domestic law comply with that principle and to consider both the purpose and the essential characteristics of allegedly similar domestic actions […]. For that purpose, the national court must consider whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics […]. 46. It is apparent from case-law that in order to decide whether procedural rules are equivalent the national court must establish objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, the conduct of that procedure and any special features of those rules […]. 47. As regards the principle of effectiveness, it is apparent from the Court's case-law that cases which raise the question whether a national procedural provision renders the exercise of an individual's rights under the Community legal order practically impossible or excessively difficult must similarly be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings. 48. The Court has thus recognised that it is compatible with Community law to lay down reasonable time limits for bringing proceedings in the interests of legal certainty, since such time-limits are not liable to render practically impossible or excessively difficult the exercise of rights conferred by Community law […]. As regards limitation periods, the Court has also held that, in respect of national legislation which comes within the scope of Community law, it is for the Member States to establish those periods in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration […]. 49. Lastly, as is apparent from settled case-law, it is not for the Court to rule on the interpretation of national law, that being exclusively for the national court, which must, in the present case, determine whether the requirements of equivalence and effectiveness are met by the provisions of the relevant national legislation […]. However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its interpretation […].'	CJEU — C-268/06, *Impact* v *Minister for Agriculture and Food and Others*; CJEU — C-326/96, *B.S. Levez* v *T.H. Jennings (Harlow Pools) Ltd.*; CJEU — C-78/98, *Shirley Preston and Others* v *Wolverhampton Healthcare NHS Trust and Others and Dorothy Fletcher and Others* v *Midland Bank plc.*; CJEU — C-426/05, *Tele2 Telecommunication GmBH* v *Telekom-Control-Kommission*; CJEU — C-255/00, *Grundig Italiana SpA* v *Ministero delle Finanze*; CJEU — C-2/06, *Willy Kempter KG* v *Hauptzollamt Hamburg-Jonas*; CJEU — C-349/07, *Sopropé — Organizações de Calçado Lda* v *Fazenda Pública*; CJEU — C-378/07 to C-380/07, *Kiriaki Angelidaki and Others* v *Organismos Nomarchiakis Autodioikisis Rethymnis, Chrikleia Giannoudi* v *Dimos Geropotamou and Georgios Karabousanos and Sofoklis Michopoulos* v *Dimos Geropotamou*; CJEU — C-53/04, *Cristiano Marrosu and Gianluca Sardino* v *Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate*; CJEU — C-180/04, *Andrea Vassallo* v *Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate*; CJEU — C-364/07, *Spyridon Vassilakis and Others* v *Dimos Kerkyraion*.

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU	*Brahim Samba Diouf* v *Ministre du Travail, de l'Emploi et de l'Immigration* Case C-69/10 EU:C:2011:524 28.7.2011	Judgment after a reference for a preliminary ruling from the Tribunal administratif (Luxembourg) on the right to an effective remedy in the context of accelerated procedure under Article 39 APD and under Articles 6 and 13 ECHR. Right to an effective remedy — general principle of EU law — Article 47 EU Charter — thorough review of legality — review on both the facts and the law — interpretation of national law in conformity with EU law — time limits. **Paras 48-50, 54-61 and 66-68**: '48. The question referred thus concerns the right of an applicant for asylum to an effective remedy before a court or tribunal in accordance with Article 39 of Directive 2005/85 and, in the context of European Union ('EU') law, with the principle of effective judicial protection. 49. That principle is a general principle of EU law to which expression is now given by Article 47 of the Charter of Fundamental Rights of the European Union […]. 50. It is therefore appropriate to determine whether the system put in place by the national rules at issue in the main proceedings observes the principle of effective judicial protection and, in particular, whether the fact that there is no appeal against the decision to examine the application for asylum under an accelerated procedure denies the applicant for asylum his right to an effective remedy. […] 54. It is appropriate, in that regard, to recall that, in Case C-13/01 *Safalero* [2003] ECR I8679, paragraphs 54 to 56, the Court held that the principle of effective judicial protection of the rights which the EU legal order confers on individuals is to be construed as not precluding national legislation under which an individual cannot bring court proceedings to challenge a decision taken by the public authorities, where there is available to that individual a legal remedy which ensures respect for the rights conferred on him by EU law and which enables him to obtain a judicial decision finding the provision in question to be incompatible with EU law. 55. The decision relating to the procedure to be applied for the examination of the application for asylum, viewed separately and independently from the final decision which grants or rejects the application, is a measure preparatory to the final decision on the application. 56. Accordingly, the absence of a remedy at that stage of the procedure does not constitute an infringement of the right to an effective remedy, provided, however, that the legality of the final decision adopted in an accelerated procedure — and, in particular, the reasons which led the competent authority to reject the application for asylum as unfounded — may be the subject of a thorough review by the national court, within the framework of an action against the decision rejecting the application. 57. As regards judicial review within the framework of a substantive action against the decision rejecting the application for international protection, the effectiveness of that action would not be guaranteed if — because of the impossibility of bringing an appeal under Article 20(5) of the Law of 5 May 2006 — the reasons which led the Minister for Labour, Employment and Immigration to examine the merits of the application under an accelerated procedure could not be the subject of judicial review. In a situation such as that at issue in the main proceedings, the reasons relied on by that Minister in order to use the accelerated procedure are in fact the same as those which led to that application being rejected. Such a situation would render review of the legality of the decision impossible, as regards both the facts and the law […]. 58. What is important, therefore, is that the reasons justifying the use of an accelerated procedure may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum. It would not be compatible with EU law if national rules such as those deriving from Article 20(5) of the Law of 5 May 2006 were to be construed as precluding all judicial review of the reasons which led the competent administrative authority to examine the application for asylum under an accelerated procedure.	CJEU — C-279/09, *DEB Deutschland Energiehandels und Beratungsgesellschaft mbH* v *Bundesrepublik Deutschland*; CJEU — C-457/09, *Claude Chartry* v *Belgian State*; CJEU — C-13/01, *Safalero Srl* v *Prefetto di Genova*; CJEU — C-506/04, *Graham J. Wilson* v *Ordre des avocats du barreau de Luxembourg*; CJEU — C-378/07 to C-380/07, *Kiriaki Angelidaki and Others* v *Organismos Nomarchiakis Autodioikisis Rethymnis, Chrikleia Giannoudi* v *Dimos Geropotamou and Georgios Karabousanos and Sofoklis Michopoulos* v *Dimos Geropotamou*; CJEU — C-268/06, *Impact* v *Minister for Agriculture and Food and Others.*

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		59. In that regard, it should be noted that it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law or to decide whether the interpretation given by the national court of those provisions is correct. Indeed, only the national courts are competent to decide upon the interpretation of domestic law […]. 60. However, in that context, attention should also be drawn to the requirement that national law be interpreted in conformity with EU law, which permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them […]. The principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it […]. 61. The objective of Directive 2005/85 is to establish a common system of safeguards serving to ensure that the Geneva Convention and the fundamental rights are fully complied with. The right to an effective remedy is a fundamental principle of EU law. In order for that right to be exercised effectively, the national court must be able to review the merits of the reasons which led the competent administrative authority to hold the application for international protection to be unfounded or made in bad faith, there being no irrebuttable presumption as to the legality of those reasons. It is also within the framework of that remedy that the national court hearing the case must establish whether the decision to examine an application for asylum under an accelerated procedure was taken in compliance with the procedures and basic guarantees laid down in Chapter II of Directive 2005/85, as provided for in Article 23(4) of the directive. […]. 66. As regards the fact that the time limits for bringing an action is 15 days in the case of an accelerated procedure, whilst it is 1 month in the case of a decision adopted under the ordinary procedure, the important point, as the Advocate General has stated in point 63 of his Opinion, is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action. 67. With regard to abbreviated procedures, a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved. 68. It is, however, for the national court to determine — should that time limits prove, in a given situation, to be insufficient in view of the circumstances — whether that element is such as to justify, on its own, upholding the action brought indirectly against the decision to examine the application for asylum under an accelerated procedure, so that, in upholding the action, the national court would order that the application be examined under the ordinary procedure.'	
CJEU (Grand Chamber)	*NS v Secretary of State for the Home Department and ME and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* Joined Cases C-411/10 and C-493/10 EU:C:2011:865 21.12.2011	Judgment after a reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) on the concept of 'safe countries' and the rebuttable presumption of compliance with fundamental rights by Member States under the Dublin II Regulation. General principles of EU law — interpretation of national law in accordance with EU law. **Para. 77:** 'According to settled case-law, the Member States must not only interpret their national law in a manner consistent with European Union law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the European Union legal order or with the other general principles of European Union law […].'	CJEU — C-101/01, *Bodil Lindqvist*; CJEU — C-305/05, *Ordre des barreaux francophones et germanophone and Others* v *Conseil des ministres*.

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*Bundesrepublik Deutschland v Y and Z* Joined Cases C-71/11 and C-99/11 EU:C:2012:518 5.9.2012	Judgment after a reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) on the notion of persecution on the basis of Articles 9(1) and 10(1)(b) QD. Individual assessment — standard of proof — refugee status — vigilance and care. **Individual assessment, para. 72:** 'In the light of the foregoing considerations, the answer to the first two questions referred in both cases is that Article 9(1)(a) of the Directive must be interpreted as meaning that: […] for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.' **Standard of proof for refugee status, paras 76 and 80:** '76. It should be noted in that regard that, in the system provided for by the Directive, when assessing whether, in accordance with Article 2(c) thereof, an applicant has a wellfounded fear of being persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subject to acts of persecution. […]. 80. In the light of the above considerations, the answer to the third question referred in both cases is that Article 2(c) of the Directive must be interpreted as meaning that the applicant's fear of being persecuted is well-founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.' **Vigilance and care, para. 77**: 'That assessment of the extent of the risk, which must, in all cases, be carried out with vigilance and care […], will be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4 of the Directive.'	CJEU — C-175/08, C-176/08, C-178/08 and C-179/08, *Aydin Salahadin Abdulla and Others* v *Bundesrepublik Deutschland.*

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU	*MM* v *Minister for Justice, Equality and Law Reform, Ireland*, Attorney General Case C-277/11 EU:C:2012:744 22.11.2012	Judgment after a reference for a preliminary ruling from the High Court (Ireland) on Article 4 QD. Two-stage assessment of applications for international protection — applicants to submit all elements to substantiate application — Member State's duty of cooperation with applicants — examination on the merits as responsibility of national authorities — procedural rules and safeguards — right to be heard — EU Charter — right to good administration (Article 41 EU Charter) — right to be heard in international protection procedures — interpretation of national law in line with EU law, fundamental rights and general principles. **Two-stage assessment of applications for international protection, para. 64:** 'In actual fact, that 'assessment' takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.' **Applicants to submit all elements and Member States' duty to cooperate, paras 65 and 66:** '65. Under Article 4(1) of Directive 2004/83, although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application. 66. This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. A Member State may also be better placed than an applicant to gain access to certain types of documents.' **Examination of the merits as responsibility of competent national authorities, para. 70**: 'Such an examination of the merits of an asylum application is solely the responsibility of the competent national authority; accordingly, at that stage in the procedure, a requirement that the authority cooperate with the applicant — as laid down in the second sentence of Article 4(1) of Directive 2004/83 — is of no relevance.' **QD not prescribing procedural rules and safeguards, para. 73:** 'Directive 2004/83 in no way seeks, however, to prescribe the procedural rules applicable to the examination of an application for international protection or, therefore, to determine the procedural safeguards which must, in that respect, be afforded to an applicant for asylum.' **Rights of the defence as a fundamental principle of EU law, para. 81**: 'In that regard, it must be recalled that observance of the rights of the defence is a fundamental principle of EU law […].' **Right to be heard in Articles 47, 48 and 41 EU Charter, para. 82:** 'In the present case, with regard more particularly to the right to be heard in all proceedings, which is inherent in that fundamental principle […], that right is now affirmed not only in Articles 47 and 48 of the Charter, which ensure respect of both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 thereof, which guarantees the right to good administration.' **Right to good administration under Article 41 EU Charter, paras 83 and 84**: '83. Article 41(2) of the Charter provides that the right to good administration includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions. 84. It must be stated that, as follows from its very wording, that provision is of general application.'	CJEU — C-7/98, *Dieter Krombach* v *André Bamberski*; CJEU — C-349/07, *Sopropé — Organizações de Calçado Lda* v *Fazenda Pública*; CJEU — C-322/81, *NV Nederlandsche Banden Industrie Michelin* v *Commission of the European Communities*; CJEU — C-374/87, *Orkem* v *Commission of the European Communities*; CJEU — C-17/14, *Transocean Marine Paint Association* v *Commission of the European Communities*; CJEU — C-287/02, *Kingdom of Spain* v *Commission of the European Communities*; CJEU — C-141/08 P, *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd* v *Council of the European Union*; CJEU — C-27/09 P, *French Republic* v *People's Mojahedin Organization of Iran*; CJEU — C-269/90, *Technische Universität München* v *Hauptzollamt München-Mitte*; CJEU — C-411/10 and C-493/10, *NS* v *Secretary of State for the Home Department and ME and Others* v *Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform.*

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		Application of the right to be heard in procedures determining application for international protection and scope of the right, paras 85-89: '85. Thus the Court has always affirmed the importance of the right to be heard and its very broad scope in the EU legal order, considering that that right must apply in all proceedings which are liable to culminate in a measure adversely affecting a person […]. 86. In accordance with the Court's caselaw, observance of that right is required even where the applicable legislation does not expressly provide for such a procedural requirement […]. 87. The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely […]. 88. That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision […]; the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence. 89. It follows from the foregoing reasoning that the right, thus understood, of the applicant for asylum to be heard must apply fully to the procedure in which the competent national authority examines an application for international protection pursuant to rules adopted in the framework of the Common European Asylum System.' **Interpretation of national law consistent with EU law and fundamental rights or general principles, pa**ra. 93: 'It should be added that, according to the Court's settled caselaw, the Member States must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation which would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles of EU law […].'	
CJEU	*HN* v *Minister for Justice, Equality and Law Reform, Ireland, Attorney General* Case C-604/12 EU:C:2014:302 8.5.2014	Judgment after a reference for a preliminary ruling from the Supreme Court (Ireland) on national procedures for applications of international protection under the QD and APD. Article 41 EU Charter — right to good administration — general principle of EU law. **Para. 49:** 'As regards the right to good administration, enshrined in Article 41 of the Charter, that right reflects a general principle of EU law.'	
CJEU (Grand Chamber)	*A, B and C* v *Staatssecretaris van Veiligheid en Justitie* Joined Cases C-148/13, C-149/13 and 150/13 EU:C:2014:2406. 2.12.2014	Judgment after a reference for a preliminary ruling from the Raad van State (Netherlands) on assessment of facts and circumstances in the context of application for international protection on ground of sexual orientation under Article 4 QD. Evidence assessment — compatibility of methods with QD and EU Charter — adapt methods of assessment to specific features of applications — two-stage assessment of applications for international protection — evidence of sexual orientation — individual assessment — interview in light of personal and general circumstances — stereotyped notions — questions on sexual practices — evidence infringing human dignity — submit all elements 'as soon as possible' — credibility. **Methods of evidence assessment consistent with QD and EU Charter, para. 53**: 'However, the methods used by the competent authorities to assess the statements and documentary or other evidence submitted in support of those applications must be consistent with the provisions of Directive 2004/83 and 2005/85 and, as is clear from recitals 10 and 8 in the preambles to those directives respectively, with the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity, enshrined in Article 1 of the Charter, and the right to respect for private and family life guaranteed by Article 7 thereof.'	CJEU — C-277/11, *MM* v *Minister of Justice, Equality and Law Reform*, Ireland.

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
		To adapt methods of evidence assessment to each application, para. 54: 'Even though Article 4 of Directive 2004/83 is applicable to all applications for international protection, whatever the ground for persecution relied on in support of those applications, it remains the case that it is for the competent authorities to modify their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for asylum, in observance of the rights guaranteed by the Charter.' **Two-stage assessment of applications for international protection, para. 55**: 'As regards the assessment of the facts and circumstances under Article 4 of Directive 2004/83, that assessment takes place, as was held at paragraph 64 of the judgment in *M*. […], in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are satisfied.' **Applicant best placed to provide evidence of sexual orientation, para. 56:** 'During the first stage, to which the questions of the referring court in each of the cases in the main proceedings relates, while the Member State may consider that it is generally for the applicant to submit all elements needed to substantiate his application, the applicant being, besides, best placed to provide evidence to establish his own sexual orientation, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of assessing the relevant elements of that application, in accordance with Article 4(1) of the directive […].' **Individual assessment, para. 57**: 'It should be noted in that regard that, in accordance with Article 4(3)(c) of Directive 2004/83, that assessment must be made on an individual basis and must take account of the individual situation and personal circumstances of the applicant, including factors such as background, gender and age, in order for it to be determined whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm.' **Interview in light of personal and general circumstances, para. 61**: 'In that respect, it should be recalled that Article 4(3)(c) of Directive 2004/83 requires the competent authorities to carry out an assessment that takes account of the individual position and personal circumstances of the applicant and that Article 13(3)(a) of Directive 2005/85 requires those authorities to conduct the interview in a manner that takes account of the personal and general circumstances surrounding the application.' **Questions based on stereotyped notions, paras 62 and 63:** '62. While questions based on stereotyped notions may be a useful element at the disposal of competent authorities for the purposes of the assessment, the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not, nevertheless, satisfy the requirements of the provisions referred to in the previous paragraph, in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned. 63. Therefore, the inability of the applicant for asylum to answer such questions cannot, in itself, constitute sufficient grounds for concluding that the applicant lacks credibility, inasmuch as such an approach would be contrary to the requirements of Article 4(3)(c) of Directive 2004/83 and of Article 13(3)(a) of Directive 2005/85.' **Questions on sexual practices contrary to EU Charter of rights, para. 64:** 'In the second place, while the national authorities are entitled to carry out, where appropriate, interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum, questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the Charter and, in particular, to the right to respect for private and family life as affirmed in Article 7 thereof.'	

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		Evidence infringing human dignity, paras 65 and 66: '65. In relation, in the third place, to the option for the national authorities of allowing, as certain applicants in the main proceedings proposed, homosexual acts to be performed, the submission of the applicants to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts, it must be pointed out that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by Article 1 of the Charter. 66. Furthermore, the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence.' **Delay in applicants' submission of all elements and impact on credibility, paras 67-71:** '67. In the fourth place, as regards the option for the competent authorities finding a lack of credibility when, in particular, the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the grounds for persecution, it must be held as follows. 68. It is clear from Article 4(1) of Directive 2004/83 that Member States may consider it the duty of the applicant to submit 'as soon as possible' all elements needed to substantiate the application for international protection. 69. However, having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset. 70. Moreover, it must be observed that the obligation laid down by Article 4(1) of Directive 2004/83 to submit all elements needed to substantiate the application for international protection 'as soon as possible' is tempered by the requirement imposed on the competent authorities, under Article 13(3)(a) of Directive 2005/85 and Article 4(3) of Directive 2004/83 to conduct the interview taking account of the personal or general circumstances surrounding the application, in particular, the vulnerability of the applicant, and to carry out an individual assessment of the application, taking account of the individual position and personal circumstances of each applicant. 71. Thus, to hold that an applicant for asylum is not credible, merely because he did not reveal his sexual orientation on the first occasion that he was given to set out the grounds of persecution, would be to fail to have regard to the requirement referred to in the previous paragraph.'	
CJEU	*Andre Lawrence Shepherd* v *Bundesrepublik Deutschland* Case C-472/13 EU:C:2015:117 26.2.2015	Judgment after a reference for a preliminary ruling from the Bayerisches Verwaltungsgericht München (Germany) on eligibility for refugee status and meaning of acts of persecution on the basis of Article 9(2)(b), (c) and (e) QD. Assessment of facts — responsibility of national authorities — standard of proof. **Assessment of facts as responsibility of national authorities, para. 40:** 'Fourthly and lastly, while in the assessment of the facts which, under Article 4(3) of Directive 2004/83, it is for the national authorities alone to carry out, acting under the supervision of the courts, in order to determine the situation of the military service concerned, certain events such as, inter alia, the past conduct of the applicant's unit or criminal sentences passed on members of that unit may constitute indicia that it is probable the unit will commit further war crimes, such events cannot by themselves automatically establish, at the time of the applicant for refugee status's refusal to serve, that it is likely that such crimes will be committed. Against that background, the assessment which the national authorities must carry out can be based only on a body of evidence which alone is capable of establishing, in view of the circumstances in question, that the situation of that military service makes it credible that such acts will be committed.' **Standard of proof, para. 43:** 'It follows that, in those circumstances, it is for the person seeking refugee status under Article 9(2)(e) of Directive 2004/83 to establish with sufficient plausibility that his unit carries out operations assigned to it, or has carried them out in the past, in such conditions that it is highly likely that acts such as those referred to in that provision will be committed.'	

Court	Case name/reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*Pál Aranyosi and Robert Căldăraru* Joined Cases C-404/15 and C-659/15 PPU EU:C:2016:198 5.4.2016	Judgment after a reference for a preliminary ruling from Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen, Germany) relating to the execution of European arrest warrants. Evidentiary assessment — European arrest warrant — Grounds for refusal to execute. **Para 89: '**[…] the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.'	
CJEU	*Mehrdad Ghezelbash* v *Staatssecretaris van Veiligheid en Justitie* Case C-63/15 EU:C:2016:409 7.6.2016	Judgment after a reference for a preliminary ruling from the Rechtbank Den Haag (Netherlands) on the right to an effective remedy against a transfer decision under the Dublin III Regulation. Determination of responsible Member State — examination of the elements of proof and circumstantial evidence. **Paras 38–44**: '38. Furthermore, the scope of the remedy available to an asylum seeker against a decision to transfer him is made clear in recital 19 of Regulation No 604/2013, the content of which did not appear in Regulation No 343/2003. 39. That recital states that, in order to ensure compliance with international law, the effective remedy introduced by Regulation No 604/2013 in respect of transfer decisions should cover (i) the examination of the application of that regulation and (ii) the examination of the legal and factual situation in the Member State to which the asylum seeker is to be transferred. 40. While the second examination mentioned in that recital refers only to the review of the situation prevailing in the Member State to which the applicant is to be transferred and is designed to check that it is not impossible to proceed with the transfer of the applicant for the reasons set out in Article 3(2) of the regulation, the first examination mentioned in that recital is designed to ensure, more generally, review of the proper application of the regulation. 41. It is apparent from the general scheme of Regulation No 604/2013 that its application is based essentially on the conduct of a process for determining the Member State responsible as designated by the criteria listed in Chapter III of the regulation. 42. Thus, according to recitals 4, 5 and 40 of Regulation No 604/2013, the objective of the regulation is to establish a clear and workable method based on objective, fair criteria both for the Member States and for the persons concerned for determining the Member State responsible for examining an asylum application. It follows, in particular, from Articles 3(1) and 7(1) of the regulation that the Member State responsible is, in principle, the Member State indicated by the criteria set out in Chapter III of the regulation. Moreover, Chapter IV of the regulation identifies specifically the situations in which a Member State may be deemed responsible for examining an asylum application by way of derogation from those criteria. 43. The crucial importance, for the application of Regulation No 604/2013, of the process for determining the Member State responsible on the basis of the criteria laid down in Chapter III of the regulation is confirmed by the fact that Article 21(1) of the regulation provides that it is possible for the Member State with which an application for international protection has been lodged to request another Member State to take charge of an asylum seeker only if the first Member State considers that the second is responsible for the examination of the application. Moreover, under Article 21(3) of the regulation, the request for charge to be taken of the applicant must include evidence enabling the authorities of the Member State requested to check whether it is responsible on the basis of the criteria laid down in the regulation. Similarly, it is apparent from Article 22 of Regulation No 604/2013 that the response to such a request must be based on an examination of the elements of proof and circumstantial evidence whereby the criteria laid down in Chapter III of the regulation are applied.	

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		44. Accordingly, the reference in recital 19 of Regulation No 604/2013 to the examination of the application of the regulation in an appeal against a transfer decision for which provision is made in Article 27(1) of the regulation must be understood as being intended to ensure, in particular, that the criteria for determining the Member State responsible laid down in Chapter III of the regulation are correctly applied, including the criterion for determining responsibility set out in Article 12 of the regulation.'	
CJEU (Grand Chamber)	*Commissaire général aux réfugiés et aux apatrides* v *Mostafa Lounani* Case C-573/14 ECLI:EU:C:2017:71 31.1.2017	Judgment after a reference for a preliminary ruling from the Conseil d'État, Council of State (Belgium) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Article 12(2)(c) and Article 12(3) — Exclusion from being a refugee — Concept of 'acts contrary to the purposes and principles of the United Nations' — criminal conviction of participation in the activities of a terrorist group — Individual assessment. **Para 79:** […] For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted by the courts of a Member State on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.	
CJEU	*C.K. and Others* v *Republika Slovenija* Case C-578/16 PPU EU:C:2017:127 16.2.2017	Judgment after a reference for a preliminary ruling from the the Vrhovno sodišče, Supreme Court (Slovenia) on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. Article 4 of the Charter of Fundamental Rights of the European Union — Inhuman or degrading treatment — Transfer of a seriously ill asylum seeker to the State responsible for examining his application — No substantial grounds for believing that there are proven systemic flaws in that Member State — Obligations imposed on the Member State having to carry out the transfer. **Para 65:** It follows from all of the preceding considerations that the transfer of an asylum seeker within the framework of the Dublin III Regulation can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter. **Para 75:** Consequently, where an asylum seeker provides, particularly in the context of an effective remedy guaranteed to him by Article 27 of the Dublin III Regulation, objective evidence, such as medical certificates concerning his person, capable of showing the particular seriousness of his state of health and the significant and irreversible consequences to which his transfer might lead, the authorities of the Member State concerned, including its courts, cannot ignore that evidence. They are, on the contrary, under an obligation to assess the risk that such consequences could occur when they decide to transfer the person concerned or, in the case of a court, the legality of a decision to transfer, since the execution of that decision may lead to inhuman or degrading treatment of that person.	

ECtHR

Court	Case name/reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*Cruz Varas* v *Sweden* Application no 15576/89 ECLI:CE:ECHR:1991: 0320JUD001557689 20.3.1991	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — standard of proof — assessment — late submission of evidence — credibility. **Standard of proof in *non-refoulement* cases under Article 3 ECHR, para. 69:** 'In its Soering judgment of 7 July 1989 the Court held that the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 […], and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country […].' **Assessment in light of all material placed before the Court, para. 75:** 'In determining whether substantial grounds have been shown for believing in the existence of a real risk of treatment contrary to Article 3 (art. 3) the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu […].' **Late submission of evidence affecting applicants' credibility, para. 78:** 'Moreover, even if allowances are made for the apprehension that asylum-seekers may have towards the authorities and the difficulties of substantiating their claims with documentary evidence, the first applicant's complete silence as to his alleged clandestine activities and torture by the Chilean police until more than eighteen months after his first interrogation by the Växjö Police Authority casts considerable doubt on his credibility in this respect […]. As the Government have pointed out, there was no reference to these allegations during the police interrogations that took place in June 1987 and October 1988 and the many written submissions made in the course of the immigration proceedings up to January 1989 […]. These doubts are reinforced by the fact that he was legally represented at all stages throughout these proceedings and that he must have been aware of the importance of bringing to the attention of the authorities any element which supported his asylum claim. His credibility is further called into question by the continuous changes in his story following each police interrogation and by the fact that no material has been presented to the Court which substantiates his claims of clandestine political activity on behalf of or in collaboration with members of the FPMR […]. On the contrary the evidence points in the opposite direction […].'	ECtHR — *Soering* v *United Kingdom*, Application no 14038/88; ECtHR — *Ireland* v *United Kingdom*, Application no 5310/71.
ECtHR	*Vilvarajah and Others* v *the United Kingdom* Application nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87 ECLI:CE:ECHR:1991 1030JUD001316387 30.10.1991	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — standard of proof — mere possibility insufficient. **Para. 111:** '[…] A mere possibility of ill-treatment, however, in such circumstances, is not in itself sufficient to give rise to a breach of Article 3 […].'	

Court	Case name/reference/date	Relevance/keywords/main points	Cases cited
ECtHR (Grand Chamber)	*Chahal* v *the United Kingdom* Application no 22414/93 ECLI:CE:ECHR:1996: 1115JUD002241493 15.11.1996	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — rigorous risk assessment. **Para. 96:** 'However, the Court is not bound by the Commission's findings of fact and is free to make its own assessment. Indeed, in cases such as the present the Court's examination of the existence of a real risk of ill-treatment must necessarily be a rigorous one, in view of the absolute character of Article 3 (art. 3) and the fact that it enshrines one of the fundamental values of the democratic societies making up the Council of Europe […].'	ECtHR — *Vilvarajah and Others* v *United Kingdom*, Application nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87.
ECtHR	*Jabari* v *Turkey* Application no 40035/98 ECLI:CE:ECHR:2000: 0711JUD004003598 11.7.2000	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — independent and rigorous assessment — right to an effective remedy — Article 13 ECHR. **Para. 50:** 'In the Court's opinion, given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned. Since the Ankara Administrative Court failed in the circumstances to provide any of these safeguards, the Court is led to conclude that the judicial review proceedings relied on by the Government did not satisfy the requirements of Article 13.'	
ECtHR	*Hilal* v *the United Kingdom* Application no 45276/99 ECLI:CE:ECHR:2001: 0306JUD004527699 6.3.2001	ECtHR judgment. Assessment of credibility — 'in the round' assessment — standard of 'non-material' inconsistency. **Para. 64:** 'The Court accepts that the applicant was arrested and detained because he was a member of the CUF opposition party and had provided them with financial support. It also finds that he was ill-treated during that detention by, inter alia, being suspended upside down, which caused him severe haemorrhaging through the nose. In the light of the medical record of the hospital which treated him, the apparent failure of the applicant to mention torture at his first immigration interview becomes less significant and his explanation to the special adjudicator — that he did not think he had to give all the details until the full interview a month later — becomes far less incredible. While it is correct that the medical notes and death certificate of his brother do not indicate that torture or ill-treatment was a contributory factor in his death, they did give further corroboration to the applicant's account which the special adjudicator had found so lacking in substantiation. They showed that his brother, who was also a CUF supporter, had been detained in prison and that he had been taken from the prison to hospital, where he died. This is not inconsistent with the applicant's allegation that his brother had been ill-treated in prison.'	
ECtHR	*Tekdemir* v *the Netherlands* Application nos 46860/99 and 49823/99 ECLI:CE:ECHR:2002: 1001DEC004686099 1.10.2002	ECtHR admissibility decision. *Non-refoulement* — Article 3 ECHR — consistency of applicants' story — country information — numerous alterations in statements — credibility. 'The Court considers that the fact that the applicant supplemented and significantly altered the motives for seeking asylum in the course of his three consecutive asylum requests can reasonably be regarded as undermining the credibility of his claim. The Court further finds that the applicant's stated reasons for fearing treatment contrary to Article 3 of the Convention if returned to Turkey have not only remained unsubstantiated but are, in addition, contradicted by the findings made by the Netherlands authorities in their investigation carried out in Turkey. Insofar as the applicant disputes these findings, the Court considers that the points made by the applicant are insufficiently substantiated and cannot be said to weaken the Government's findings.'	

Court	Case name/reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*B* v *Sweden* Application no 16578/03 ECLI:CE:ECHR:2004: 1026DEC001657803 26.10.2004	ECtHR admissibility decision. *Non-refoulement* — Article 3 ECHR — complete accuracy of dates and events — major inconsistencies — credibility. **Complete accuracy of dates and events not to be expected in *non-refoulement* cases under Article 3 ECHR:** 'While acknowledging that it cannot be expected that asylum-seekers, in all circumstances, give completely accurate and consistent statements, the Court still finds it striking that the applicant failed to give information that would have been of vital importance for the examination of his request for asylum.' **Major inconsistencies' impact on credibility:** 'Having regard to the above, the Court considers that there are strong reasons to call into question the veracity of the applicant's statements and the authenticity of the documents relied on by him. It finds that he has not offered sufficient and reliable explanations for the delays in submitting the documents in question or for the partly incomplete and inconsistent statements given by him to the Swedish authorities and the Court at different stages of the proceedings. Consequently, the Court finds that it has not been established that there are substantial grounds for believing that, upon return to Libya, the applicant faces a real risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention and Article 1 of Protocol No 6 to the Convention.'	
ECtHR (Grand Chamber)	*Mamatkulov and Askarov* v *Turkey* Application nos 46827/99 and 46951/99 ECLI:CE:ECHR:2005: 0204JUD004682799 4.2.2005	ECtHR judgment. Extradition to the Republic of Uzbekistan — Articles 2, 3 and 6 ECHR. **Para. 67:** '67. It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment [...].'	ECtHR — *Soering v United Kingdom*, judgment of 7.7.1989.
ECtHR	*Shamayev and Others* v *Georgia and Russia* Application no 36378/02 ECLI:CE:ECHR:2005: 0412JUD003637802 12.4.2005	ECtHR judgment. *Non-refoulement* — Articles 2 and 3 ECHR — close scrutiny by a national authority. **Para. 448**: 'The Court considers it important to point out that an applicant's complaint alleging that his or her extradition would have consequences contrary to Articles 2 and 3 of the Convention must imperatively be subject to close scrutiny by a 'national authority" [...].'	ECtHR — *Chahal* v *United Kingdom*, Application no 22414/93, judgment of 15.11.1996.
ECtHR	*Said* v *the Netherlands* Application no 2345/02 ECLI:CE:ECHR:2005: 0705JUD000234502 5.7.2005	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — credibility — applicants' story. **Para. 53:** 'In these circumstances it is difficult to imagine by what means other than desertion the applicant might have left the army. Even if the account of his escape may appear somewhat remarkable, the Court considers that it does not detract from the overall credibility of the applicant's claim that he is a deserter.'	

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ECtHR	*N* v *Finland* Application no 38885/02 ECLI:CE:ECHR:2005:0726JUD003888502 26.7.2005	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — individual assessment — credibility — evasive statements — overall assessment. **Paras 154-157:** '154. The Court has certain reservations about the applicant's own testimony before the Delegates which it considers to have been evasive on many points and is not prepared to accept every statement of his as fact. In particular, his account of the journey to Finland is not credible. 155. In light of the overall evidence now before it the Court finds however that the applicant's account of his background in the DRC must, on the whole, be considered sufficiently consistent and credible. It can accept therefore that he fled the DRC in May 1997 at the time when Laurent-Désiré Kabila's forces were overthrowing President Mobutu's regime. The Court further finds it sufficiently credible that, although the applicant was not senior in military rank, he could be considered to have formed part of the President's and the DSP commander's inner circle. 156. Finally, the Court also finds sufficiently credible the applicant's statement that as an official in the DSP he took part in various events during which dissidents seen as a threat to President Mobutu were singled out for harassment, detention and possibly execution. 157. The Court would note in this connection that the Finnish authorities and courts, while finding the applicant's account generally not credible, do not appear to have excluded the possibility that he might have been working for the DSP. Moreover, the Finnish authorities and courts did not have an opportunity to hear K.K.'s testimony with regard to the applicant's background in the DRC. It cannot be said therefore that the position of the Court contradicts in any respect the findings of the Finnish courts. Neither is there any indication that the initial asylum interview was in any way rushed or otherwise conducted in a superficial manner […].'	
ECtHR	*Bello* v *Sweden* Application no 32213/04 ECLI:CE:ECHR:2006:0117DEC003221304 17.1.2006	ECtHR admissibility decision. *Non-refoulement* — Article 3 ECHR — complete accuracy of dates and events — major inconsistencies — credibility. **Complete accuracy of dates and events not to be expected in *non-refoulement* cases under Article 3 ECHR:** 'The Court acknowledges that complete accuracy as to dates and events cannot be expected in all circumstances from a person seeking asylum.' **Major inconsistencies' impact on credibility:** 'In the present case, however, it is struck by the number of major inconsistencies in the applicant's story. […] Having regard to the above, the Court finds that there are strong reasons to call into question the veracity of the applicant's statements and the newspaper article submitted in support thereof. She has offered no reliable evidence in support of her claims. Consequently, it has not been established that there are substantial grounds for believing that, if deported to Nigeria, she faces a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention or Article 1 of Protocol No 13 to the Convention.'	

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ECtHR	*Salah Sheekh* v *the Netherlands* Application no 1948/04 ECLI:CE:ECHR:2007: 0111JUD000194804 11.1.2007	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — evidence obtained proprio motu — ex nunc examination. **Para. 136:** '[…] In determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained proprio motu, in particular where the applicant — or a third party within the meaning of Article 36 of the Convention — provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government. In respect of materials obtained proprio motu, the Court considers that, given the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. In its supervisory task under Article 19 of the Convention, it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned, without comparing these with materials from other reliable and objective sources. This further implies that, in assessing an alleged risk of treatment contrary to Article 3 in respect of aliens facing expulsion or extradition, a full and ex nunc assessment is called for as the situation in a country of destination may change in the course of time. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of illtreatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion […]. In the present case, given that the applicant has not yet been expelled, the material point in time is that of the Court's consideration of the case. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities […].'	ECtHR — *Vilvarajah and Others* v *United Kingdom*, Application nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87; ECtHR — *Chahal* v *United Kingdom*, Application no 22414/93; ECtHR — *HLR* v *France*, Application no 24573/94; ECtHR — *Mamatkulov and Askarov* v *Turkey*, Application nos 46827/99 and 46951/99
ECtHR (Grand Chamber)	*Saadi* v *Italy* Application no 37201/06 ECLI:CE:ECHR:2008: 0228JUD003720106 28.2.2008	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — rigorous assessment. **Para. 128:** 'In determining whether substantial grounds have been shown for believing that there is a real risk of treatment incompatible with Article 3, the Court will take as its basis all the material placed before it or, if necessary, material obtained proprio motu […]. In cases such as the present one, the Court's examination of the existence of a real risk must necessarily be a rigorous one […].'	ECtHR — *HLR* v *France*, Application no 24573/94; ECtHR — *Hilal* v *United Kingdom*, Application no 45276/99; ECtHR — *Chahal* v *United Kingdom*, Application no 22414/93

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ECtHR	*NA* v *the United Kingdom* Application no 25904/07 ECLI:CE:ECHR:2008: 0717JUD002590407 17.7.2008	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — rigorous assessment — sources of COI — socioeconomic or humanitarian situations. **Rigorous assessment in *non-refoulement* cases under Article 3 ECHR, para. 111**: 'The assessment of the existence of a real risk must necessarily be a rigorous one […].' **Sources of country of origin information and socioeconomic or humanitarian situations, paras 121 and 122:** '121. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. 122. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be returned to that country. Thus the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3. Thus in respect of the UNHCR, due weight has been given by the Court to the UNHCR's own assessment of an applicant's claims when the Court determined the merits of her complaint under Article 3 […]. Conversely, where the UNHCR's concerns are focussed on general socioeconomic and humanitarian considerations, the Court has been inclined to accord less weight to them, since such considerations do not necessarily have a bearing on the question of a real risk to an individual applicant of ill-treatment within the meaning of Article 3 […].'	ECtHR — *Chahal* v *United Kingdom*, Application no 22414/93; ECtHR — *Saadi* v *Italy*, Application no 37201/06; ECtHR — *Jabari* v *Turkey*, Application no 40035/98; ECtHR — *Salah Sheekh* v *the Netherlands*, Application no 1948/04
ECtHR	*FH* v *Sweden* Application no 32621/06 ECLI:CE:ECHR:2009: 0120JUD003262106 20.1.2009	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — COI — socioeconomic or humanitarian conditions. **Para. 92:** 'In this connection, the Court stresses that it attaches importance to information contained in recent reports from independent international human rights organisations or governmental sources […]. However, its own assessment of the general situation in the country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant were to be returned to that country. Consequently, where reports are focused on general socioeconomic and humanitarian conditions, the Court has been inclined to accord less weight to them, since such conditions do not necessarily have a bearing on the question of a real risk to an individual applicant of ill-treatment within the meaning of Article 3 […].'	ECtHR — *Saadi* v *Italy*, Application no 37201/06; ECtHR — *NA* v *United Kingdom*, Application no 25904/07

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ECtHR (Grand Chamber)	*A and Others* v *the United Kingdom* Application no 3455/05 ECLI:CE:ECHR:2009: 0219JUD000345505 19.2.2009	ECtHR judgment. Right to fair trial — right to a fully adversarial procedure — disclosure of evidence. **Paras 204-205 and 216-218:** '204. Thus, the proceedings must be adversarial and must always ensure 'equality of arms" between the parties […]. An oral hearing may be necessary, for example in cases of detention on remand […]. Moreover, in remand cases, since the persistence of a reasonable suspicion that the accused person has committed an offence is a condition sine qua non for the lawfulness of the continued detention, the detainee must be given an opportunity effectively to challenge the basis of the allegations against him […]. This may require the court to hear witnesses whose testimony appears prima facie to have a material bearing on the continuing lawfulness of the detention […]. It may also require that the detainee or his representative be given access to documents in the case file which form the basis of the prosecution case against him […]. 205. The Court has held nonetheless that, even in proceedings under Article 6 for the determination of guilt on criminal charges, there may be restrictions on the right to a fully adversarial procedure where strictly necessary in the light of a strong countervailing public interest, such as national security, the need to keep secret certain police methods of investigation or the protection of the fundamental rights of another person. There will not be a fair trial, however, unless any difficulties caused to the defendant by a limitation on his rights are sufficiently counterbalanced by the procedures followed by the judicial authorities […]. 216. The Court takes as its starting point that, as the national courts found and it has accepted, during the period of the applicants' detention the activities and aims of the al-Qaeda network had given rise to a 'public emergency threatening the life of the nation". It must therefore be borne in mind that at the relevant time there was considered to be an urgent need to protect the population of the United Kingdom from terrorist attack and, although the United Kingdom did not derogate from Article 5 § 4, a strong public interest in obtaining information about al-Qaeda and its associates and in maintaining the secrecy of the sources of such information […]. 217. Balanced against these important public interests, however, was the applicants' right under Article 5 § 4 to procedural fairness. Although the Court has found that, with the exception of the second and fourth applicants, the applicants' detention did not fall within any of the categories listed in sub-paragraphs (a) to (f) of Article 5 § 1, it considers that the case-law relating to judicial control over detention on remand is relevant, since in such cases also the reasonableness of the suspicion against the detained person is a sine qua non (see paragraph 204 above). Moreover, in the circumstances of the present case, and in view of the dramatic impact of the lengthy — and what appeared at that time to be indefinite — deprivation of liberty on the applicants' fundamental rights, Article 5 § 4 must import substantially the same fair-trial guarantees as Article 6 § 1 in its criminal aspect […]. 218. Against this background, it was 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 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.	ECtHR — *Reinprecht* v *Austria*, Application no 67175/01; ECtHR — *Nikolova* v *Bulgaria*, Application no 31195/96; ECtHR — *Becciev* v *Moldova*, Application no 9190/03; ECtHR — *Turcan* v *Moldova*, Application no 39835/05; ECtHR — *Wloch* v *Poland*, Application no 27785/95; ECtHR — *Lamy* v *Belgium*, Application no 10444/83; ECtHR — *Fodale* v *Italy*, Application no 70148/01; ECtHR — *Doorson* v *the Netherlands*, Application no 20524/92; ECtHR — *Van Mechelen and Others* v *the Netherlands*, Application nos 21363/93, 21364/93, 21427/93 and 22056/93; ECtHR — *Jasper* v *United Kingdom*, Application no 27052/95; ECtHR — *SN* v *Sweden*, Application no 34209/96; ECtHR — *Botmeh and Alami* v *United Kingdom*, Application no 15187/03; ECtHR — *Fox, Campbell and Hartley* v *United Kingdom*, Application nos 12244/86, 12245/86 and 12383/86; ECtHR — *Garcia Alva* v *Germany*, Application no 23541/94; ECtHR — *Chahal* v *United Kingdom*, Application no 2241/93.

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ECtHR	*Sufi and Elmi* v *the United Kingdom* Application nos 8319/07 and 11449/07 ECLI:CE:ECHR:2011: 0628JUD000831907 28.6.2011	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — country evidence — assessment. **Paras 230-234:** '230. In assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations [...]. 231. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do. 232. The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on. The Court will not, therefore, disregard a report simply on account of the fact that its author did not visit the area in question and instead relied on information provided by sources. 233. That being said, where a report is wholly reliant on information provided by sources, the authority and reputation of those sources and the extent of their presence in the relevant area will be relevant factors for the Court in assessing the weight to be attributed to their evidence. The Court recognises that where there are legitimate security concerns, sources may wish to remain anonymous. However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess their reliability. Consequently, the approach taken by the Court will depend on the consistency of the sources' conclusions with the remainder of the available information. Where the sources' conclusions are consistent with other country information, their evidence may be of corroborative weight. However, the Court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it. 234. In the present case the Court observes that the description of the sources relied on by the fact-finding mission is vague. As indicated by the applicants, the majority of sources have simply been described either as 'an international NGO", 'a diplomatic source" or 'a security advisor". Such descriptions give no indication of the authority or reputation of the sources or of the extent of their presence in southern and central Somalia. This is of particular concern in the present case, where it is accepted that the presence of international NGOs and diplomatic missions in southern and central Somalia is limited. It is therefore impossible for the Court to carry out any assessment of the sources' reliability and, as a consequence, where their information is unsupported or contradictory, the Court is unable to attach substantial weight to it.'	ECtHR — *Saadi* v *Italy*, Application no 37201/06; ECtHR — *NA* v *United Kingdom*, Application no 25904/07.
ECtHR	*SF and Others* v *Sweden* Application no 52077/10 ECLI:CE:ECHR:2012: 0515JUD005207710 15.5.2012	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — credibility — uncertainties in applicant's story. **Para. 66:** 'The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one and that, as a general principle, the national authorities are best placed to assess not just the facts, but also the general credibility of the applicant's story. The Court finds, in agreement with the Swedish Migration Court, that the applicant's basic story was consistent throughout the proceedings and that, notwithstanding some uncertain aspects, such uncertainties do not undermine the overall credibility of their story.'	

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ECtHR	*Mohammed* v *Austria* Application no 2283/12 ECLI:CE:ECHR:2013:0606JUD000228312 6.6.2013	ECtHR judgment. *Non-refoulement* — careful and rigorous assessment of risk. **Para. 80:** 'The Court acknowledges the need of EU Member States to ease the strain of the number of asylum applications received by them and in particular to find a way to deal with repetitive and clearly abusive or manifestly ill-founded applications for asylum. On the other hand, the Court has found in no uncertain terms that where an applicant makes an arguable claim under Article 3 of the Convention, he or she should have access to a remedy with automatic suspensive effect, meaning a stay on a potential deportation. The Court observes that, in the present case, the applicant had access to asylum proceedings allowing an examination of the merits within the scope of the Dublin Regulation in the course of the first set of proceedings which ended in January 2011. In that first set of proceedings, the situation in Hungary as the receiving State would have been examined in substance. However, in the applicant's case, almost a year passed until the transfer order was scheduled to be enforced and the applicant lodged a second application. Consequently, according to the reported information on the situation of asylum-seekers in Hungary and the Austrian Asylum Court's own practice at the relevant time, that second application cannot prima facie be considered abusively repetitive or entirely manifestly illfounded. On the contrary, the Court establishes below that the applicant had — at that time — an arguable claim, as regards his complaints directed against Hungary as the receiving State.'	
ECtHR	*I* v *Sweden* Application no 61204/09 ECLI:CE:ECHR:2013:0905JUD006120409 5.9.2013	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — applicant to adduce evidence — presumption of future risk — documentary evidence. **Concerning the applicant's duty to adduce evidence of the risk in case of removal, para. 56:** 'In determining whether it has been shown that an applicant runs a real risk of suffering treatment proscribed by Article 3 the Court examines the foreseeable consequences of sending an applicant to the country of destination, bearing in mind the general situation there and his personal circumstances. It will do so by assessing the issue in the light of all material placed before it, or, if necessary, material obtained on its own initiative […]. The assessment of the existence of a real risk must necessarily be a rigorous one. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 […].' **Concerning the presumption of future risk on the basis of documentary evidence, paras 59-69:** '59. Turning to the applicants' individual situation, they maintained that they had been ill-treated by the 'Kardyrov group" and were at risk of being ill-treated anew upon return to Russia, because the first applicant took photographs and wrote reports about numerous crimes committed by the State against Chechens between 1995 and 2007. 60. The Government have questioned the applicants' credibility and pointed to various inconsistencies in their stories. The Court accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned […]. But at the same time it acknowledges that owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies […].	ECtHR — *Saadi* v *Italy*, Application no 37201/06; ECtHR — *NA* v *United Kingdom*, Application no 25904/07; ECtHR — *RC* v *Sweden*, Application no 41827/07; ECtHR — *N* v *Sweden*, Application no 23505/09; ECtHR — *HN* v *Sweden*, Application no 30720/09; ECtHR — *Yakubov* v *Russia*, Application no 7265/10; ECtHR — *HN and Others* v *Sweden*, Application no 50043/09; ECtHR — *Panjeheighalehei* v *Denmark*, Application no 11230/07; ECtHR — *Jean MV Hakizimana* v *Sweden*, Application 37913/05; ECtHR — *Fazul Karim* v *Sweden,* Application no 24171/05; ECtHR — *Bajsultanov* v *Austria,* Application no 54131/10.

Court	Case name/reference/date	Relevance/keywords/main points	Cases cited
		61. In the present case the national authorities did not as such question that the first applicant had been subjected to torture. They stated, however, taking into account that victims of torture cannot be expected to provide completely coherent and consistent statements, that even though the evidence supported his statements that he had been subjected to torture, the first applicant had not established with sufficient certainty why he had been subjected to it and by whom. Notably, as to the first applicant's explanation that he was a key figure and wanted by the Russian authorities with a significant price on his head because he had carried out journalistic work to their detriment, the Migration Court pointed out that his statements had been remarkably vague and that although he claimed that he had collected material for twelve years, he had not been able to provide any concrete examples of what he had done or been able to provide any form of evidence of his work. Thus, the Migration Court found reason to question the credibility of the first applicant's statements. 62. This leads to the crucial question of whether the isolated fact that a person has been subjected to torture suffices to demonstrate that he or she, if deported to the country where the ill-treatment took place, will face a real risk of being subjected again to treatment contrary to Article 3. The Court is aware that in R.C. v. Sweden […], it found that since the asylum seeker in that case had proven that he had been subjected to torture, the onus rested with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that the expulsion were carried out. However, leaving aside deportations to countries where the general situation is sufficiently serious to conclude that the return of any refused asylum seeker thereto would constitute a violation of Article 3 of the Convention, the Court acknowledges that in order for a State to dispel a doubt such as mentioned in R.C. v. Sweden, the State must at least be in a position to assess the asylum seeker's individual situation. However, this may be impossible, when there is no proof of the asylum seeker's identity and when the statement provided to substantiate the asylum request gives reason to question his or her credibility. Moreover, as stated above, the Court's established case-law is that in principle it is for the person to be expelled to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it. Accordingly, the Court considers that where an asylum seeker, like the first applicant, invokes that he or she has previously been subjected to illtreatment, whether undisputed or supported by evidence, it may nevertheless be expected that he or she indicates that there are substantial and concrete grounds for believing that upon return to the home country he or she would be exposed to a risk of such treatment again, for example because of the asylum seeker's political activities, membership of a group in respect of which reliable sources confirm a continuing pattern of illtreatment on the part of the authorities, a pending arrest order, or other concrete difficulties with the authorities concerned […]. 63. In the present case, the applicants' case was thoroughly examined by both the Migration Board and the Migration Court, before which the applicants were heard and represented by counsel. There are no indications that the proceedings before those domestic authorities lacked effective guarantees to protect the applicants against arbitrary refoulement or were otherwise flawed. Both instances found reason to question the credibility of the applicants' statements (see paragraph 11 as to the Migration Court's reasoning) and they thus concluded that the applicants had failed to establish that they should be regarded as refugees or aliens otherwise in need of protection within the meaning of the Aliens Act.	

Court	Case name/reference/date	Relevance/keywords/main points	Cases cited
		64. The Court finds, in agreement with the Swedish authorities, that there are credibility issues with regard to the applicants' statements, notably as to the first applicant's alleged twelve years of journalistic activities, which he claimed was the main reason for the ill-treatment of the applicants by the FSB and Kadyrov's group. As to the Court's request for documentation or evidence of the first applicant's work, the Court received a compilation of incidents allegedly documented by the first applicant during the period from 1995 to 2007. He did not develop on the link between his work and the compilation of incidents. Moreover, he submitted only one example of an article (see paragraph 20) allegedly based on his reports, but he contended that he was not in possession of any articles where his name was mentioned. The Court notes in addition that the first applicant did not submit any articles written by him either, whether unsigned or written under a pseudonym, nor did he point to one single photograph taken by him and published by one of the many wellknown sources or media which he claimed had used his material. In these circumstances, the Court must conclude that the first applicant has failed to present any documents or information which would lead it to depart from the domestic authorities' conclusion that there are reasons to doubt the applicant's credibility. 65. Consequently, it agrees with the domestic authorities that the applicants failed to make it plausible that they would face a real risk of being subjected to ill-treatment upon return to the Russian Federation because of the first applicant's alleged journalistic activities. 66. As stated above, the Court is aware of the reported interrogation of returnees and of harassment and possible detention and ill-treatment by the Federal Security Service or local law-enforcement officials and also by criminal organisations. Nevertheless, it considers that the general situation is not sufficiently serious to conclude that the return of the applicants thereto would constitute a violation of Article 3 of the Convention. The Court emphasises that the assessment of whether there is a real risk for the person concerned must be made on the basis of all relevant factors which may increase the risk of ill-treatment. In its view, due regard should also be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk; but when taken cumulatively and when considered in a situation of general violence and heightened security the same factors may give rise to a real risk […]. 67. The Court notes that in their decisions of October 2008 and July 2009, the Migration Board and the Migration Court did not make a separate assessment of this specific risk in the applicants' case, notably that the first applicant has significant and visible scars on his body, including a cross burned into his chest. The medical certificates stated that his wounds could be consistent with his explanation both as to the timing (October 2007) and the extent of the torture to which he maintained he had been subjected, and in their judgment of 15 July 2009 the Migration Court contended that the first applicant's injuries had probably been caused by ill-treatment resembling torture. 68. Thus, in case of a body search of the first applicant in connection with possible detention and interrogation by the Federal Security Service or local law-enforcement officials upon return, the latter will immediately see that the first applicant has been subjected to illtreatment for whatever reason, and that those scars occurred in recent years, which could indicate that he took active part in the second war in Chechnya. His situation therefore differs significantly from, for example, the applicant in Bajsultanov v. Austria (cited above) or from returnees of Chechen origin who took active part in the first war in Chechnya only, and who are therefore not as such at risk of being persecuted by the present authorities […]. 69. Taking those factors into account cumulatively, in the special circumstances of the case the Court finds that there are substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if deported to the Russian Federation. Accordingly, the Court finds that the implementation of the deportation order against the applicants would give rise to a violation of Article 3 of the Convention.'	

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ECtHR	*RJ c France* Application no 10466/11 ECLI:CE:ECHR:2013:0919JUD001046611 19.9.2013	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — presumption of future risk — documentary evidence. **Paras 41-43:** '41. Si le récit du requérant est, ainsi que l'ont constaté les instances nationales compétentes en matière d'asile, peu étayé tant sur son soutien financier au mouvement des LTTE que sur les conditions de sa détention, la Cour relève cependant qu'il produit un certificat médical à l'appui de ses allégations de mauvais traitements subis lors de sa détention. Ce certificat médical, établi par un médecin de l'' Unité médicale de la ZAPI de Roissy ' alors que le requérant se trouvait en zone d'attente, décrit de façon précises quatorze ' plaies par brûlure datant de quelques semaines ' et occasionnant ' des douleurs importantes nécessitant un traitement local et par la bouche (...) '. 42. La Cour considère que ce document constitue une pièce particulièrement importante du dossier. En effet, la nature, la gravité et le caractère récent des blessures constituent une forte présomption de traitement contraire à l'article 3 de la Convention infligé au requérant dans son pays d'origine. Or, malgré la présentation de ce certificat, aucune des instances nationales compétentes en matière d'asile qui se sont prononcées postérieurement à l'application de l'article 39 n'a cherché à établir d'où provenaient ces plaies et à évaluer les risques qu'elles révélaient. La Cour ne peut estimer suffisante la motivation de la CNDA selon laquelle ' le certificat en date du 3 février 2011 ne peut être regardé comme justifiant de l'existence d'un lien entre les constatations relevées lors de l'examen médical du requérant et les sévices dont il déclare avoir été victime lors de sa détention '. Par la seule invocation du caractère lacunaire du récit, le Gouvernement ne dissipe pas les fortes suspicions sur l'origine des blessures du requérant. 43. Partant, la Cour considère que le requérant, sans être utilement contredit par le gouvernement, a établi le risque qu'il soit soumis à des traitements contraires à l'article 3 de la Convention en cas de renvoi au Sri Lanka. Dès lors, il y aurait violation de l'article 3 de la Convention en cas de retour du requérant au Sri Lanka.'	
ECtHR	*ME* v *Sweden* Application no 71398/12 ECLI:CE:ECHR:2014:0626JUD007139812 26.6.2014	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — overall assessment — demeanour of the individual. **Para. 78:** 'The Court first acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one and it accepts that, as a general principle, the national authorities are best placed to assess the credibility of the applicant if they have had an opportunity to see, hear and assess the demeanour of the individual concerned [...]. In this respect, the Court observes that the applicant's case was examined on the merits by the Migration Board, which held two in-depth interviews with the applicant, and by the Migration Court, which held an oral hearing. Moreover, the Migration Court of Appeal considered his appeal but found no grounds on which to grant leave to appeal. Furthermore, the applicant then requested the Migration Board to reconsider his case on the basis of new information but this request was rejected by the Board. The Court notes that the applicant was represented throughout the proceedings by legal counsel who filed a number of submissions on his behalf.'	ECtHR — *RC* v *Sweden*, Application no 4182/07.
ECtHR	*RH* v *Sweden* Application no 4601/14 ECLI:CE:ECHR:2015:0910JUD000460114 10.9.2015	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — credibility — benefit of the doubt for applicants. **Para. 58:** 'The assessment of the existence of a real risk must necessarily be a rigorous one [...]. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it [...]. In this respect, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies [...].	ECtHR — *Saadi* v *Italy*, Application no 37201/06; ECtHR — *Sufi and Elmi* v *United Kingdom*, Applications nos 8319/07 and 11449/07; ECtHR — *KAB* v *Sweden*, Application 886/11.

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ECtHR	*MD et MA c Belgique* Application no 58689/12 ECLI:CE:ECHR:2016:0119JUD005868912 19.1.2016	ECtHR judgment. *Non-refoulement* — new evidence submitted by the applicant — rigorous assessment. **Paras 65 and 66:** '65. En effet, la Cour considère que l'existence d'un élément nouveau a, en l'espèce, été examinée de manière trop restrictive par l'OE. L'OE s'est borné à constater que les documents étaient datés d'avant la dernière phase de la précédente demande d'asile au cours de laquelle les requérants auraient pu les présenter. Des documents auxquels elle peut avoir égard, la Cour constate que les requérants pourraient avoir été dans l'impossibilité de produire les documents litigieux au cours d'une précédente demande d'asile. Dans l'état actuel du dossier, elle n'aperçoit aucun élément concret permettant de douter de la bonne foi des requérants sur ce point. Ceux-ci ont d'ailleurs tout mis en œuvre pour démontrer aux instances d'asile qu'ils n'avaient pas pu fournir les documents plus tôt, notamment en déposant la déclaration d'A.C. En rejetant l'argumentation des requérants sur ce point, l'OE a imposé une charge de la preuve déraisonnable sur les requérants. Ensuite, le CCE, dans son arrêt du 10 septembre 2012, s'est contenté de valider l'approche restrictive adoptée par l'OE. 66. Or, la Cour insiste sur le fait que, compte tenu de l'importance qui doit être attachée à l'article 3, du caractère absolu de cette disposition et de la nature irréversible du dommage susceptible d'être causé en cas de réalisation du risque de mauvais traitement, il appartient aux autorités nationales de se montrer aussi rigoureuses que possible et de procéder à un examen attentif des griefs tirés de l'article 3 sans quoi les recours perdent de leur effectivité […]. Un tel. examen doit permettre d'écarter tout doute, aussi légitime soit-il, quant au caractère mal fondé d'une demande de protection et ce, quelle que soit l'étendue des compétences de l'autorité chargée du contrôle […].'	ECtHR — *MSS* v *Belgium and Greece*, Application no 30696/09.
ECtHR (Grand Chamber)	*FG* v *Sweden* Application no 43611/11 ECLI:CE:ECHR:2016:0323JUD004361111 23.3.2016	ECtHR judgment. *Non-refoulement* — power to obtain evidence *proprio motu* — assessment of risk on own motion. **Paras 126 and 127**: '126. However, in relation to asylum claims based on a well-known general risk, when information about such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail that the authorities carry out an assessment of that risk of their own motion […]. 127. By contrast, in relation to asylum claims based on an individual risk, it must be for the person seeking asylum to rely on and to substantiate such a risk. Accordingly, if an applicant chooses not to rely on or disclose a specific individual ground for asylum by deliberately refraining from mentioning it, be it religious or political beliefs, sexual orientation or other grounds, the State concerned cannot be expected to discover this ground by itself. However, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the position of vulnerability that asylum seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations incumbent on the States under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. This applies in particular to situations where the national authorities have been made aware of the fact that the asylum seeker may, plausibly, be a member of a group systematically exposed to a practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned […].'	ECtHR — *Hirsi Jamaa and Others* v *Italy*, Application no 27765/09; ECtHR — *MSS* v *Belgium and Greece*, Application no 30696/09.

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ECtHR (Grand Chamber)	*JK and Others* v *Sweden* Application no 59166/12 ECLI:CE:ECHR:2016: 0823JUD005916612 23.8.2016	ECtHR judgment. *Non-refoulement* — special situation of asylum-seekers — benefit of the doubt **Para. 93:** 'Owing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when assessing the credibility of their statements and the documents submitted in support thereof. Yet when information is presented which gives strong reasons to question the veracity of an asylum-seeker's submissions, the individual must provide a satisfactory explanation for the alleged inaccuracies in those submissions […]. Even if the applicant's account of some details may appear somewhat implausible, the Court has considered that this does not necessarily detract from the overall general credibility of the applicant's claim […].'	ECtHR — *FG* v *Sweden*, Application no 43611/11; ECtHR — *Akaziebe* v *Sweden*, Application no 23944/05; ECtHR — *SHH* v *United Kingdom*, Application no 60367/10; ECtHR — *N* v *Finland*, Application no 38885/02.

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United Kingdom, House of Lords	*R* v *Secretary of State for the Home Department, Ex parte Sivakumaran* [1988] AC 958 16.12.1987	Judgment on qualification for refugee status. Standard of proof/level of conviction — well-founded fear of persecution — probability. **Standard of proof for refugee status:** 'Fear of persecution, in the sense of the convention, is not to be assimilated to a fear of instant personal danger arising out of an immediately presented predicament. The claimant to refugee status is not immediately threatened with danger arising out of a situation then confronting him. The question is what might happen if he were to return to the country of his nationality. He fears that he might be persecuted there. Whether that might happen can only be determined by examining the actual state of affairs in that country. If that examination shows that persecution might indeed take place then the fear is well founded. Otherwise it is not. The Court of Appeal found some support for its formulation of the test in a decision of the United States Supreme Court in Immigration and Naturalization Service v Cardoza-Fonseca (1987) 94 L Ed 2d 434. It was there held by a majority that in order for an alien to show a 'well-founded fear of persecution' within the meaning of sc 101(a)(42) of the Immigration and Nationality Act 1952 (8 USC scsc 1011—1525), so as to be eligible for consideration for asylum as a refugee under sc 208(a) of the Act, the alien need not prove that it was more likely than not that he or she would be persecuted on return to his or her own country. The effect of sc 208(a) was that an alien who qualified as a refugee under sc 101(a)(42) (which reflected the language of art 1(A)(2) of the convention) might be granted asylum at the direction of the Attorney General. Under another section (sc 243(h)) of the Act deportation of an alien to any country was prohibited if the Attorney General determined that his— 'life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.' The Supreme Court had previously decided, in Immigration and Naturalization Service v Stevic (1984) 467 US 407, that to qualify under sc 243(h) an alien had to prove that it was more likely than not that he would be persecuted. It was argued for the government in Naturalization Service v Cardoza-Fonseca that the same standard of proof was applicable to determine refugee status under sc 101(a)(42). The Supreme Court rejected this argument. Stevens J, delivering the majority opinion, observed that the 'would be threatened' language in sc 243(h) had no subjective component, whereas the word 'fear' in sc 101(a)(42) made the eligibility determination turn to some extent on the subjective mental state of the alien [...]. Later he said: 'That the fear must be ''well-founded'' does not alter the obvious focus on the individual's subjective beliefs, nor does it transform the standard into a ''more likely than not'' one. One can certainly have a well-founded fear of an event happening when there is less than a 50 % chance of the occurrence taking place.' Stevens J stated that there was no room for the view that because an applicant had only a 10 % chance of being shot, tortured or otherwise persecuted he or she had no 'well-founded fear' of the event happening (at 453). Quoting from Immigration and Naturalization Service v Stevic he said: '... so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.' Stevens J also referred with approval to the views of certain academic writers, quoted in a footnote, referring to 'a real chance that he will suffer persecution' and '[the] appropriate test is ''reasonable chance,'' ''substantial grounds for thinking,'' or ''serious possibility''' (at 452—453). It would accordingly appear that Stevens J was of opinion that it was appropriate to weigh up on the basis of an objective situation established by evidence whether or not there was a reasonable chance or serious possibility of persecution. There is no suggestion that the matter should be looked at only from the point of view of the individual claiming to have the well-founded fear. The case, accordingly, does not support the Court of Appeal's formulation of the test, but rather favours that put forward by counsel for the Secretary of State. In my opinion the requirement that an applicant's fear of persecution should be well founded means that there has to be demonstrated a reasonable degree of likelihood that he will be persecuted for a convention reason if returned to his own country.'	United States, Supreme Court — *INS* v *Cardoza Fonseca,* (1987) 95 L Ed 2d 434; United States, Supreme Court — *INS* v *Stevic,* (1984) 467 US 407.

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United Kingdom, Immigration and Asylum Tribunal	*Smith* v *Secretary of State for the Home Department* [2000] 00TH02130 9.6.2000	Judgment on determination of nationality of an applicant for refugee status. Determination of nationality — standards of assessment — elements to substantiate nationality — conflict of laws — use of foreign law. **General principles as to determination of nationality, para. 9:** 'Whilst several questions concerning nationality and statelessness in refugee determination have yet to be fully settled in United Kingdom case law, it is well established that: a) The issue of a claimant's nationality is integral to assessment of every claim to refugee status. That is clear from the text of Art 1A(2) of the 1951 Convention which requires that a claim to refugee status can only be assessed in relation to two categories of country: either the country(ies) of which the claimant is a national; or, as an alternative arising only if he is stateless, the country of his former habitual residence: Ivanov (R12583 a and b); Tikhonov G0052 [1998] INLR 737. (b) In relation to nationality, the burden of proof is on the applicant throughout. There is no need for the Secretary of State to prove, either at first instance or on appeal, whether the applicant is a national of a particular country or stateless: Ivanov (R12583a) and Tikhonov. However that burden will not be onerous where there is corroborative evidence: Zrilic (171006). c) The evidential burden, however, may shift throughout the case (Ivanov, op.cit.).' **Elements to substantiate an applicant's nationality, para. 45:** 'In order to decide questions of nationality Special Adjudicators will need to have recourse to a variety of sources. Without intending to place them in any order, we observe that previous decisions of the Tribunal have identified at least five different items as potentially relevant: i. Relevant documentation. The relevant country of nationality may be established with documentation such as a passport or travel document. In Polivina (18441), in which a claimant was adjudged to be Croatian, possession of a passport was held to create a strong presumption of citizenship which could only be displaced by weighty evidence to the contrary. However, other items of documentation may be relevant, e.g. letters from relevant authorities in the country concerned or (as in the instant case) birth certificates in respect of countries that operate qualified or unqualified ius soli. ii. The claimant. Where documentation is not available or admitted to be false, evidence from the claimant will be especially important. Relatives and friends may also have relevant evidence. Just because there is no documentary evidence to support the appellant`s claimed nationality is not fatal if his word is believed as to his nationality: Benda (13293). iii. Agreement between the parties (Tikhonov (G0052)). iv. Expert oral or affidavit evidence (Ibid.). v. Foreign Office letters. vi. Text of relevant nationality law of country(ies) concerned.' **No conflict of laws for determining nationality despite use of foreign law, Paras 46-52: '**46. In Tikhonov a Tribunal consisting of three legal members (including the then President, Judge Pearl) appeared intent upon viewing at least some of these sources hierarchically. It ruled that nationality, being a question of foreign law, 'can only be determined, in the absence of agreement between the parties, by the leading of expert evidence either in the form of oral evidence or by affidavit: see Bradshaw [1994] Imm AR 359, Lord McLean at p 366 and Professor Jackson, Immigration Law and Practice[1st ed], pp. 25-6". The Tribunal went on to say that translations of foreign laws unsupported by expert evidence would be given little or no evidential weight; likewise Foreign Office letters did not constitute expert evidence.	United Kingdom, Immigration Appeal Tribunal — *Ivanov R12583*; United Kingdom, Immigration Appeal Tribunal — *Tikhonov G0052,* [1998] INLR 737; United Kingdom, Immigration Appeal Tribunal — *Zrilic 171006*; United Kingdom, Immigration Appeal Tribunal — *Polivina 18441*; United Kingdom, Court of Appeal, *Bradshaw,* [1994] Imm AR 359; United Kingdom, Court of Appeal (England and Wales) — *Bumper Development Corporation* v *Commissioner of Police of the Metropolis,* [1991] 1 WLR 1362.

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		47. We respectfully differ from the approach taken by Tikhonov here to expert evidence, not least because it appears to run counter to the practice followed in Tribunal determinations otherwise. It is perfectly true that insofar as it involves foreign law the issue of country of nationality is a question of fact and it is open to the parties to adduce expert evidence as to that law: Bumper Development Corporation v Commissioner of Police of the Metropolis [1991] 1 WLR 1362; s. 4(1) Civil Evidence Act 1972; P. Murphy, Murphy on Evidence, 5th Ed. P.320-1. But the approach in Tikhonov takes too far reliance on rules of evidence and proof forged in non-refugee law contexts, the conflict of laws context and United Kingdom immigration and nationality context in particular. The 1951 Convention, however, has been accorded primacy under United Kingdom law. In all its aspects it has to interpreted purposively in accordance with Art 31 of the Vienna Convention on the Law of Treaties 1969. In the context of refugee determination, therefore, the overriding consideration has to be the necessity to undertake and complete an individual examination of each claim to asylum. To exclude a priori a claimant on the basis that he has failed to prove either a nationality or a statelessness could undo the purpose of the Convention as set out in its Preamble, to protect fundamental rights and freedoms. Above all, it could fail to prevent refoulement to any country or persecution whatsoever of a person who is in fact a refugee, as set out at Art 33(1). The Tikhonov approach also runs counter to paragraph 197 of the 1979 UNHCR Handbook which states: "The requirements of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself". 48. If followed in practice the Tikhonov approach would have the effect of placing undue restrictions on the ability of a Special Adjudicator to perform the task of determination of nationality. Since determination of nationality is but one part of the composite assessment of a refugee claim, it not only can but has to be determined on the basis of the available evidence, even if there is no agreement between the parties and no expert evidence led. Although sources pinpointed may not constitute "expert evidence" the question of what weight is to be given them will depend on the state of the available evidence. 49. We note in any event that apart from Tikhonov we are unaware of any other Tribunal determination that requires such strict proof of nationality. Furthermore, the view we have taken here accords with that of Professor Jackson in Immigration Law and Practice Professor Jackson 2nd Ed (1999) p.430 n.47 which says of the Tikhonov decision that "it seems to overplay the need for expert evidence for any reliance on foreign law and the need to apply to 'states which might accept' an applicant as a national." 50. It remains only to clarify why reliance is properly placed on generalisations about modern nationality laws. In the instant case the Tribunal relied on generalisations about what could be inferred from a Liberian birth certificate naming the parents and their citizenship. 51. The sources relevant to decisions on nationality as listed earlier included: the texts of the nationality law of the relevant country. However it will be exceedingly difficult if not impossible to draw conclusions from such items of evidence unless they are considered together with acknowledged general principles governing nationality law. 52. Whilst, as already mentioned, it is a principle of international law that it is for each state to determine under its own laws who are its nationals, all states use common legal reference points and common parameters within which they construct their own criteria and guidance on nationality legislation and practice: see I.Brownlie, Principles of Public International Law 4th Ed 387ff; P. Weis, Nationality and Statelessness in International Law 1979. As summarised by C. Batchelor: "To be considered as a national by operation of law means that, under the terms outlined in the State`s enacted legal instruments pertaining to nationality, the individual concerned is ex lege, or automatically, considered a national. As a minimum, there must be a State, the constitution or laws of which make some provision for nationality. Those who are granted citizenship automatically by the operation of these legal provisions are definitively nationals of that State. Those who have to apply for citizenship and those the law outlines as being eligible to apply, but whose application could be rejected, are not citizens of that State by operation of that State`s law. Wherever an administrative procedure allows for discretionary granting of citizenship, such applicants cannot be considered citizens until the application has been approved and completed and the citizenship of that State bestowed in accordance with the law" (p. 171), C.A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status", IJRL Vol.10 1998 157 at 158.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Immigration and Asylum Tribunal	*Kacaj (Article 3 — Standard of Proof — Non-State Actors) Albania* [2001] UKIAT 00018 19.7.2001	Judgment on leave to remain on the basis of Article 3 ECHR. Refugee status — *non-refoulement* — Article 3 ECHR — standard of proof/level of conviction. **Identical standard of proof for refugee status and *non-refoulement* under Article 3 ECHR and, a fortiori, subsidiary protection, para. 12:** 'Various expressions have been used to identify the correct standard of proof required for asylum claims. These stem from language used by Lord Diplock in *R* v *Governor of Pentonville Prison ex p. Fernandez* [1971] 2 All E.R. 691 at p.697, cited by Lord Keith in *Sivakumaran* at [1988] 1 All E.R. 198. Lord Diplock said that the expressions "a reasonable chance", "substantial grounds for thinking" and "a serious possibility" all conveyed the same meaning. There must be a real or substantial risk of persecution. The test formulated by the European Court requires the decision-maker and appellate body to ask themselves whether there are substantial grounds for believing that the applicant faces a real risk of relevant ill-treatment. That is no different from the test applicable to asylum claims. The decision-maker and appellate body will consider the material before them and will decide whether the existence of a real risk is made out. The words "substantial grounds for believing" do not and are not intended to qualify the ultimate question which is whether a real risk of relevant ill-treatment has been established. They merely indicate the standard which must be applied to answer that question and demonstrate that it is not that of proof beyond reasonable doubt. The adjudicator in the instant case used the expressions ''a reasonable chance" or 'a serious possibility'' when considering the asylum claim, both of which are used by Lord Diplock. In our view, now that the European Court has fixed on a particular expression and it is one which is entirely appropriate for both asylum and human rights claims, it should be adopted in preference to any other, albeit others may be intended to convey the same meaning. This will lead to complete consistency of approach and avoid arguments such as were raised by Mr Tam that the adjudicator in using the expression "reasonable likelihood" in relation to Article 3 was applying too low a test. The use of the words "real risk" also has the advantage of making clear that there must be more than a mere possibility. The adjective "real" must be given its proper weight. Anxious though the scrutiny must be and serious though the effect of a wrongful return may be, the applicant must establish that the risk of persecution or other violation of his human rights is real. The standard may be a relatively low one, but it is for the applicant to establish his claim to that standard.'	United Kingdom, Court of Appeal — *R* v *Governor of Pentonville Prison ex p. Fernandez,* [1971] 2 All ER 691; United Kingdom, House of Lords, *R* v *Secretary of State for the Home Department, Ex parte Sivakumaran,* [1988] AC 958.
United Kingdom, Immigration and Asylum Tribunal	*Tanveer Ahmed* v *Secretary of State for the Home Department* [2002] UKIAT 00439 19.2.2002	Judgment on qualification for refugee status. Determination of nationality — documentary evidence — authenticity — burden of proof — assessment. **Burden of proof concerning (un)authenticity of a document, para. 30:** 'The statement in A, B, C, and D, that the burden of proof is on the Secretary of State to show that a document is "not authentic", rather than on the Appellant to prove (on the reasonable likelihood test) that it is "authentic", is not consistent with Rule 39 (2) of the Immigration and Asylum (Procedure) Rules 2000 (to which we will refer: at the time A, B, C, and D was decided the Rule in force was 31 (2) of the 1996 Rules, of which the wording is identical). There will be a burden on the Secretary of State only in those rare cases where it is necessary to establish that the document is not merely unreliable but actually a forgery. The standard of proof in such cases is the higher civil standard.' **Assessment of a document's authenticity, para. 31:** 'It is trite immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain "forged" documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee", but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is "forged" or even "not genuine". It is necessary to shake off any preconception that official looking documents are genuine, based on experience of documents in the United Kingdom, and to approach them with an open mind.'	United Kingdom, Immigration Appeal Tribunal — *A, B, C and D* v *Secretary of State for the Home Department,* [1999] HX/61156/96.

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Austria, Administrative High Court	VwGH 2002/01/0497 9.9.2003	Judgment on internal protection. Application of internal protection concept — duty to substantiate. **'Rechtssatz —** Entsprechend dem 'Ausschlusscharakter" der internen Schutzalternative muss es Sache der Behörde sein, die Existenz einer internen Schutzalternative aufzuzeigen und nicht umgekehrt Sache des Asylwerbers, die Annahme einer theoretisch möglichen derartigen Alternative zu widerlegen (vgl. dazu das UNHCRArbeitspapier von Hathaway/Foster, Internal Protection/ Relocation/Flight Alternative as an Aspect of Refugee Status Determination (2001), 49).'	
United Kingdom, Upper Tribunal	*MM (DRC — plausibility) Democratic Republic of Congo* [2005] UKIAT 00019 27.1.2005	Judgment on qualification for refugee status. Credibility assessment — plausibility — non-verbal communication — cultural differences. **Paras 15-19:** '15. We turn to our conclusions. First, Mr Toal is right to say that the assessment of credibility may involve an assessment of the plausibility, or apparent reasonableness or truthfulness, of what has been said. This assessment can involve a judgement as to the likelihood of something having happened based on evidence and or inferences. The particular role of background evidence here is that it can assist either way with that process, revealing the likelihood of part or the whole of what was said to have happened actually having happened. It can be of especial help in showing that adverse inferences can be apparently reasonable when based on an understanding of life in this country and yet are less reasonable when the circumstances of life in the country of origin are exposed. This is a problem of which Adjudicators are well aware, and it can exist even where no background material is available to assist. The assessment of plausibility is not however a separate stage in the assessment of credibility but is an aspect which may vary in its importance, from case to case. A story may be implausible and yet may properly be taken as credible; it may be plausible and yet properly not believed. There is a danger in erecting too many stages of reasoning with different tests, as opposed to recognising different aspects of reasoning. This is especially so as credibility, while often decisive, is however not the true or ultimate focus of decision in an asylum or human rights case. 16. But there is a danger of "*plausibility*" becoming a term of art, yet with no clear definition or consistent usage. It is simply that the inherent likelihood or apparent reasonableness of a claim, is an aspect of its credibility, and an aspect which may well be related to background material, which assists in judging it. This danger is reflected in the comment of Lee J which, with respect, we do not find helpful to us. We do not regard "*implausible*" or "*inherently unlikely*" as meaning "*beyond human experience or possible occurrence*", nor do we regard that latter phrase as the relevant benchmark for an adverse conclusion as to plausibility or credibility. 17. Mr Toal is also right to say that an assessment of the oral evidence including cross-examination of a witness, however brief, would often be of value, even necessary at times, to explain why particular findings were made. For example, an absence of evasion or a sequence of changing answers, and the converse, can be usefully and explicitly referred to. This is an element in the assessment of credibility. 18. Where there are aspects of the *way* in which evidence was given which form part of an Adjudicator's reasoning, is for that Adjudicator to say how and why it did, as part of the reasons for the decision. But it is an area for real caution. Mr Toal disavowed any suggestion that demeanour be used or referred to as a tool in this context. He was right to do so. 19. It is the total *content* of the evidence, including consistency on essentials or major inconsistencies, omissions and details, improbabilities or reasonableness, which does and should found the decision. The *way* in which the evidence is given, so far as significant at all in this type of case, would normally be reflected in the quality of the *content* of the evidence. It may confirm a conclusion well founded in the content of the evidence. It would, we think, be very rare that it would properly justify a conclusion which was not sustained by the content of the evidence or its quality. Even evasiveness or the ability to answer questions would be reflected in the quality or content of the evidence — issues would be dealt with satisfactorily or not.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Court of Appeal of England and Wales	*François Mibanga* v *Secretary of State for the Home Department* [2005] EWCA Civ 367 17.3.2005	Judgment on application for international protection. Assessment of an application for international protection — entire evidence. **Assessment must be based on entire evidence, Paras 20 and 24**: '20. As I will explain, it is one of the central features of the argument before this court that the adjudicator fell into legal error in appraising parts of the evidence adduced on behalf of the appellant bit by bit and, in particular, in addressing the doctor's evidence only after she had conclusively rejected the central features of the appellant's case as incredible. In fairness to the tribunal, I would have preferred to see that argument more clearly articulated in the grounds of appeal put before the tribunal; nevertheless, it was there in summary form and I believe that it was reasonably clear that the whole fact-finding *modus operandi* adopted by the adjudicator was under challenge. […] 24. It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact-finder's function in assessing credibility. I agree. What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November 2004, namely HE (DRC — Credibility and Psychiatric Reports) [2004] UKIAT 00321 in which, in paragraph 22, it said: "Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."'	United Kingdom, Immigration and Asylum Tribunal — *HE (DRC — Credibility and Psychiatric Reports,* [2004] UKIAT 00321.
United Kingdom, Upper Tribunal (Asylum and Immigration Tribunal)	*SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116 5.7.2005	Judgment on consideration of evidence as a whole, even where Section 8 applies. Evidence — Section 8 — credibility. **Para. 10:** '[…] It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. Some aspects of the evidence may be matters to which section 8 applies. Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and, despite section 8, and although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.'	

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France, Council of State	*OFPRA* v *Mr T* Application no 255091B 18.1.2006	Judgment on exclusion from refugee status. Exclusion from international protection — serious reasons for considering — no proof required. **No proof required of implication of the applicant in an act falling within the exclusion clause (only 'serious reasons for considering'):** 'Considérant que la décision de la Commission des recours des réfugiés relève que le nom de M. T. était mentionné dans le rapport de 1993 d'une commission internationale d'enquête sur les violations des droits de l'Homme au Rwanda comme l'un des principaux organisateurs des massacres d'octobre 1990 à Kibilira et qu'il figurait sur une liste de participants au génocide établie en 1994 par le gouvernement rwandais; qu'en jugeant que ' ces imputations, à défaut de témoignages circonstanciés et directs sur les initiatives que M. T. auraient prises ou sur sa participation effective dans les atrocités dont a été victime, tant en 1990 qu'en 1994, la communauté Tutsi, sont insuffisantes pour convaincre de ses responsabilités dans les exactions et les crimes alors commis ", la Commission subordonne l'exclusion prévue à l'article 1F de la convention de Genève non à des raisons sérieuses de penser que les personnes ont commis un crime, au sens des instruments internationaux, mais à la démonstration de leur implication dans ces crimes; que la Commission a ainsi entaché sa décision d'une erreur de droit; que, dès lors, l'Office français de protection des réfugiés et apatrides est fondé à demander l'annulation de la décision de la Commission en date du 7 janvier 2003 annulant son refus d'accorder le statut de réfugié à M. T.'	
United Kingdom, Court of Appeal of England and Wales	*HK* v *Secretary of State for the Home Department* [2006] EWCA Civ 1037 20.7.2006	Judgment on factual evidence. Evidence — no direct factual evidence other than that given by the appellant himself. **Para 28**: '[…] in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).'	
United Kingdom, Court of Appeal of England and Wales	*Y* v *Secretary of State for the Home Department* [2006] EWCA Civ 1223 26.7.2006	Judgment. Evidence — importance of considering evidence. **Para 25:** 'There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD13190, the passage being taken from an article in Current Legal Problems.'	

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Austria, Administrative High Court	VwGH 2006/19/0675 17.4.2007	Judgment on qualification for international protection. Interview — account of vulnerability of the application — traumas. 'Unter Zugrundelegung dieser Überlegungen darf das Neuerungsverbot des § 32 Abs. 1 AsylG jedenfalls nicht so verstanden werden, dass neue Tatsachenbehauptungen in der Berufung eines Asylwerbers, bei dem es möglich erscheint, dass er insbesondere aufgrund seiner psychischen Ausnahmesituation nicht in der Lage war, diese früher vorzubringen, unzulässig wären (vgl. zur Beschränkung des Neuerungsverbotes auf Missbrauchsfälle auch das hg. Erkenntnis vom 27. September 2005, Zl. 2005/01/0313). Diese Überlegungen gelten aber nicht nur für das asylrelevante Vorbringen selbst, sondern auch für die Frage, ob eine Traumatisierung aufgrund eines fluchtauslösendes Ereignisses vorliegen könnte, zumal es nicht auszuschließen ist, dass eine allfällige Traumatisierung den Asylwerber nicht nur (unverschuldet) daran gehindert hat, im erstinstanzlichen Verfahren über das Erlebte zu berichten, sondern auch die Traumatisierung selbst zu thematisieren. Ausgehend davon erscheint es dem Verwaltungsgerichthof — trotz eines missverständlichen Wortlautes — auch nicht zulässig, § 24b Abs. 1 AsylG so auszulegen, dass damit implizit eine Erweiterung des 'Neuerungsverbotes" gerade für jene Personen (nämlich allenfalls Traumatisierte) stattfände, die nach den Intentionen des Gesetzgebers eine besonders schützenswerte Gruppe von Asylwerbern sind. Wenn § 24b Abs. 1 AsylG daher vorsieht, dass sich die für eine Traumatisierung sprechenden medizinisch belegbaren Tatsachen 'in der Ersteinvernahme oder einer weiteren Einvernahme im Zulassungsverfahren (§ 24a)' ergeben, lässt sich diese Formulierung nur so verstehen, dass damit auf den — vom Gesetzgeber angedachten — Regelfall abgestellt worden ist, wonach sich Anhaltspunkte für das mögliche Vorliegen einer Traumatisierung bei den gesetzlich vorgesehenen Einvernahmen im Zulassungsverfahren zeigen sollten. Damit wurde aber nicht ausgeschlossen, dass diese Umstände den Asylbehörden auch auf andere Art und Weise, sei es durch Schriftsatz im Rahmen des erstinstanzlichen Verfahrens, sei es aber auch in der Berufung gegen eine für den Asylwerber negative Zuständigkeitsentscheidung des Bundesasylamtes zur Kenntnis gelangen und inhaltlich zu prüfen sind. Dass auch das Berufungsverfahren in solchen Fällen Teil des Zulassungsverfahrens ist, wurde im hg. Erkenntnis vom heutigen Tag, Zlen. 2006/19/0163 bis 0166, näher ausgeführt und es wird insofern gemäß § 43 Abs. 2 VwGG auf dessen Entscheidungsgründe verwiesen. Die belangte Behörde hielt dem Berufungsvorbringen der Beschwerdeführerin entgegen, es reiche in seiner Allgemeinheit und Unkonkretheit nicht aus, um als 'hinreichend konkreter Anknüpfungspunkt für das Vorliegen einer Traumatisierung" dienen zu können. Richtig ist, dass auch das Vorbringen in der Berufung an Deutlichkeit zu wünschen übrig ließ und ihm nicht eindeutig zu entnehmen war, ob die behaupteten Albträume, Ängste und Erschöpfungszustände (auch) mit Erfahrungen der Beschwerdeführerin im Zusammenhang standen, die sie bei den vorgebrachten 'Säuberungsaktionen" des russischen Militärs und dem Tod von Verwandten der Beschwerdeführerin gemacht hatte. Auszuschließen war ein solcher Konnex — mangels Nachfrage in geeigneter Form — freilich nicht. Wenn die belangte Behörde ungeachtet dessen eine nähere Überprüfung der behaupteten Traumatisierung unter Hinweis auf das unkonkrete Vorbringen ablehnte, legte sie damit an die Konkretheit des Vorbringens einen Maßstab an, welcher der besonderen Situation von (möglicherweise) Traumatisierten nicht ausreichend Rechnung trägt. Im Übrigen ergänzte die belangte Behörde ihre Überlegungen noch dahingehend, dass die von der Beschwerdeführerin angegebenen Symptome solche seien, die regelmäßig (gemeint: ohne Traumatisierung durch Geschehnisse im Zusammenhang mit dem fluchtauslösenden Ereignis) mit einer Flucht einhergingen. Dabei übersah die belangte Behörde, dass der Kausalzusammenhang zwischen den fluchtauslösenden Ereignissen und einer Traumatisierung der Asylwerberin nur möglich sein muss. Lässt sich daher nicht ausschließen, dass (medizinisch belegbare) und als solche feststellbare Tatsachen — hier etwa Symptome — auf eine Traumatisierung durch fluchtauslösende Erfahrungen hindeuten, wäre das Verfahren bereits zuzulassen. Insofern kommt es nicht darauf an, dass derartige Symptome auch andere Ursachen (die belangte Behörde meinte hier die Erlebnisse der Asylwerberin bei der Flucht selbst) haben könnten.'	Austria, Administrative High Court (VwGH) — *2005/01/0313*; Austria, Administrative High Court (VwGH) — *Zlen, 2006/19/0163 to 0166.*

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Court of Appeal of England and Wales	*GM (Eritrea), YT (Eritrea) and MY (Eritrea)* v *Secretary of State for the Home Department* [2008] EWCA Civ 833 17.7.2007	Judgment. Evidence — fabrication — need to consider additional factors. **Paras 29-31:** '[…] found that the appellants had fabricated a large part of their evidence, the only object being to deceive the immigration authorities both administrative and judicial. In the preliminary process in this court some reserve was expressed about the continued reliance on the asylum system by persons who had subjected it to serious misuse in the past. […] However, that consideration cannot in itself weigh with us, because the obligation of the court is to respect the international obligations of the United Kingdom towards persons who do in fact fall within the protection of the Refugee Convention, however little such persons may have assisted their case by lying or acting in bad faith: see *Mbanga* at p142 per Millett LJ and more generally *Danian*. Second, in none of the appeals has any indication at all been given of what evidence about their individual cases the appellants would now wish to give, having been disbelieved in what they originally said. Mr Nicol QC austerely said that there was no forum in which the appellants' true case could be advanced. Accepting that that is so, or at least that that is the perception adopted by the appellants, the outcome is that this court is in the same position as the tribunals below, of knowing virtually nothing about the individual experience of these three appellants. Third, the observation in *Ariaya and Sammy* and in *MA* that a person who has not given a credible account of his own history cannot easily show that he would be at risk as a draft evader or because of illegal exit is, with respect, a robust assessment of practical likelihood, but it is not expressed as, and cannot be, any sort of rule of law or even rule of thumb. In every case it is still necessary to consider, despite the failure of the applicant to help himself by giving a true or any account of his own experiences, whether there is a reasonable likelihood of persecution on return. In all of the present cases the appellants argued that the totality of material before the respective tribunals, even though it included almost no contribution from the appellants themselves, required a positive answer to that question. To those arguments I now turn.'	United Kingdom, Court of Appeal (England and Wales) — *Mbanga,* [1996] Imm AR 136 at p. 142 per Millett LJ; and *Danian* v *SSHD,* [2000] Imm AR 96; *Ariaya and Sammy* v *SSHD* [2006] EWCA Civ 48; *MA (Draft evaders-illegal departures-risk) Eritrea CG,* [2007] UKAIT 00059.
Ireland, High Court	*S* v *Minister for Justice Equality & Law Reform & ors* [2007] IEHC 451 30.11.2007	Judgment on the reason for preferring certain 'country of origin information' over others. Evidence — COI — acting reasonably, rationally and impartial. **Para 11**: 'It is perfectly within the province and jurisdiction of the Refugee Appeals Tribunal, or any other body considering information of that type, to prefer some information over other information. What is critical, however, is that they give a reason for doing so. That doesn't mean that every piece of "country of origin information" must be alluded to in the judgment, but where there is a major conflict and where the status of one piece of "country of origin information" versus another piece of "country of origin information" is an issue of very significant importance in the case, then the judgment should deal with that, and if there is a preferment of one piece of evidence over another it should be justified so that the tribunal can be seen not to have acted arbitrarily but to have acted reasonably, rationally and impartially.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Germany, Federal Administrative Court	BVerwG 10 C 33.07 BVerwG:2008: 070208B10C33.07.0 7.2.2008	Judgment on qualification for refugee status. Standard of proof/level of conviction — well-founded fear of persecution — probability. **Standard of proof for qualification for refugee status not requiring a probability of more than 50 %, para. 37**, available in English at http://www.bverwg.de: 'In these decisions, this Court ties into the standards of probability developed in Germany for granting asylum under Article 16a of the Basic Law, and later transferred to recognition of refugee status under the Geneva Refugee Convention. According to these decisions, different standards apply in the recognition proceedings, depending on whether the person seeking asylum left his country of origin in flight from experienced or directly threatened persecution, or emigrated without having been persecuted. If the asylum seeker has emigrated without being persecuted, a risk of persecution, and thus a well-founded fear of persecution, exists if a judicious — namely, objective — assessment of all the circumstances of his case indicates a substantial probability that he is threatened with persecution, so that he cannot reasonably be expected to remain in his country, or to return there. Here a "qualifying" approach must be adopted, in the sense of a weighting and weighing of all ascertained circumstances and their significance. The crucial matter is whether in view of these circumstances, a reasonable-minded, prudent human being in the applicant's position could have a fear of persecution. A well-founded fear of an event in this sense can exist even if from a "quantitative" or mathematical viewpoint there is less than a 50 % probability that the event will occur. Therefore a substantial probability of persecution must be assumed when, in the required "summary assessment of the life circumstances under examination", the circumstances arguing for persecution have greater weight, and therefore prevail over the facts arguing to the contrary. Thus, the crucial factor is ultimately the aspect of reasonableness. Reasonableness is the primary qualitative criterion to be applied in assessing whether the probability is "substantial". The deciding factor is whether from the viewpoint of a prudent and reasonable-minded person in the asylum seeker's position, a return to the native country seems unreasonable after weighing all known circumstances. This may be the case even if the mathematical probability of political persecution is less than 50 %. In such a case, to be sure, the mere theoretical possibility of persecution is not sufficient. A reasonable-minded person will ignore such a possibility. But if the overall circumstances of the case indicate a real risk of persecution, a judicious person will also not take the risk of returning to his native country. In weighing all circumstances, a judicious observer will additionally make certain allowances in his considerations for the particular severity of the feared encroachment. Though in quantitative terms there may be only a low mathematical probability of persecution, even from the viewpoint of a prudent and reasonable-minded person who is considering whether he can return to his country it makes a substantial difference whether, for example, he is risking only a month in prison or the death penalty […].'	Germany, Federal Administrative Court (BVerwG) — *9 C 118.90*.

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Immigration and Asylum Tribunal	*MA (Disputed Nationality) Ethiopia* [2008] UKIAT 32 17.4.2008	Judgment on disputed nationality. Determination of nationality — de jure and de facto nationality — elements to substantiate nationality — evidence assessment — general principles governing nationality law. **Evidence assessment with regard to nationality, para. 81:** 'In any case of disputed nationality the first question to be considered should be "Is the person a de jure national of the country concerned?" That is a necessary element of the definition of a refugee contained in Article 1A(2) of the Refugee Convention and is exclusively a legal question. This question is to be answered by examining whether a person fulfils the nationality law requirements of his or her country. The ways in which nationality must be assessed are the subject of guidance given by the Tribunal in *Smith* (00/TH/02130), where the Tribunal considered that a hierarchical approach to evidence on nationality was not appropriate, disagreeing with what had been said in *Tikhonov* (V0052; 17 July 1998) and commenting that the approach in that case took too far reliance on rules of evidence and proof which had been forged in non-refugee law contexts, the context of conflict of laws and the United Kingdom immigration and nationality context in particular. Thus relevant documentation, the appellant's own testimony, agreement between the parties, Foreign Office letters and the text of nationality laws, as well as expert evidence, could all legitimately inform the assessment.' **Assessment based on general principles governing nationality law, para. 83:** 'What is concerned in determining whether a person has de jure nationality is essentially the question of whether they plainly fulfil the mandatory criteria governing, for example, the acquisition of nationality by birth and/or parentage. In such cases it would be irrelevant whether the person holds documents confirming their nationality. However, where the eligibility for nationality depends upon discretionary criteria under the nationality laws of that country, providing, for example, for naturalisation depending upon such matters as character, conduct, long residence or other similar grounds, then the question of whether or not they could take (or have taken) the appropriate steps to obtain nationality will be of relevance. To that extent, the previous case law of the Tribunal, which affirms the importance of a claimant taking reasonable steps, remains valid since in such cases the answer to the legal question depends upon the exercise by the country concerned of discretion under its nationality laws.' **Assessment of de facto nationality, para. 85:** 'If it is concluded that the person is a de jure national of the country concerned then the next question to be considered is the purely factual question, i.e. "Is it reasonably likely that the authorities of the state concerned will accept the person concerned if returned as one of its own nationals?" This is the hypothetical approach, which focuses exclusively on the person's position upon return. That this approach was approved by the Court of Appeal can be seen from paragraph 71 of *EB* in the judgment of Longmore LJ.'	United Kingdom, Immigration and Asylum Tribunal — *Smith* v *Secretary of State for the Home Department,* [2000] 00TH02130; United Kingdom, Immigration Appeal Tribunal — *Tikhonov, V0052* [1998] INLR 737; United Kingdom, Court of Appeal of England and Wales, *EB (Ethiopia),* [2007] EWCA Civ 809.
United Kingdom, Court of Appeal of England and Wales	*AA (Uganda)* v *Secretary of State for the Home Department* [2008] EWCA Civ 579 22.5.2008	Judgment on the application of internal protection. Internal protection — evidence assessment — COI — particular circumstances of the applicant. **Importance of taking into account the applicant's particular circumstances in application of internal protection, Paras 22 and 23:** '22. Even if the foregoing is wrong, and it was open to the AIT to hold that it would not be unduly harsh to return young women generally to Kampala, it is still necessary to consider whether AA has characteristics that would render remission unduly harsh in her particular case. That is made plain in the authoritative statements of the law cited in §7 above. Lord Bingham said that the enquiry must be directed to the situation of the particular applicant; and Lord Brown of Eaton-under-Heywood that the claimant must be as well able as most to bear the hardship suffered by a significant minority in the country of relocation. It was this aspect of the case that occupied most of the submissions both before the AIT and before us. 23. The two particular characteristics of AA that were relied on as making her particularly vulnerable were, first, that AA has no formal qualifications; and second that she was traumatised and suffering from anxiety and depression. It will be recalled from the extracts set out in §9 above that Dr Nelson relied on both of those matters as showing that AA would be even more vulnerable than the general run of unaccompanied young women in Kampala. The AIT did not accept that either of those matters was made out on the facts, and that therefore Dr Nelson had been wrong to place weight upon them.'	

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Ireland, High Court	*IR v Minister for Justice, Equality and Law Reform* [2009] IEHC 353 24.7.2009	Judgment on credibility of the applicant. Principles for credibility assessment. **Para. 11:** 'So far as relevant to the issues dealt with in this judgment it seems to the Court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out: 1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers. 2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice. 3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded. 4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told. 5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding. 6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given. 7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim. 8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person. 9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated. 10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.'	
Belgium, Council for Aliens Law Litigation	45.396. 24.6.2010	Judgment on assessment of the need of protection against the country of nationality or of former habitual residence. Determination of nationality — competence of courts or tribunals. **Paras 6.3 and 6.4:** '6.3. D'une part, l'article 144 de la Constitution dispose que les contestations qui ont pour objet des droits civils sont exclusivement du ressort des cours et tribunaux et l'article 145 de la Constitution dispose quant à lui que les contestations qui ont pour objet des droits politiques sont du ressort des cours et des tribunaux, sauf les exceptions établies par la loi. Le Conseil est, par conséquent, sans juridiction pour connaître des contestations qui portent sur des droits civils ou encore pour connaître des contestations qui portent sur des droits politiques que le législateur ne lui a pas expressément attribuées. Les contestations portant sur la nationalité d'une personne n'ayant pas pour objet un droit politique soustrait par le législateur à la juridiction des cours et tribunaux, le Conseil est sans juridiction pour déterminer la nationalité du demandeur d'asile, qu'il s'agisse de décider quelle nationalité celui-ci -ci possède, s'il en a plusieurs ou s'il est apatride. 6.4. Ce rappel ne peut évidemment avoir pour effet de rendre impossible l'examen du bien-fondé d'une demande d'asile. Il s'en déduit toutefois qu'en cas de doute au sujet de la nationalité du demandeur d'asile ou, s'il n'en a pas, du pays dans lequel il avait sa résidence habituelle, il revient aux deux parties d'éclairer le Conseil de la manière la plus précise et la plus circonstanciée possible quant à la détermination du pays par rapport auquel l'examen de la demande de protection doit s'effectuer.'	

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United Kingdom, Supreme Court	*MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 24.11.2010	Judgment on the approach to the assessment of the impact of an applicants lies on his claim for international protection. Evidence — lies told by an applicant. **Para. 33:** 'Although the analogy is not exact, it is close enough for these words to be of relevance in the present context. So the significance of lies will vary from case to case. In some cases, the AIT may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the AIT may conclude that they are of great significance. MA's appeal was such a case. The central issue was whether MA had close connections with powerful actors in Mogadishu. The AIT found that he had not told the truth about his links with Mogadishu. It is in such a case that the general evidence about the country may become particularly important. It will be a matter for the AIT to decide whether the general evidence is sufficiently strong to counteract what we have called the negative pull of the appellant's lies.'	
United Kingdom, Upper Tribunal	*AW (sufficiency of protection) Pakistan v Secretary of State for the Home Depatment* [2011] UKUT 31 (IAC) 24.1.2011	Judgment on sufficiency of state protection. Internal protection — evidence assessment — COI — particular circumstances of the applicant. **Importance of taking into account the applicant's particular circumstances in application of internal protection, paras 34 and 35:** '34. The starting point in assessing whether the appellant would be given sufficient protection if returned to Pakistan is to consider whether there is systemic insufficiency of state protection. In relation to Pakistan, having regard to the case of AH and also to the case of KA and Others (Domestic Violence — Risk on Return) Pakistan CG [2010] UKUT 216 (IAC), it cannot be said that such a general insufficiency of state protection has been established. Neither party submitted that there was, nor do we find, that the background evidence before us demonstrates such as insufficiency. 35. However, as we have outlined above, that is not an end of the matter, regard must be had to the individual circumstances of the appellant with a view to addressing the questions as outlined in the sixth and fifteenth propositions of Auld LJ in Bagdanavicius [2005] EWCA 1605.'	United Kingdom, Upper Tribunal — *KA and Others (Domestic Violence — Risk on Return) Pakistan* CG, [2010] UKUT 216 (IAC); United Kingdom, Court of Appeal of England and Wales — *Bagdanavicius,* [2005] EWCA 1605.
Hungary, Metropolitan Court	*SMR v Office of Immigration and Nationality* 17.K.30.302/2010/18-II 4.2.2011	Judgment on refugee status and credibility. Factors affecting the applicant — interview — personal circumstances — vulnerability. **Importance of taking into consideration the factors affecting the applicant at interview, including his/her vulnerability**, per EDAL English summary of the case: 'The court also ruled that the authority is obliged to clarify misunderstandings at hearings, at the same time applicants have to be given the possibility of justifying contradictions and incoherencies in their statements. The emotional, psychological and medical conditions of the applicants have to be taken into account in order to have a full picture of the claim. It is the authority's obligation to ensure that the applicants know of the doubts regarding their credibility before a decision is issued so they have an opportunity to respond to those doubts. Country of origin information may confirm odd details of the applicants' statements and question otherwise plausible points, therefore, it has to be equally examined. Also, the doubts resulting from the research of country of origin information has to be shared with the applicants giving them the opportunity to deal with any issues that may arise. The OIN should have made an effort to clarify ambiguous and fragmentary parts of the applicants' statements which were particularly problematic since the case worker dealing with the applicants' case was replaced during the procedure and consequently the decision was written by someone that did not interview the applicants.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Court of Appeal of England and Wales	*R on the application of MD (Gambia)* v *Secretary of State for the Home Department* [2011] EWCA Civ 121 17.2.2011	Judgment inter alia on designation of country of origin as safe. Safe country of origin — designation — case-by-case assessment. **Designation of safe countries of origin not precluding case-by-case assessment** **Para. 51:** 'It follows that since the listing of Gambia is not unlawful, the Secretary of State was obliged to certify the claim unless satisfied that it was not clearly unfounded. I would observe, however, that the fact that Gambia has been listed does not mean that the general evidence of human rights' abuses is thereafter immaterial. The background information may still, in the context of the facts of a particular claim, weigh against certifying the claim even where it is not enough to demonstrate the degree of systemic human rights breaches necessary to preclude the country being listed under section 94(4). It was in fact taken into account by the Secretary of State in this case.'	
Belgium, Council for Aliens Law Litigation	56.584. 23.2.2011	Judgment inter alia on weight to be given to witness statement as evidence. Witness's statement — credibility assessment — private source. **Para. 4.2:** 'La circonstance qu'un témoignage émane d'une source privée ne suffit pas à lui ôter de manière automatique toute force probante. Il convient d'apprécier si son auteur peut être identifié, si son contenu peut être vérifié et si les informations qu'il contient présentent un caractère de précision et de cohérence suffisant pour contribuer utilement à l'établissement des faits de la cause. Cette appréciation doit s'effectuer au cas par cas. Lorsque le témoin peut être entendu, il revient à l'instance chargée de l'instruction d'évaluer s'il ne s'indique pas de procéder à son audition afin de vérifier sa crédibilité. En l'espèce, la partie requérante communique les documents d'identité des auteurs des témoignages. Il ressort, en outre, du dossier administratif que l'un au moins d'entre eux pouvait être aisément contacté, s'agissant d'une dame qui réside en Belgique et qui y préside une association enregistrée. Ce témoin est suffisamment identifié et a communiqué dans l'en-tête de son témoignage des coordonnées permettant de la joindre. Le témoignage de cette dame étant potentiellement déterminant, puisqu'il semble indiquer que le requérant fait toujours l'objet de poursuites, la partie défenderesse ne pouvait rejeter la demande sans en tenir compte ni sans l'avoir examiné de manière rigoureuse, le cas échéant après avoir entendu le témoin. Ni la décision attaquée, ni aucune autre pièce du dossier ne permettent de considérer que cet examen rigoureux ait eu lieu.'	
Ireland, High Court	*HR* v *Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform* [2011] IEHC 151 15.4.2011	Judgment inter alia on applicant's credibility. Indicators of credibility — applicant's demeanour. **Para. 7:** 'There is not doubt, of course, but that the Tribunal member is perfectly entitled to base a finding as to lack of credibility and plausibility upon the manner in which an asylum seeker gives evidence and on his or her demeanour when answering questions in relation to the details of facts and events which form the basis of the claim. Indeed, in many cases where such facts and events are incapable of any independent corroboration, the personal credibility of the claimant may be crucial. At the same time, however, the decision-maker must be careful not to misplace reliance upon demeanour and risk construing as a deliberate lack of candour a demeanour which may be the result of nervousness, of the stress of the occasion and even of the embarrassment of being an asylum seeker. An apparent hesitation and uncertainty may well be attributable to difficulties of language and comprehension. In the judgment of the Court, before a decision-maker in the asylum process bases a rejection of a claim upon lack of credibility based mainly on the personal appearance and demeanour of the claimant, the decision-maker ought to be fully confident that the basis of the claim and all relevant facts and circumstances recounted have been fully and correctly understood and that there is no possibility that the decision-maker and claimant have been at cross purposes on any material point.'	

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Germany, Federal Administrative Court	BVerwG 10 C 25.10 BVerwG:2011: 010611U10C25.10.0 1.6.2011	Judgment on revocation of the refugee status in case of cessation based on change of circumstances in the country of origin. Refugee status — subsidiary protection — standard of proof/level of conviction. **Identical standard of proof for refugee status and *non-refoulement* under Article 3 ECHR and, a fortiori, subsidiary protection, para. 22**, available in English at http://www.bverwg.de**: 'This substantive-law concept of different standards of probability** for the likelihood of persecution is unknown to Directive 2004/83/EC. Instead, the Directive adopts an evidentiary approach that applies a uniform standard of determining likelihood when establishing and terminating the entitlement to refugee status, as articulated in the Member States' obligation to verify, under Article 14(2), and in the actual presumption of persecution under Article 4(4) of the Directive […]. This proceeds not only from the wording of the latter provision but also from the legislative history, because the Federal Republic of Germany was unable to win acceptance for its suggestion of distinguishing between the different prognostic standards of "considerable" probability and "sufficient" probability (see the results of the deliberations of the "Asylum" group of 25 September 2002, Council Document 12199/02 p. 8 f.). Accordingly, under Union law, a uniform standard of probability applies in assessing the likelihood of persecution in the protection of refugees, even if the applicant has already suffered persecution previously. This standard of probability, contained in the characteristic of "… a well-founded fear of being persecuted…" under Article 2 (c) of the Directive, is based on the case law of the European Court of Human Rights. In the examination of Article 3 of the ECHR, that court focuses on the actual danger ("real risk"; see ECtHR, […] Saadi […]); this is equivalent to the standard of considerable probability […].'	ECtHR — *Saadi* v *Italy*, Application no 37201/06; Germany, Federal Administrative Court (BVerwG) — *10 C 5.09*; Germany, Federal Administrative Court (BVerwG) — *10 C 11.09*; Germany, Federal Administrative Court (BVerwG) — *77.95*; Germany, Federal Administrative Court (BVerwG) — *10 C 22 33.08.*
Belgium, Council for Aliens Law Litigation	64.233 30.6.2011	Judgment on availability of internal protection in the country of origin. Internal protection — evidence assessment — COI — particular circumstances of the applicant **Importance of taking into account the applicant's particular circumstances in application of internal protection, para. 5.4.2:** 'En l'espèce, s'il ressort de la décision attaquée que la partie défenderesse a vérifié si les personnes déplacées d'origine géorgienne provenant d'Ossétie du sud bénéficient d'une protection de la part de leurs autorités nationales dans les autres régions de Géorgie, force est de constater qu'il n'en ressort par contre pas qu'elle a examiné s'il peut être raisonnablement attendu de la partie requérante qu'elle reste dans ces autres parties du pays, compte tenu des conditions de l'accueil des personnes déplacées susmentionnées et de sa situation personnelle. A cet égard, le Conseil relève que des rapports internationaux récents, cités par la partie requérante dans sa requête […] indiquent que les personnes déplacées susmentionnées ne sont pas logées correctement, qu'elles peuvent faire l'objet d'expulsions sans alternative de relogement ou d'indemnisation, que leur santé est fragilisée par leurs conditions de vie médiocres et par la pauvreté et qu'il leur est plus difficile de se faire soigner en raison du manque d'informations et du coûts des traitements. Compte tenu de ces conditions générales et de la situation personnelle de la partie requérante, qui souffre, selon les termes mêmes du rapport du conseiller expert auprès du Commissariat général, d'une importante psychopathologie et d'une souffrance psychique — confirmée par le rapport médical d'évolution daté du 9 mars 2011, versé par la partie requérante au dossier de la procédure —, le Conseil estime qu'il ne peut être raisonnablement attendu de celle-ci qu'elle reste dans d'autres parties de la Géorgie. L'article 48/5, §3 ne trouve dès lors pas à s'appliquer au cas d'espèce.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Slovenia, Supreme Court	I UP 471/2012 18.10.2012	Judgment on qualification for international protection with minor applicant. Factors affecting the applicant — interview — personal circumstances — vulnerability. **Importance of taking into consideration the factors affecting the applicant at interview, including his/her vulnerability**, as per EDAL English summary of the case: 'The Supreme Court found that in its decision-making process the Ministry of the Interior did not take into account the Applicant's youth (10-12 years) at the time of the events that led to his departure from the country of origin, nor did it take into account that he was a minor when applying for international protection (17 years). The MI also failed to take into account the Applicant's general lack of education (illiterate, no formal education), his background, and the circumstances in which he allegedly found himself in this specific environment as a 10-12 year old child. The fact that the Applicant answered briefly and was therefore asked sub-questions cannot be attributed solely and exclusively to his unwillingness to participate in the process. This could be due to his general manner of expression, or his ability to give statements, however the Respondent failed to define this in his decision. The inconsistencies revealed in the Applicant's statements as to when the individual events took place and other issues related to the time and dates as well as amounts and prices have not been sufficiently evaluated in terms of the Applicant's capability in relation to time perception and calculation skills. The MI also failed to conduct the proceedings and pose questions in a manner that would suit the Applicant's personality and age. It is true that in the application for international protection the main burden of proof lies on the Applicant applying for international protection, however the authorities conducting the procedure also have the duty to ascertain the actual circumstances. According to Article 7(3) of the International Protection Act, the authorities must allow the Applicant to protect and enforce his rights emerging from this Act in the easiest way possible; they also have to ensure that the Applicant's ignorance and lack of knowledge does not violate his rights. Merely fulfilling the formal conditions (merely acquainting the Applicant with his rights in written form, appointing a guardian, issuing a general warning when receiving the application stating that the Applicant needs to give all data with which he attempts to support his application independently, convincingly, accurately and truthfully etc.) may not be sufficient in certain cases (especially when minors or uneducated individuals are involved); in such cases it is necessary to ascertain whether the Applicant truthfully understands the importance of his behaviour, actions and statements during the procedure for obtaining international protection.'	
United Kingdom, Supreme Court	*Al-Sirri* v *Secretary of State for the Home Department* [2012] UKSC 54 21.11.2012	Judgment on refugee status and protection. Evidence — serious reasons for considering – **Para 75:** 'We are, it is clear, attempting to discern the autonomous meaning of the words "serious reasons for considering". We do so in the light of the UNHCR view, with which we agree, that the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied. This leads us to draw the following conclusions: (1) "Serious reasons" is stronger than "reasonable grounds". (2) The evidence from which those reasons are derived must be "clear and credible" or "strong". (3) "Considering" is stronger than "suspecting". In our view it is also stronger than "believing". It requires the considered judgment of the decision-maker. (4) The decision-maker need not be satisfied beyond reasonable doubt or to the standard required in criminal law. (5) It is unnecessary to import our domestic standards of proof into the question. The circumstances of refugee claims, and the nature of the evidence available, are so variable. However, if the decision-maker is satisfied that it is more likely than not that the applicant has *not* committed the crimes in question or has *not* been guilty of acts contrary to the purposes and principles of the United Nations, it is difficult to see how there could be serious reasons for considering that he had done so. The reality is that there are unlikely to be sufficiently serious reasons for considering the applicant to be guilty unless the decision-maker can be satisfied on the balance of probabilities that he is. But the task of the decision-maker is to apply the words of the Convention (and the Directive) in the particular case.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Upper Tribunal (Immigration and Asylum Chamber)	*JL (medical reports-credibility)* [2013] UKUT 145 28.1.2013	Judgment on the assessment of evidence from vulnerable applicants. Medical evidence — medical reports — credibility. **Para. 26:** '26. A second error we discern consists in the judge's treatment of the appellant's vulnerability (the appellant's ground 3). It is clear from her determination that despite disbelieving much of the appellant's evidence including the account she gave of her psychological problems (the judge placed particular emphasis on the appellant's ability to perform well in her studies) the judge was prepared to accept she was a vulnerable person. To be specific, she appeared to accept that the appellant had been the victim of physical abuse at the hands of her former boyfriend in the UK [104]; and, although rejecting the reasons given, accepted that "[i]t may well be the appellant has certain mental health issues". Given that the judge described the respondent's reasons (as set out in the preceding paragraph) as "cogent" and that they included reliance on inconsistencies, it was of particular importance to see what findings, if any, the judge made about the possible relevance to these of the appellant being a vulnerable person. In the case of a vulnerable person, it is incumbent on a Tribunal judge to apply the guidance given in the Joint Presidential Guidance Note No 2 2010, Child, Vulnerable adult and sensitive appellant guidance. At [14]-[15] of this guidance, which deal with assessment of evidence, it is stated: "(14) Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those who are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity. (15) The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.' Whilst in [14] above the focus is on oral evidence, it is clear from [15] and the guidance read as a whole that the same approach should inform assessment of discrepancies in the written record.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Germany, Federal Administrative Court	BVerwG 10 C 6.13 BVerwG:2014: 130214U10C6.13.0 13.2.2013	Judgment on qualification for subsidiary protection under Article 15(c) QD. Applicant's duty to substantiate the application — determination of country of origin. **Paras 19-21:** '[19] Die Feststellung unionsrechtlichen Abschiebungsschutzes nach § 60 Abs. 7 Satz 2 AufenthG (a.F.) setzt voraus, dass dem Ausländer in seinem Herkunftsland die in der Vorschrift näher beschriebene Gefahr droht. Das Abstellen auf das Herkunftsland (Land der Staatsangehörigkeit des Ausländers) ergibt sich für die zum Zeitpunkt der Berufungsentscheidung maßgebliche Rechtslage aus einer richtlinienkonformen Auslegung des nationalen Rechts (vgl. Art. 2 Buchst. e und k der Richtlinie 2004/83/EG — Qualifikationsrichtlinie) und ist jetzt ausdrücklich in § 4 Abs. 1 AsylVfG (n.F.) so geregelt. [20] Die Feststellungen des Verwaltungsgerichtshofs zum Herkunftsland stützen sich ausschließlich auf die in der Niederschrift zum Asylantrag vom 25. Juni 2010 aufgenommenen Angaben des Klägers zu seinem Namen, Geburtsdatum, Geburtsort, Sprache, Religion und Staatsangehörigkeit sowie auf die Angaben seines Prozessbevollmächtigten zum Reiseweg. Die Angaben zum Reiseweg beschränken sich auf die Mitteilung, dass der Kläger „über Äthiopien, Dubai und schließlich Frankfurt am Main Flughafen ins Bundesgebiet eingereist" sei; es fehlen jedoch Angaben dazu, wie er von seinem Heimatort nach Äthiopien gelangt ist. Die vom Berufungsgericht für seine Entscheidung herangezogenen Tatsachen waren nicht detailreich genug, um darauf eine den Maßstäben des § 108 Abs. 1 Satz 1 VwGO entsprechende Überzeugungsbildung zu stützen. [21] Die vom Berufungsgericht seiner Entscheidungsfindung der Sache nach zugrunde gelegte Beweismaßreduktion lässt sich den maßgeblichen Vorschriften nicht entnehmen. Vielmehr ergibt sich aus den in § 15 Abs. 2 AsylVfG normierten Pflichten des Asylbewerbers zur Vorlage seines Passes oder Passersatzes sowie sonstiger Urkunden und Unterlagen, die in seinem Besitz sind, dass diese Unterlagen als regelmäßig erforderlich angesehen werden, um über einen Asylantrag sowie Antrag auf Gewährung von unionsrechtlichem subsidiärem Schutz und nationalem Abschiebungsschutz zu entscheiden. Auf keinerlei derartige Unterlagen konnte der Verwaltungsgerichtshof seine Überzeugungsbildung stützen, weil sie ihm nicht vorlagen. Daher wäre es erforderlich gewesen, diesen Mangel an Grundlagen für die Feststellung zum Herkunftsland des Klägers jedenfalls durch eine persönliche Anhörung des Klägers auszugleichen. Nach § 24 Abs. 1 Satz 1 AsylVfG ist das Bundesamt verpflichtet, den Sachverhalt aufzuklären und die erforderlichen Beweise zu erheben. In diesem Rahmen ist es nach § 24 Abs. 1 Satz 3 AsylVfG grundsätzlich zu einer persönlichen Anhörung des Asylbewerbers verpflichtet. Kommt das Bundesamt dieser Verpflichtung nicht nach — etwa weil es sich an einer Sachentscheidung gehindert sieht —, muss das Gericht, wenn es eine Entscheidung zur Sache für geboten hält, die gesetzlich gebotenen Maßnahmen zur Aufklärung des Sachverhalts durchführen. Jedenfalls nachdem das Bundesamt Zweifel an den Angaben des Klägers zu seinem Herkunftsland vorgetragen und u.a. darauf hingewiesen hat, dass die vom Kläger gebrauchte Sprache auch in den an Somalia angrenzenden Landesteilen von Äthiopien und Kenia gebräuchlich sei, hätte der Verwaltungsgerichtshof die Feststellung, dass der Kläger aus Somalia stammt, nicht ohne eigene Sachaufklärung treffen dürfen, insbesondere nicht ohne persönliche Anhörung des Klägers in der mündlichen Verhandlung.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Belgium, Council of State	99.380. 21.3.2013	Judgment inter alia on the weight of medical evidence. Medical evidence — source — quality. **Para. 4.5:** 'La partie requérante souligne l'importance que revêt l'attestation psychologique déposée: elle atteste d'un vécu traumatique au pays d'origine de la requérante, qui a toujours des conséquences psychologiques aujourd'hui pour la requérante. Le Conseil, à l'instar de la partie requérante, estime consternant de rejeter ce document rédigé par un professionnel de la santé mentale, notamment, parce qu'il a été établi ' *par une personne qui n'a pas été le témoin direct des événements que [la requérante présente] au CGRA afin de soutenir [sa] demande d'asile* '. La partie défenderesse souligne aussi curieusement que cette attestation est postérieure aux événements invoqués par la requérante laissant planer un doute sur la conclusion à en tirer, de même elle constate que cette pièce est établie ' *uniquement sur base [des] affirmations [de la requérante]* ' et qu'elle ne peut en aucun cas démontrer que les différents ennuis décrits résultent directement des faits avancés par la requérante devant le CGRA. Alors qu'il semble logique et légitime pour un professionnel de la santé mentale de s'appuyer sur le récit des souffrances d'une personne pour tenter de décrire les symptômes de ces souffrances. En tout état de cause, à la vue de cette attestation médicale, la fragilité psychologique de la requérante est établie. En cas de contestation sur ce point, il appartenait à la partie défenderesse de dissiper tout doute qui pourrait persister quant à la cause des symptômes constatés avant d'écarter la demande […] ce qui n'a pas été le cas en l'espèce.'	ECtHR — *RC* v *Sweden*, Application no 41827/07.
United Kingdom, Court of Appeal of England and Wales	*CM (Zimbabwe)* v *the Secretary of State for the Home Department* [2013] EWCA Civ 1303 30.7.2013	Judgment inter alia on the weight of anonymous material in applications' assessment. Substantiation of application — use of anonymous material. **Use of anonymous material, para. 17:** 'There is no general rule at common law or inspired by the European Convention on Human Rights that uncorroborated anonymous material can never be relied on in a country guidance case or any other case. Sometimes that will be the position. Whether or not it is so will depend on all the circumstances. That is the approach taken by the Upper Tribunal in this case. Generally of course the effect of anonymity will go to the weight to be attached to the material in question and care must always be taken in assessing the weight of such material.'	ECtHR — *Sufi and Elmi* v *United Kingdom*, Application nos 8319/07 and 11449/07.

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Germany, Federal Administrative Court	BVerwG 10 C 1.13 BverwG:2013: 050913U10C1.13.0 5.9.2013	Judgment on cooperation of the applicant when taking fingerprints to determine his/her identity. Substantiation of the application — evidence/elements to be submitted — applicant's cooperation — fingerprints. **Paras 18, 19 and 23**, available in English at http://www.bverwg.de: '[18] The general obligations of cooperation incumbent upon applicants for asylum and foreigners seeking refugee status within the meaning of Section 3 (1) and (4) of the Asylum Procedure Act proceed from Section 15 of the Asylum Procedure Act. That provision was likewise incorporated into the Asylum Procedure Act by the 1992 Act Amending Asylum Procedure. According to Section 15 (1) sentence 1 of the Asylum Procedure Act, foreigners are personally required to cooperate in establishing the facts of their case. Section 15 (2) of the Asylum Procedure Act provides examples ("in particular") of specific, especially important obligations to cooperate (Bundestag Printed Paper 12/2062 p. 30). Accordingly, foreigners are required, for example, to provide the necessary information orally, and on request also in writing, to the authorities responsible for implementing the Act (no. 1); to comply with statutory and official orders requiring them to report to specific authorities or institutions or to personally appear there (no. 3); and to undergo the required identification measures (no. 7). [19] 3. A cause to issue a request to pursue proceedings may consequently arise from a breach of the obligation to undergo required identification measures that is incumbent upon the asylum seeker under Section 15 (2) no. 7 of the Asylum Procedure Act. It is true that no obligation to guarantee the analysability of fingerprints can be derived from this provision. However, the obligation to cooperate established in Section 15 (2) no. 7 of the Asylum Procedure Act also embraces the obligation of an asylum seeker to refrain, in advance of a planned fingerprinting, from any conduct that could compromise or frustrate the analysability of his or her fingerprints. […] [23] The obligation imposed on the asylum seeker under Section 15 (2) no. 7 of the Asylum Procedure Act to acquiesce in having fingerprints taken and to refrain from any steps that impede or frustrate the usability of the fingerprints for purposes of identification is compatible with Article 11 of Directive 2005/85/EC of 1 December 2005 (the Asylum Procedures Directive). That version of the Procedures Directive continues to apply in the present proceedings, under the transitional provision in Article 52 of Directive 2013/32/EU of 26 June 2013. Under Article 11 (1) of Directive 2005/85/EC, Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application. It is true that the catalogue of obligations that may be imposed on asylum seekers under Article 11 (2) of the Directive does not include the obligation to acquiesce in fingerprinting. But that is also not necessary, because these are only general examples "in particular"). However, the imposition of an obligation to cooperate in fingerprinting is covered by the general clause of Article 11 (1) of the Directive, under which Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application. After all, taking fingerprints that are suitable for data matching in the Eurodac System belongs to the obligations necessary for processing the application. This is also emphasised by Article 23 (4) (n) of the directive, which presupposes that an obligation for applicants to subject to fingerprinting is at least possible under Community or national law. It is also evident from the Member States' obligation to take fingerprints under the Eurodac Regulation that the Member States may to that extent oblige applicants to acquiesce in having their fingerprints taken.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Czech Republic, Supreme Administrative Court	*IJ* v Minister of the Interior 4 Azs 24/2013-34 30.9.2013	Judgment on protection in the country of origin (state protection; internal protection). Internal protection — evidence assessment — COI — particular circumstances of the applicant. **Importance of applicant's particular circumstances in the application of internal protection, per** EDAL English summary **of the case:** 'As for the possibility of internal relocation, the Court pointed out with reference to its previous jurisprudence that internal relocation should be preferred before leaving the country and its availability is therefore logically to be examined within the asylum procedure. It must, however, be examined whether it is available from a legal and factual point of view with regard to the particular situation of the Applicant. In the case of this Applicant and with regard to general information about the situation of followers of the Ahmadiyah religion in Pakistan, it is clear that there is no reasonable and safe possibility of relocation. The Claimant had even been attacked in the surroundings of the city R, which is inhabited predominantly by followers of the same religion, and which should therefore be the safest city. It can scarcely be imagined that he could be better off in an area where, to the contrary, his religion is in a complete minority.'	
United Kingdom, Upper Tribunal	*KV (Scarring — medical evidence) Sri Lanka* [2014] UKUT 230 23.4.2014	Judgment relating inter alia to medical reports. Evidence assessment — medical evidence — Istanbul Protocol. **Importance of the Istanbul Protocol concerning medical evidence, paras 222-224:** '222. The HBF submitted that the Tribunal should regard the IP as having attained the status of customary international law, based on a statement by Dean Claudio Grossman (current Chair of the Committee against Torture), "The normative value of the Istanbul Protocol", in S Kjaer and A Kjaerum (eds), *Shedding light on a dark practice: Using the Istanbul Protocol to document torture* (International Rehabilitation Council for Torture Victims (IRCT)), 2009. Bearing in mind the requirements for the creation of customary international law, as set out by the International Court of Justice in *North Sea Continental Shelf Cases*, 20 February 1969, ICR Rep.1969, 3 paragraphs 70-74, such a submission is fraught with difficulties. As analysed by Wallace and Wylie in "The Reception of Expert Medical Evidence in Refugee Status Determination", IJRL, Vol 25, No. 4 pp 755, these range from the fact that the IP does not itself purport to impose legal standards to the fact that the UN Committee against Torture has noted that there is a lack of knowledge about the Protocol and very few" countries were using it. Even in the context of European state practice the EU institutions chose in 2011 not to proceed with an amendment to the recast Procedures Directive, which would have required the IP to be one of the instruments that should inform the "national measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or mental violence, including acts of sexual violence, in procedures covered by [the] Directive". We find that the case for regarding the IP as having the status of customary international law has not been made out. 223. At the same time, the fact that the IP was mentioned in the draft recast of the Procedures Directive, coupled with the endorsement given to the IP by the ECtHR in cases such as *Bati and Others* v *Turkey* […], are just two of a number of indices showing that the IP is becoming more embedded in the framework of international protection. As stated by Wallace and Wylie: "… irrespective of legal uncertainties as to the normative status of the Istanbul Protocol, it undoubtedly does represent a global consensus as to standards and principles for the investigation and documentation of torture". 224. In the UK recognition of its central role has come both from the Upper Tribunal, the courts and the Home Office. Accurately encapsulating this, the Home Office Policy Instructions (which we consider it useful to append: see Annex A) state at 3.3 that: "The Protocol, the central importance of which is accepted by the UK courts in the asylum context, makes clear that reports which document and evaluate a claim of torture for asylum proceedings need only provide 'a relatively low level of proof of torture [or serious harm]'. Therefore, the [FFT and HBF] report in support of the applicant's claim of torture or serious harm cannot be dismissed or little or no weight attached to them when the overall assessment of the credibility of the claim is made."'	ICJ — *North Sea Continental Shelf Cases,* ICJ Rep 1969; ECtHR, *Bati and Others* v *Turkey*, Application nos 33097/96 and 57834/00.

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Supreme Court	*Secretary of State for Home Department* v *MN and KY* [2014] UKSC 30 21.5.2014	Judgment dealing inter alia with determination of applicants' country of origin. Weight of evidence — linguistic analysis reports. **Para. 46:** 'The first is as to the weight to be given to such evidence in future cases. Tribunals are advised that, where there is a "clear, detailed and reasoned linguistic analysis" leading to "an opinion expressed in terms of certainty or near certainty", then "little more" is required to support a conclusion. This seems to me to underplay the importance in any case of the tribunal itself examining such a report critically in the light of all the evidence, and of the reasoning supporting its conclusion (not necessarily limited by the scope of any criticisms or evidence that may be presented by the appellant). The language of the guidance gives rise to a real risk of being interpreted as prejudging issues which are for the individual tribunal to determine. As will be seen, the present appeals are illustrative of that risk.'	
Germany, Federal Administrative Court	BVerwG 10 C 7.13 BVerwG:2014: 170614U10C7.13.0 17.6.2014	Judgment on qualification for international protection. Substantiation of the application — evidence/elements to be submitted — travel route. **Discontinuance of the asylum procedure in case of non-compliance to present written account of travel route in a timely manner, paras 21 to 23**, available in English at http://www.bverwg.de: '[21] 1.4 The suspensive effect of Section 32 sentence 1 of the Asylum Procedure Act did arise, however, in that the Complainant did not comply in a timely manner with his independent obligation to submit a written account of his travel routes and of any other applications for asylum that might have been lodged previously (No 2 of the request to pursue proceedings of 9 September 2010). [22] Under Section 15 (2) (1) of the Asylum Procedure Act, the Complainant was obliged to provide the information requested by the Federal Office. The information that may be requested from an applicant for asylum, according to Section 25 (1) sentence 2 of the Asylum Procedure Act, also includes information about travel routes, time spent in other countries, and asylum procedures initiated or completed there (see judgment of 5 September 2013, op. cit., at 33). The request of 9 September 2010 to pursue proceedings by providing the appropriate written information is also in compliance here with the further requirements of Section 33 (1) of the Asylum Procedure Act. [23] The Complainant did not provide the requested written information within the one-month deadline under Section 33 (1) of the Asylum Procedure Act. It is true that counsel for the Complainant attempted to make up for this with a letter dated 2 November 2010, after the one-month deadline had expired. However, the letter does not reveal any reasons why the Complainant was not at fault for failing to meet the deadline […]. According to that letter, the failure to meet the deadline was caused by a mistake on the Complainant's part. The Complainant is said to have believed that he thought he had met his obligation under the request to pursue the procedure by appearing at the field office of the Federal Office on 7 October 2010 and permitting his fingerprints to be taken again. He had understood that he would now be asked soon by the Federal Office about his reasons for asylum, his travel routes, and his applications for asylum in other countries. But it does not proceed from this argument that the deadline was missed for no fault of the Complainant. The request to pursue the procedure of 9 September 2010 refers to two mutually independent acts: (1) fingerprinting, and (2) the written information about the travel routes and about a possible application for asylum. The Complainant was not entitled to assume that by cooperating in being fingerprinted he had also complied with his obligation to provide the requested written information. […]'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Court of Appeal of England and Wales	*PJ (Sri Lanka)* v *Secretary of State for the Home Department* [2014] EWCA Civ 1011 18.7.2014	Judgment inter alia on unauthenticity of documentary evidence submitted by the applicant. Standards for assessing documentary evidence — duty of determining authorities — authenticity. **Obligation for the determining authority to verify the authenticity of documentary evidence depending on the particular case, paras 30-32:** '30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document — depending always on the particular facts of the case — when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh* v *Belgium* [101] — [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh* v *Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification. 31. In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic. 32. Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see *NA (UT rule 45: Singh* v *Belgium*) [2014] UKUT 00205 IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case.'	United Kingdom, Immigration and Appeal Tribunal — *Tanveer Ahmed* v *Secretary of State for the Home Department,* [2002] UKIAT 00439; ECtHR — *Singh and Others* v *Belgium*, Application no 33210/11; United Kingdom, Upper Tribunal — *NA (UT rule 45: Singh* v *Belgium)*, [2014] UKUT 00205 (IAC).
United Kingdom, Upper Tribunal	*MOJ and others (return to Mogadishu) Somalia CG* [2014] UKUT 442 3.10.2014	Judgment on qualification for subsidiary protection under Article 15(c) in context of Somalia. Standards for assessing expert evidence — duties of experts. **Duties of experts, para. 25:** 'Thus in the contemporary era the subject of expert evidence and experts' reports is heavily regulated. The principles, rules and criteria highlighted above are of general application. They apply to experts giving evidence at every tier of the legal system. In the specific sphere of the Upper Tribunal (Immigration and Asylum Chamber), these standards apply fully, without any qualification. They are reflected in the Senior President's Practice Direction No 10 (2010) which, in paragraph 10, lays particular emphasis on a series of duties. We summarise these duties thus (i) to provide information and express opinions independently, uninfluenced by the litigation; (ii) to consider all material facts, including those which might detract from the expert witness' opinion; (iii) to be objective and unbiased; (iv) to avoid trespass into the prohibited territory of advocacy; (v) to be fully informed; (vi) to act within the confines of the witness's area of expertise; and (vii) to modify, or abandon one's view, where appropriate.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
France Council of State decision	Association ELENA and others, Association FORUM REFUGIES-COSI Application nos 375474 and 375920 10.10.2014	Judgment denying the Applicants' appeal against the decision made by the Board of the Office for the Protection of Refugees and Stateless Persons (OFPRA) to include Georgia and the Republic of Albania in the list of safe countries of origin because, amongst other things, these countries are democratic institutions and are parties to the ECHR. 1. **Decision and reasoning regarding the inclusion in the list of safe countries of origin of each of the three countries:** **Albania:** The Council of State rejected the appeal with regards to the Republic of Albania because the country has been linked to the European Union since 2009 under a Stabilisation and Association Agreement; is a party to the ECHR; has democratic institutions, the functionings of which have been progressively restored since the post-election unrest of 2009; and amended its Penal Code, Civil Code and Code of Civil Procedure in 2012 and 2013 in order to strengthen the protection of fundamental freedoms. Anti-corruption legislation was also enacted during this time. The Council of State noted that some difficulties regarding the fight against organised crime still remain. **Georgia:** The Council of State rejected the appeal with regards to Georgia because the country has democratic institutions and political leaders are chosen in free and pluralist elections; is a party to the ECHR; and is committed to continuing to implement significant reforms of the political and judicial systems in order to strengthen the Rule of Law in accordance with the agreement with the European Union. The Council of State noted that some difficulties remain regarding the State's ability to assert its authority and, in particular, the specific situation in South Ossetia and Abkhazia. **Kosovo ([1]):** The Council of State granted the appeal with regards to the Republic of Kosovo because the country's institutions are still significantly supported by international organisations and missions; its political and social contexts were, at the time of the decision, unstable; and some segments of the population are subject to violence without sufficient protection by public authorities.	
United Kingdom, Upper Tribunal	*KS (benefit of the doubt)* [2014] UKUT 552 (IAC) 10.12.2014	Judgment concerning inter alia the benefit of the doubt in applications for international protection. Assessment in case of doubt — Article 4(5) QD (recast) — benefit of the doubt. **Interpretation of Article 4(5) QD (recast) and withholding of the benefit of the doubt from applicants, para. 85:** 'But (like Noll) we think it unwise to refer to Article 4(5) as reflecting or encapsulating a TBOD [benefit of the doubt] rule. In part that is because we think that the provision seeks primarily to identify one particular application of the lower standard of proof (which in our view affords a positive role for uncertainty). In part this relates to the point we have already emphasised, namely that this provision is limited to cases where there is a lack of corroboration: viz., "where aspects of the applicant's statements are not supported by documentary or other evidence" (chapeau to Article 4(5)); that on its face is more limited in scope than the notion as set out in paragraph 204 of the UNHCR Handbook (where the precondition is that "all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility"). In part is because whereas the notion is formulated in the UNHCR Handbook in defeasible and contingent terms, Article 4(5) sets out in mandatory terms four conditions which have to be cumulatively met in order for an applicant not to be required to substantiate his application. As such we think Article 4(5) (and paragraph 339L of the Rules) should be applied as it is without any gloss or reference to the UNHCR Handbook "analogue". We understand UNHCR's concern, as expressed in the 2013 CREDO study, that if not read in the light of the UNHCR Handbook, Article 4(5) could operate as a policy for withholding TBOD from asylum-seekers; but we consider that danger to be offset by (i) the fact that the ambit of Article 4(5) is limited to cases of non-corroboration/confirmation; and (ii) the fact that applicants benefit throughout the assessment of credibility from the lower standard of proof, which in the terminology of *Karanakaran* ensures that the entirety of that assessment affords a positive role for uncertainty.'	United Kingdom, Court of Appeal of England and Wales — *Karanakaran* v *Secretary of State for the Home Department,* [2000] 3 All ER

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

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Supreme Court	*R (on the application of Jamar Brown (Jamaica))* v *Secretary of State for the Home Department* [2015] UKSC 8 4.3.2015	Judgment on designation and assessment of a safe third country. Safe country of origin — designation — general absence of risk of persecution. **Paras 21-23:** '21. Section 94 is concerned with the return of unsuccessful asylum and human rights claimants. It is in that context that the Home Secretary may designate a state (or part of a state) only if satisfied that there is in general no serious risk of persecution of persons entitled to live there. I take section 94(5) in its natural meaning to refer to countries (or parts of countries) where its citizens are free from any serious risk of systematic persecution, either by the state itself or by non-state agents which the state is unable or unwilling to control. This is the effect of the words "in general" and "serious". I do not read the words "there is in general … no serious risk of persecution of persons, …" as meaning "there is no serious risk of persecution of persons in general", and therefore as intended to permit the designation of a state which systematically carries out or tolerates persecution provided that it is limited so as not to affect the large majority. I read the words "in general" as intended to differentiate a state of affairs where persecution is endemic, i.e. it occurs in the ordinary course of things, from one where there may be isolated incidents of persecution. 22. I am influenced by the fact that persecution within the meaning of the Refugee Convention will by its nature often be directed towards minorities (as Wilson J said in *R (Husan)* v *Secretary of State for the Home Department* [2005] EWHC 189 (Admin), para 55), and the great majority of asylum and human rights claimants belong to minorities of one kind or another. For a serious risk of persecution to exist in general, i.e. as a general feature of life in the relevant country, it must be possible to identify a recognisable section of the community to whom it applies, but to require it to be established also that the relevant minority exceeds x % of the population is open to several objections. The first is the absence of any yardstick for determining what x should be. If the Home Secretary was entitled to conclude that 10 % was insufficient, would the same apply to 15 %, 20 % or 25 %? It is no answer to say that it is a question of degree for the judgment of the Home Secretary, within a wide margin of appreciation, if there is simply no way of deciding it. Secondly, if it were possible to place a value on x, it is nevertheless hard to see any reason why it should make a difference whether the group represented, say, more than 20 % or only 15 %. Thirdly, in the case of many minority groups there will be no way of obtaining reliable information as to their total size for obvious reasons. Even without the risk of persecution, a person's sexuality is a matter which many would prefer to keep private, and to disclose something which carries with it a serious risk of persecution is to court trouble. 23. I am not persuaded by Mr Eadie's argument that it makes little or no difference to members of minority groups who are exposed to a serious risk of persecution whether the state has been designated under section 94(4). As Mr Stephen Knafler QC argued, although there may be a different outcome in some cases, the purpose of designation is that applicants from designated countries will normally be detained and fast tracked. In the present case, although the Home Secretary did not certify that the respondent's claim was clearly unfounded, he was previously detained as a claimant from a designated state. I would endorse Black LJ's comment at [2014] 1 WLR 836, para 44 that the designation of a state "changes the complexion of the analysis of the claim".'	United Kingdom, Administrative Court — *R (Husan)* v *Secretary of State for the Home Department,* [2005] EWHC 189 (Admin); UK — *R (JB Jamaica)* v *Secretary of State for the Home Department,* [2014] 1 WLR 836.
United Kingdom, Upper Tribunal	*AAW (expert evidence — weight)* Somalia [2015] UKUT 00673 (IAC) 5.11.2015	Judgment concerning inter alia the weight to be given to expert evidence. Standards for assessing expert evidence — objectivity — comprehensive review of material facts. **Weight to be given to expert evidence, para. 25:** 'A witness, if put forward as an expert witness, will not be treated as such if he or she does not meet the requirements demanded by the Senior President's Practice Direction. That does not mean that his or her evidence falls to be disregarded, but any opinion offered that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness is likely to be afforded little weight by the Tribunal. In particular, a witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an informed advocate for the case of one of the parties to the proceedings rather than an independent expert witness.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
United Kingdom, Upper Tribunal (Immigration and Asylum Chamber)	*OO (Gay Men) Algeria CG* [2016] UKUT 00065 (IAC) 4.2.2016	Judgment concerning ill-treatment of an applicant due to his/her sexual orientation. Evidence — real risk of persecution — prosecution for homosexual behaviour — Sharia law. **Paras 5-6**: '5.The Tribunal heard oral evidence from the appellant and from one of the two expert witnesses, Dr David Seddon. The Tribunal has had regard to written evidence from another country expert, Ms Alison Pargeter, and received oral and written evidence from Dr Ludovic Zahed who, although not presented as an expert witness, is someone who is well placed to express an informed view upon the matters we must consider, for the reasons we give below. The Tribunal has also had regard to a wide range of documentary evidence which is identified in the annex to this decision. '6. In support of his factual account of his experiences in Algeria and his claim to be a bisexual man, both of which are disputed by the respondent, the appellant relies upon a further range of evidence, including the expert evidence of Dr David Bell, a consultant psychiatrist who has examined issues concerning the appellant's mental health and, as will be relevant to our assessment of his credibility, how that impacts upon his ability to give oral evidence effectively and reliably.'	
United Kingdom, Upper Tribunal (Immigration and Asylum Chamber)	*JA (child and risk of persecution) Nigeria* [2016] UKUT 560 (IAC) 24.11.2016	Judgment. Children at risk of persecutory harm contrary to the UN Convention on the Rights of the Child in circumstances where a comparably placed adult would not be at such a risk. **Para. 16:** '16. But as the UNHCR has observed in its Guidelines, ill-treatment which may not arise to the level of persecution in the case of an adult, may do so in the case of a child, and the child's youth immaturity, vulnerability etc. will rightly be related to how that child experiences or fears harm.'	

Member State/court	Case name/reference/date	Relevance/keywords/main points	Cases cited
Ireland, Court of Appeal	*AO* v *Refugee Appeals Tribunal & ors* [2017] IECA 51 27.2.2017	Judgment. Evidence — forged documents — State's duty to investigate authenticity. **Para. 45:** […] 'A decision-maker is not obliged as a general rule to conduct his or her own investigations in order to vouchsafe the authenticity of a document relied on by an applicant for international protection, although there may be special circumstances where this is indeed required. While it is clear from the decision of the European Court of Human Rights in Singh v Belgium that Contracting States may be under such an obligation in particular cases where the authenticity of the documentation is critical and the implications for the claimants otherwise potentially grave, there is, however, no general rule to this effect. **Para. 46:** 'Contrary to the conclusion of the High Court in the present case, the Tribunal member cannot be faulted on this account. She plainly conducted a careful review of the documents relied on by the applicant and concluded for stated reasons that they were unlikely to be authentic. As I cannot say that the adverse credibility conclusions which she reached in the present case (whether so far as the plausibility of the applicant's narrative or the inauthentic nature of the documentary materials relied on by the applicant) were unreasonable in law, I would therefore allow the Minister's appeal.'	ECtHR — *Singh* v *Belgium*, Application no 33210/11; Ireland, High Court — *AO* v *Refugee Applicagtions Commissioner,* [2015] IEHC 253 17.4.2015; *AO* v *Refugee Appeals Tribunal,* [2015] IEHC 382. 16.6.2015; *IR v Minister for Justice & Equality,* [2009] IEHC 353; *Nya v Refugee Appeals Tribunal* 5.2.2009; *K* v *Minister for Justice & Equality,* [2011] IEHC 473 United Kingdom, Immigration and Appeal Tribunal — *RP (Proof of Forgery) Nigeria* [2006] UKIAT 00086; *OA (Alleged Forgery; Section 108 Procedures) Nigeria* [2007] UKIAT 97.

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