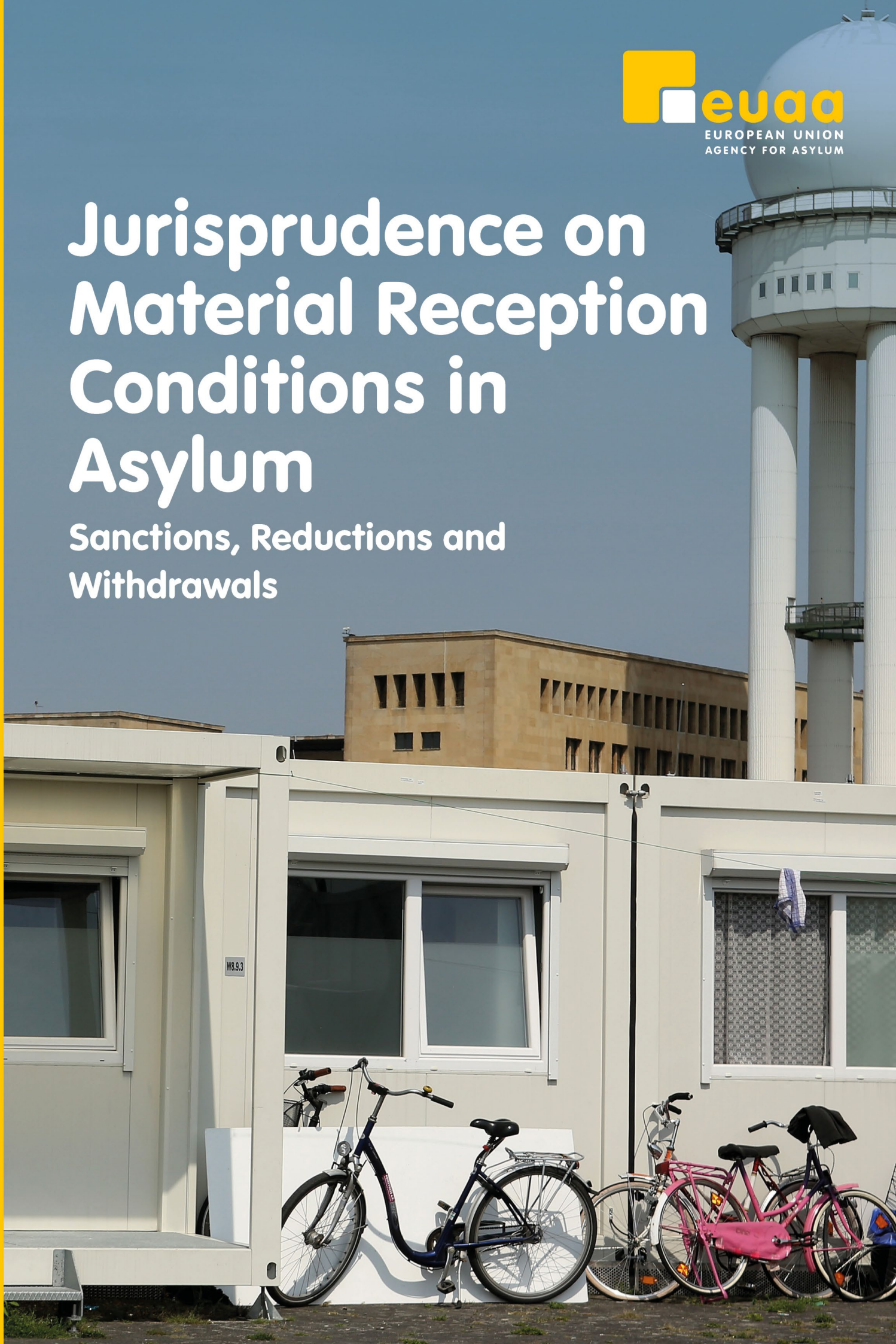
Analysis of case law from 2019-2024

November 2024

euaa
EUROPEAN UNION
AGENCY FOR ASYLUM

# Jurisprudence on Material Reception Conditions in Asylum

## Sanctions, Reductions and Withdrawals



EUROPEAN UNION AGENCY FOR ASYLUM

# Jurisprudence on Material Reception Conditions in Asylum – Sanctions, Reductions and Withdrawals

## Analysis of Case Law from 2019-2024

November 2024




Luxembourg: Publications Office of the European Union, 2024

PDF BZ-01-24-008-EN-N ISBN 978-92-9410-382-6 doi: 10.2847/4362060

# Contents

# List of abbreviations

| Term | Definition |
|---|---|
| **AsylbLG** | Asylum Seekers' Benefits Act (Germany) |
| **BFA** | Federal Office for Immigration and Asylum \| Bundesamt für Fremdenwesen und Asyl (Austria) |
| **CAS** | Extraordinary Reception Centre (Italy) |
| **CJEU** | Court of Justice of the European Union |
| **COA** | Central Agency for the Reception of Asylum Seekers (the Netherlands) |
| **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) |
| **ECHR** | European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **EU** | European Union |
| **EU Charter** | Charter of Fundamental Rights of the European Union |
| **EU+ countries** | Member States of the European Union and associated countries (Iceland, Norway and Switzerland) |
| **Fedasil** | Federal Agency for the Reception of Asylum Seekers (Belgium) |
| **HTL** | Extra Enforcement and Supervision Location (Handhavings- en Toezichtlocati, the Netherlands) |
| **RCD** | Reception Conditions Directive. 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) |
| **ROV** | Regulation on Withholding Benefits in Kind (Reglement onthouding verstrekkingen kamer, the Netherlands) |
| **SEM** | State Secretariat for Migration (Switzerland) |

# Note

The cases presented in this report are based on the EUAA Case Law Database, which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR).

The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the Latest updates (last ten cases by date of registration), Digest of cases (all registered cases presented chronologically by the date of pronouncement) and the Search page.

To reproduce or translate all or part of this report in print, online or in any other format, and for any other information, please contact: caselawdb@euaa.europa.eu

**To subscribe to the EUAA Quarterly Overview of Asylum Case Law, use this link:**
https://caselaw.euaa.europa.eu/pages/subscribe.aspx

# Methodology

This report presents judgments, decisions, orders, referrals for preliminary rulings and interim measures issued by national courts of EU+ countries, the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR) concerning sanctions, reductions or withdrawals of material reception conditions provided to asylum applicants. The selected jurisprudence from national courts and from the CJEU concerns the implementation of Article 20 of the recast Reception Conditions Directive (recast RCD).

The selected cases cover the period 2019 to 2024 to provide a comprehensive overview of main trends and challenges faced by national and European courts in determining the standards for reducing or withdrawing material reception conditions.

The cases are collected from various sources, including EUAA networks of asylum officers, judges, members of courts and tribunals, independent experts and civil society organisations. We are grateful for their time and effort in sharing this jurisprudence.

The selection of cases presented in this report is indicative rather than exhaustive, intended to highlight trends and common approaches at national and European levels, as well as various jurisprudential developments.

# Main highlights

The cases presented in this report provide important comparative information on how national administrations and courts of EU+ countries have implemented Article 20 of the recast Reception Conditions Directive (recast RCD) on reductions and withdrawals of material reception conditions.

As EUAA's Asylum Report 2024 underlines, reception authorities have noted an increase in applicants with disruptive behaviour over the past years, thus legislative changes and policy efforts were made to minimise the impact of such behaviour on the functioning of reception facilities. These changes were often introduced against the background of increased pressure on reception systems and stricter application of the rules on the entitlement to reception conditions.

In this context, the cases presented in this report shed light on how courts ensured that a dignified standard of living was maintained for applicants for international protection, including minors, who are sanctioned for serious breaches of the rules of accommodation and for seriously violent behaviour. The proportionality test employed in these cases accounts for the balance between the gravity and repetitiveness of the breaches committed and the impact of these sanctions on the applicant, considering an applicant's specific situation and their special needs (if any).

Where applicable, procedural guarantees provided to applicants undergoing the process of having their reception conditions reduced or withdrawn are also examined to show how this process can be improved by national authorities. In this regard, see also the standards and indicators of the EUAA Guidance on Reception, Operational Standards and Indicators.

- For the first time in 2019, the CJEU ruled on withdrawal of material reception conditions in the *Haqbin* judgment (C-233/18). The court clarified that, under the recast RCD, Article 20, sanctions involving the withdrawal of material reception conditions must be objective, impartial, reasoned and proportionate to the particular situation of the applicant and must, under all circumstances, ensure access to health care and a dignified standard of living. Sanctions cannot involve a temporary withdrawal of housing, food or clothing if they result in depriving the applicant of basic needs, undermining physical or mental health, or placing a person in a state of degradation incompatible with human dignity. For unaccompanied minors, sanctions must specifically account for the best interests of the child.

- In 2022, the CJEU interpreted the application of Article 20(4) and (5) of the recast RCD in a case involving the withdrawal of material reception conditions for seriously violent behaviour outside an accommodation centre. In the case, *Ministero dell'Interno v TO*

(C-422/21), the CJEU ruled that the concept of 'seriously violent behaviour' encompasses any such behaviour, irrespective of where it occurs.

- Most national judgments presented in this overview related to reducing or withdrawing material reception conditions due to serious breaches of accommodation centre rules or seriously violent behaviour, as provided in Article 20(4) of the recast RCD. Fewer cases addressed other reasons, such as abandoning the reception place (Article 20(1a) of the recast RCD), failure to comply with reporting duties (Article 20(1b) of the recast RCD) or concealing financial resources (Article 20(3) of the recast RCD).

- Following interpretation by the CJEU, several national courts overturned decisions to withdraw reception measures when they were deemed disproportionate, impaired a dignified standard of living and violated human dignity. National courts considered, for instance, that withdrawal was disproportionate when the applicant committed non-violent breaches of the rules of the reception centre, such as repeated refusals to comply with transfer orders to other reception centres or minor infractions like introducing unauthorised items in a reception centre. These violations were deemed insufficient to justify withdrawal due to their impact on the applicant's ability to meet basic needs, especially vulnerable applicants (e.g. faced with health problems or the risk of homelessness) and applicants with children.

- Reductions or withdrawals of material reception conditions for serious breaches of the rules of the accommodation centre and for seriously violent behaviour were confirmed when applicants exhibited severe misconduct, including repeated physical altercations, aggressive behaviour, substantial property damage, refusal to accept the specific accommodation centre designated for them or when several persistent violations, although minor, led to a cumulative effect and became significant when viewed collectively, affecting the environment of the reception centre. National courts also ruled that a reduction of reception conditions is more appropriate than full withdrawal for minor infractions, such as a brief absence from the reception centre.

- Two judgments were identified on the withdrawal of material reception conditions due to abandoning the place of residence and failure to comply with reporting duties. In these cases, the measures were considered disproportionate and the courts noted that less severe actions would have been appropriate. Reductions or withdrawals of material reception conditions due to a failure to comply with reporting duties were annulled by national courts when it was due to illness or a lack of financial resources for travel costs.

- The withdrawal of material reception conditions due to allegedly concealing financial resources were overturned by national courts which emphasised the need to uphold human dignity and ensure access to essential services, particularly in cases of severe hardship such as a risk of homelessness.

- Instead of fully withdrawing material reception conditions, courts stressed that authorities should take a gradual approach starting with less severe measures (e.g. warnings) and use alternative measures which safeguard basic standards of living. In the *Haqbin* case, the CJEU held that alternative sanctions could include placing the

applicant in a separate part of the reception centre, prohibiting contact with certain residents or transferring them to another facility. National courts also noted, as less severe alternatives, the possibility to charge for an applicant's stay in a reception centre depending on their income level or temporarily excluding them from activities at the centre.

- Courts considered that, while taken individually, persistent violations may not be serious enough, but their cumulative effect can become significant and affect the reception centre environment, potentially leading to sanctions such as the reduction or withdrawal of material reception conditions of ancillary type (e.g. pocket money for minors). The application of such measures is highly contingent on the individual circumstances of the applicant, including mental health and vulnerability, balanced against the gravity and repetitiveness of the breaches. In cases involving minors, courts may also refer to the authority's obligation to ensure an adequate standard of living for the minor's overall physical, mental, emotional, moral and social development.

- In the context of decisions on Dublin transfers, courts highlighted that the reduction of material reception conditions cannot be justified solely on the basis of the applicant's alleged non-compliance with transfer decisions, such as a refusal to sign a voluntary transfer declaration. Decisions must clearly demonstrate a breach of duty and consider the reasonableness of transferring applicants to the responsible Member State, ensuring that such measures are both justified and proportionate.

- National courts emphasised that authorities must offer adequate information to individuals at risk of having their reception conditions withdrawn, including timely notification of the procedure's initiation and clear communication of previous sanctions, such as warnings, so that they understand their obligations and the consequences of non-compliance.

# 1. Introduction and legal framework

Material reception conditions are defined in the recast RCD, Article 2(g) as encompassing housing, food and clothing (provided in kind, as financial allowances or vouchers, or as a combination thereof), as well as a daily expenses allowance.

Under specific circumstances outlined in Article 20 of the recast RCD, Member States may reduce or, in exceptional cases, withdraw material reception conditions. This provision is optional and affords considerable discretion to the competent authority due to its non-specific wording. Nonetheless, this discretion is constrained by the obligation to ensure uninterrupted access to healthcare as mandated by Article 19 and to maintain a dignified standard of living. Additionally, Article 20(5) stipulates that any reduction or withdrawal of benefits must adhere to the principle of proportionality, thereby safeguarding the fundamental right to human dignity as enshrined in Article 1 of the EU Charter. This is further reinforced by Recital 35, which underscores the directive's commitment to upholding human dignity throughout the process.

## Recast Directive 2013/33/EU of 26 June 2013

**Article 20 - Reduction or withdrawal of material reception conditions**

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:
(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or
(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or
(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

In relation to cases (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

Article 26 of the recast RCD regulates the appeal process: specifically, paragraph 1 mandates that Member States must ensure that decisions on granting, withdrawing or reducing benefits – as well as those taken under Article 7 that affect applicants individually – may be appealed, with the guarantee that, at least in the last instance, the possibility of an appeal or review, in fact and in law, before a judicial authority is provided.

With the adoption of the Pact on Migration and Asylum in 2024, the new recast Reception Conditions Directive 2024/1346 of 14 May 2024 introduced several key changes that must be transposed into national law by 12 June 2026. Notably, Article 2(7) broadens the definition of material reception conditions by explicitly including personal hygiene products.

Article 23 introduces significant modifications to the provisions on the reduction or withdrawal of material reception conditions:

i) Member States can reduce or withdraw the daily expense allowance for applicants who are required to be present on their territory, in accordance with Article 17(4) of the Asylum and Migration Management Regulation 2024/1351 of 14 May 2024.

ii) The withdrawal of other material reception conditions is permitted only when the applicant has seriously or repeatedly breached the rules of the accommodation centre or has behaved in a violent or threatening manner, as outlined in Article 23(2)(e).

iii) All other grounds specified in Article 23(2)(a), (b), (c), (d) and (f) allow only the reduction of material reception conditions, thereby excluding the possibility of a withdrawal.

iv) Regarding the current ground related to abandonment of a place of residence, the new provision significantly broadens its scope. The revised text permits the reduction of material reception conditions if an applicant leaves any geographical area where they are allowed to move freely under Article 8 or absconds without proper authorisation from the competent authority, as specified in Article 9.

v) The current directive specifically addressed a reduction of material reception conditions due to unjustified delays in lodging an initial application. The new recast RCD notes that the daily expense allowance and other benefits may be reduced for not cooperating with the competent authorities and non-compliance with procedural requirements.

vi) While currently serious breaches of accommodation centre rules can only lead to sanctions, the new directive allows for both a reduction and withdrawal of material reception conditions in such cases. The 2024 recast RCD introduces the concept of ‘repeated’ violations and explicitly addresses instances of ‘threatening behaviour’ within accommodation centres.

vii) The 2024 recast RCD includes a new provision for reducing the daily expense allowance and other benefits if an applicant fails to participate in compulsory integration measures, unless the failure is due to circumstances beyond their control, or if the applicant abandons a geographical area where they can move freely or if they abscond.

viii) The new recast RCD provides a more detailed and specific requirement when reducing or withdrawing material reception conditions compared to the broader

wording of the 2013 RCD. Article 23(4) stipulates that Member States must ensure access to healthcare in accordance with Article 22 and uphold a standard of living that meets international obligations and EU law, including the EU Charter of Fundamental Rights. This replaces the current 'dignified standard of living' provided in Article 20(5) of the 2013 recast RCD.

## Directive (EU) 2024/1346 of 14 May 2024

**Article 23 - Reduction or withdrawal of material reception conditions**

1. With regard to applicants who are required to be present on their territory in accordance with Article 17(4) of Regulation (EU) 2024/1351, Member States may reduce or withdraw the daily expenses allowance.

If duly justified and proportionate, Member States may also:

(a) reduce other material reception conditions, or

(b) where paragraph 2, point (e), applies, withdraw other material reception conditions.

2. Member States may take a decision in accordance with paragraph 1 where an applicant:

(a) abandons a geographical area within which the applicant is able to move freely in accordance with Article 8 or the residence in a specific place designated by the competent authority in accordance with Article 9 without permission, or absconds;

(b) does not cooperate with the competent authorities, or does not comply with the procedural requirements established by them;

(c) has lodged a subsequent application as defined in Article 3, point (19), of Regulation (EU) 2024/1348;

(d) has concealed financial resources, and has therefore unduly benefitted from material reception conditions;

(e) has seriously or repeatedly breached the rules of the accommodation centre or has behaved in a violent or threatening manner in the accommodation centre; or

(f) fails to participate in compulsory integration measures, where provided or facilitated by the Member State, unless there are circumstances beyond the applicant's control.

3. Where a Member State has taken a decision in a situation referred to in paragraph 2, points (a), (b) or (f), and the circumstances on which that decision was based cease to exist, it shall consider whether some or all of the material reception conditions withdrawn or reduced may be reinstated. Where not all material reception conditions are reinstated, the Member State shall take a duly justified decision and notify it to the applicant.

4. Decisions in accordance with paragraph 1 of this Article shall be taken objectively and impartially on the merits of the individual case and shall state the reasons on which they are based. Decisions shall be based on the particular situation of the applicant, especially with regard to applicants with special reception needs, taking into account the principle of proportionality. Member States shall ensure access to health care in accordance with Article 22 and shall ensure a standard of living in accordance with Union law, including the Charter, and international obligations for all applicants.

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in a situation referred to in paragraph 2.

In the new RCD, Article 29 covers appeals and expands the scope by including decisions on permissions under Article 8(5) (allowing temporary leave for urgent family reasons or necessary medical treatment) and decisions under Article 9 (regulating restrictions on the freedom of movement), in addition to decisions on the granting, withdrawal or reduction of benefits.

Finally, according to Article 21 of the new RCD, a decision to transfer an applicant to the Member State responsible in accordance with the Asylum and Migration Management Regulation 2024/1351 must state that the relevant reception conditions have been withdrawn so that the applicant is entitled only to the reception conditions provided in the Member State in which they are required to be present. Nonetheless, Member States must ensure a standard of living in accordance with EU law.

# 2. CJEU standard-setting jurisprudence

As previously noted, Article 20(4) of the recast RCD introduces a degree of ambiguity regarding the measures that may be applied to limit material reception conditions for asylum applicants. Consequently, Member States have a wide range of discretion in interpreting and enforcing these measures within their national legal frameworks.

The CJEU addressed this issue in two rulings concerning measures imposed for serious breaches of reception centre rules and for seriously violent behaviour outside of the reception centre. These judgments clarified the notion of sanctions and seriously violent behaviour, along with the requirements and principles that must be upheld. The CJEU affirmed in both cases that measures affecting housing, food or clothing cannot be imposed if they deprive the applicant of their ability to meet essential needs, emphasising that any action must respect the principles of proportionality and human dignity.

The CJEU has not ruled on any of the other provisions of Article 20 of the recast RCD, while one referral for a preliminary ruling is still pending (registered under C-184/24) on whether material reception conditions can be withdrawn under Article 20 of the recast RCD when the conditions for being granted reception conditions are no longer met. Another referral for a preliminary ruling is currently pending (registered under C-621/24) on whether, in the context of a Dublin transfer, the provision of only basic needs – such as food, accommodation and healthcare – complies with the recast RCD; and whether, in the case of a subsequent application previously lodged in another Member State, restrictions on reception conditions are permissible.

## 2.1. *Haqbin* v *Belgium*

The CJEU interpreted for the first time Article 20(4) and (5) of the recast RCD in November 2019 in the case of *Zubair Haqbin v Belgium, Federal agency for the reception of asylum seekers (Federaal Agentschap voor de opvang van asielzoekers)* (C-233/18). The case concerned a national of Afghanistan who entered Belgium as an unaccompanied minor and requested international protection in 2015. In 2016, Mr Haqbin was involved in a brawl at a reception centre, which led to his arrest by the police on the grounds of being one of the alleged instigators. He was released the following day. Subsequently, he was excluded from material support in a reception facility for 15 days, and he was later assigned to a new centre. An appeal before the Labour Court of Antwerp was dismissed, and a similar decision by the Labour Court of Brussels was confirmed. The latter judgment was subsequently brought before the referring court, the Higher Labour Court of Brussels.

The CJEU ruled on the scope of Member States to determine sanctions under Article 20(4) of the recast RCD when an applicant is guilty of serious breaches of the rules of the accommodation centre or of seriously violent behaviour. It held that this provision, considering Article 1 of the EU Charter, does not allow Member States to withdraw material reception

conditions related to housing, food or clothing, even temporarily. Moreover, the court clarified that the sanctions referred to in Article 20(4) of the recast RCD may, in principle, concern material reception conditions. Such sanctions must be objective, impartial, reasoned, proportionate and must ensure a dignified standard of living, as required by Article 20(5) of the directive. However, the withdrawal, even temporary, of the full set of material reception conditions or material reception conditions relating to housing, food or clothing violate the requirement to ensure a dignified standard of living for the applicant. Such a sanction would prevent the applicant from meeting basic needs and fail to comply with the proportionality requirement. The court affirmed that Member States must ensure that the sanctions imposed do not undermine the applicant's dignity, considering their specific situation and all relevant circumstances.

The court also noted that Member States may implement alternative measures, such as placing the applicant in a separate part of the accommodation centre or transferring them to another centre. Finally, the court concluded that when imposing sanctions on unaccompanied minors, national authorities must consider the minor's vulnerability and ensure proportionality. Sanctions should align with the best interests of the child as outlined in Article 24 of the EU Charter.

## 2.2. *Ministero dell'Interno* v *TO*

In August 2022, the CJEU again interpreted Article 20(4) and (5) of the recast RCD in *Ministero dell'Interno* v *TO* (C-422/21), where material reception conditions were withdrawn for seriously violent behaviour outside of an accommodation centre. The case concerned an applicant for international protection who was housed in a temporary accommodation centre and received material reception conditions as outlined in Legislative Decree No 142/2015. In 2019, the applicant verbally and physically assaulted police officers at a train station and failed to submit observations to the Prefecture of Florence about the incident. Consequently, the prefecture withdrew his material reception conditions based on Articles 14(3) and 23(1)(e) of Legislative Decree No 142/2015.

The applicant's appeal was upheld, and the Regional Administrative Court of Toscana annulled the withdrawal decision, finding that Article 23(1e) of Legislative Decree No 142/2015 was contrary to EU law as interpreted by the CJEU in the *Haqbin* judgment. The court held that this provision improperly made the withdrawal of material reception conditions the sole possible sanction in such circumstances. The Ministry of the Interior brought an appeal against the Regional Administrative Court decision before the Council of State, which decided to stay the proceedings and refer questions to the CJEU for a preliminary ruling on the interpretation of Article 20(4) of recast RCD when seriously violent behaviour occurred outside of the accommodation centre. The Italian court further asked, in essence, whether Article 20(4) and (5) of the recast RCD must be interpreted as precluding the imposition on an applicant for international protection who has engaged in seriously violent behaviour against public officials of a sanction consisting of a withdrawal of material reception conditions, within the meaning of Article 2(f) and (g) of that directive.

In its considerations, the CJEU referred to its *Haqbin* judgment and the principles that were established therein. The court ruled that the concept of seriously violent behaviour encompasses any such behaviour, irrespective of where it occurs. Therefore, it confirmed that Article 20(4) of the recast RCD must be interpreted as applying to seriously violent behaviour occurring also outside of an accommodation centre. Moreover, the CJEU held that Article 20(4) and (5) of the recast RCD must be interpreted as precluding the imposition of a sanction involving the withdrawal of material reception conditions on an applicant for international protection who has engaged in seriously violent behaviour against public officials, within the meaning of Article 2(f) and (g) of that directive relating to housing, food or clothing, insofar as it would deprive the applicant of the ability to meet their most basic needs. The imposition of other sanctions under Article 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Article 20(5), including the principles of proportionality and respect for human dignity.

# 3. ECtHR standard-setting jurisprudence

Due to its jurisdictional scope, the ECtHR does not rule directly on the reduction or withdrawal of material reception conditions under the EU legislative framework. Nevertheless, its landmark judgment in *M.S.S. v Belgium and Greece* (No 30696/09) holds considerable significance in the broader context of asylum reception conditions, as it offers a comprehensive examination of the standards required for adequate living conditions.

The ECtHR emphasised that authorities must guarantee the basic needs of asylum applicants, such as adequate housing, food and clothing, to uphold their human dignity. By highlighting the severe consequences of inadequate reception conditions, such as extreme poverty and homelessness, this judgment underscores the necessity of meeting applicants' fundamental needs and ensuring effective implementation of procedural safeguards.

In January 2011, the ECtHR ruled in *M.S.S. v Belgium and Greece* that Belgium violated Articles 2, 3 and 13 of the ECHR by transferring an Afghan applicant to Greece, where he faced inhuman conditions, and that Greece violated Articles 3 and 13 by failing to provide adequate living conditions and procedural safeguards, resulting in severe hardship and homelessness. The case concerned an Afghan applicant who was transferred from Belgium to Greece in June 2009, even though in the appeal against his transfer he cited potential ill treatment and procedural issues in Greece. He faced harsh detention conditions, homelessness and attempted to leave Greece multiple times.

The court acknowledged the applicant's particularly serious situation in Greece, including months of extreme poverty, an inability to meet his most basic needs and a general sense of insecurity. The court found that the notification requiring the applicant to register his address at the Attica police headquarters was ambiguous and inadequate. It determined that he was not properly informed about any available accommodation options, if such options existed. Using data on insufficient capacity in reception centres in Greece, the court questioned how the authorities could overlook the applicant's homelessness. Given the severe insecurity and vulnerability faced by asylum seekers in Greece, the court held that the authorities should not have waited for the applicant to seek help for his essential needs. It also noted that even though a place in a reception centre was eventually found, the authorities failed to inform him. Moreover, the asylum seeker's card offered no practical benefit due to severe administrative barriers and personal challenges, such as language and a lack of support.

In view of the obligations of Greece under the recast RCD, the court found that the authorities did not adequately address the applicant's vulnerability or take necessary measures to alleviate his severe hardship, violating Article 3 of the ECHR. The court held that by transferring the applicant to Greece, the Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment in violation of Article 3 of the ECHR.

On 29 August 2024, the ECtHR communicated the case *Abbas and Others* v *Italy* (Nos 57842/22 and 4722/23) which concerned the applicants' living conditions following their temporary expulsion from the Gradisca d'Isonzo reception centre due to various incidents. The applicants appealed the administrative decision before the Regional Administrative Court of Friuli Venezia Giulia, which ordered the suspension of the expulsion orders and quashed the decisions. Both applicants filed requests for enforcement of the respective judgments, which were subsequently complied with by the prefecture. They also submitted requests for interim measures under Rule 39 of the Rules of the Court. The applicants complained under Article 3 of the ECHR that, since their eviction from the reception centre premises and until relocation, they slept in makeshift beds or in abandoned buildings and had no regular access to food, hygienic services and adequate medical assistance. The ECtHR asked the government whether domestic remedies had been exhausted and whether the applicants had been subjected to inhumane or degrading treatment under Article 3 of the ECHR.

# 4. National court rulings

Several national courts across EU+ countries have ruled on cases where national authorities imposed sanctions, reductions and withdrawals of material reception conditions, proposing interpretations and highlighting various challenges. In the broader context of reception and the complexities faced by Member States in ensuring adequate reception conditions – especially within the framework of systems that are under significant strain, a recent case of *Irish Human Rights and Equality Commission* v *Minister for Children, Equality, Disability, Integration and Youth & Ors* reinforced the safeguards which must be in place. This case underscored the critical importance of guaranteeing adequate accommodation for applicants, emphasising that failure to do so not only jeopardises their basic needs but also fundamentally undermines their inherent dignity.

## 4.1. Serious breach of accommodation centre rules and seriously violent behaviour

Under Article 20(4) of the 2013 recast RCD, Member States may impose sanctions for serious breaches of accommodation centre rules or for seriously violent behaviour by applicants for international protection. The recast RCD does not explicitly define the nature of these sanctions, leaving considerable discretion to national authorities. As a result, practices vary across Member States, as reflected in the jurisprudence in this report.

In some instances, national courts have overturned measures when the breaches were not deemed severe enough to warrant such extreme actions, particularly when the measures compromised essential living conditions and infringed on human dignity. Conversely, in other cases, courts have upheld measures when the breaches were considered serious enough and the authority's actions were viewed as proportionate.

Specifically, courts examined whether authorities adopted a gradual approach when imposing sanctions, starting with less severe measures such as warnings and discussions before resorting to more severe actions. Courts also addressed cases where the withdrawal of reception measures was not justified by violent behaviour directed at people or property.

Moreover, courts considered the cumulative impact of persistent violations, which, while not serious if taken individually, can become significant when viewed collectively and affect the reception centre environment, potentially leading to sanctions such as the reduction or withdrawal of material reception conditions of ancillary type. The application of such measures is highly contingent on the individual circumstances of the applicant, including their mental health and vulnerability, balanced against the gravity and repetitiveness of the breaches. For example, suspending pocket money for an unaccompanied minor was deemed appropriate in some cases, provided it did not hinder their ability to meet essential needs or adversely affect their overall physical, mental or social development.

Furthermore, courts assessed the legality and conditions of the use of special reception centres for applicants exhibiting disruptive behaviour. They generally concluded that, while such measures impose significant restrictions, they do not necessarily constitute a deprivation of liberty if sufficient guarantees are provided to ensure basic rights and freedoms.

Lastly, courts examined the use of detention as a sanction for serious breaches of the rules of accommodation centres, following the CJEU's judgment in *Haqbin*, which held that Article 20(4) and (5) of recast RCD does not preclude the use of detention as a sanction for protection of national security or public order, provided that the relevant guarantees under Articles 8-11 of the recast RCD are provided.

#### 4.1.1. Reducing or withdrawing material reception conditions as a sanction

***Austria***

In June 2024, the Federal Administrative Court of Austria upheld the suspension of material reception conditions in cash for a Syrian minor in *Applicant v Federal Office for Immigration and Asylum (BFA)*. The applicant was accommodated in a care facility for unaccompanied minor asylum applicants, where the house rules were provided to him in a language he could understand. On 17 February 2023, he was granted the opportunity to attend a hearing about his violations of the house rules through a written interrogation by the BFA. The applicant repeatedly violated the house rules, was expelled twice and caused EUR 1,500 in damages to window panes. On 14 March 2023, he was involved in a physical altercation with another asylum applicant, resulting in a ban from the premises. On 31 July 2023, he was given the opportunity to submit a written statement about the violations. Because of ongoing breaches and aggressive behaviour, the BFA suspended his pocket money from 1 August to 31 October 2023. The Federal Administrative Court upheld this decision. Subsequently, the applicant continued to violate house rules, including missing mandatory checks and disturbing the peace at night, despite being informed that further violations could lead to additional restrictions or withdrawal of basic services. On 12 March 2024, he was questioned again by the BFA and he denied responsibility. Due to persistent misconduct, the BFA suspended his pocket money for the remainder of his stay. The applicant appealed this decision.

The Federal Administrative Court determined that the numerous and severe violations of house rules, committed within a short period, constituted gross misconduct, which significantly complicated the maintenance of order and disrupted the coexistence of other applicants, as defined in Section 2(4) of the Basic Welfare Support Act (GVG-B). Moreover, the court held that decisions regarding unaccompanied minors must prioritise the best interests of the child and adhere to the principle of proportionality. Following the CJEU *Haqbin* judgment (C-233/18, 12 November 2019), the court reiterated that when imposing sanctions under Article 20(4) of the recast RCD, including restrictions on services, special attention must be given to the minor's situation and the principle of proportionality, considering factors such as the minor's well-being, social development and background. The court held that suspending pocket money would not hinder the applicant's ability to meet essential needs or impact his overall physical, mental, emotional, moral and social development or adequate standard of living. It

concluded that the measure taken by the authority did not negatively impact or violate the applicant's well-being, also given that he was nearing adulthood.

The court noted that neither warnings nor explanatory conversations improved the applicant's behaviour, who continued to violate house rules even after restrictions on basic services were imposed. It also noted that the applicant was heard by the BFA on 12 March 2023, meeting the requirements for pocket money withdrawal under Section 2(6) of the GVG-B. Thus, the court found the measure legally justified and proportionate, and dismissed the appeal.

Similarly, in February 2023, in *Applicant v Federal Office for Immigration and Asylum (BFA)*, the Federal Administrative Court confirmed the suspension of material reception conditions in cash for a Syrian minor, deeming it proportionate due to repeated serious violations of house rules. The Syrian minor requested international protection on 14 July 2022 and was accommodated in a federal care facility. The house rules were provided to him in Arabic, his mother tongue. On 10 August 2022, the applicant was formally admonished to adhere to the house rules. Despite this, from 20 July to 22 August 2022, he committed ten violations, including absenteeism, smoking, unauthorised entry and misconduct. On 22 August 2022, he engaged in verbal and physical altercations with another asylum applicant, resulting in injuries to the other asylum applicant and a supervisor.

Criminal proceedings under Sections 83 and 107 of the Austrian Criminal Code (StGB) were discontinued because, according to Section 6 of the Juvenile Court Act (JGG), continuing the prosecution was deemed inappropriate for the minor involved. After being transferred to another facility on 22 August and 8 September 2022, he continued to breach the rules, leading to administrative criminal proceedings for aggressive behaviour on 20 January 2023. Meanwhile, on 25 August 2022, the basic allowance previously granted to the applicant was restricted, and he did not receive pocket money from 1 September 2022 to 31 December 2022. This decision was based on his repeated violations of the house rules and the injuries he caused to others. The applicant challenged the decision before the Federal Administrative Court, arguing that the 4-month withdrawal of pocket money was not proportionate.

The Federal Administrative Court determined that the numerous and severe violations of house rules, committed within a short period, constituted gross misconduct, which significantly complicated the maintenance of order and disrupted the coexistence of other guests, as defined in Section 2(4) of the GVG-B. The court noted that the applicant repeatedly breached house rules despite being aware of them. After a written warning, he continued to ignore the smoking ban, arrive late, disrupt nighttime rest and act aggressively toward caregivers and other asylum seekers. The court clarified that while individual violations, such as smoking, may not significantly disturb the facility, the overall pattern of behaviour, especially the violent incident, was likely to severely impact the facility's environment. It concluded that the accumulation of these violations over a few months posed a persistent risk to the facility's communal harmony.

Regarding proportionality, the court determined that while some individual violations, like breaches of curfew or smoking, may seem minor, the persistent nature of these violations demonstrated a disregard for the facility's authority despite multiple admonitions. The court found that this ongoing behaviour showed a lack of intent to change, justifying the need for

proportional responses. Moreover, the court affirmed that decisions regarding unaccompanied minors must prioritise the best interests of the child and adhere to the principle of proportionality. Following the CJEU *Haqbin* judgment, the court reiterated that when imposing sanctions under Article 20(4) of the recast RCD, including restrictions on services, special attention must be given to the minor's situation and the principle of proportionality, considering factors such as the minor's well-being, social development and background.

The applicant, citing the same judgment, argued that restrictions on basic services should not result in extreme material hardship that prevents meeting essential needs or maintaining a dignified standard of living. In this regard, the court found that the applicant was fully covered by the basic care system and adequately provided for. The claim that reduced pocket money impaired the ability to meet essential needs was dismissed. The court found that, given the frequency and seriousness of the offenses, as well as the applicant's young age, a 4-month withdrawal of pocket money was a proportionate measure. Therefore, it dismissed the appeal as unfounded.

In July 2023, in *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, the Federal Administrative Court overturned the withdrawal of material reception conditions imposed following a singular incident of domestic violence, deeming the measure disproportionate. The applicant, a national of Afghanistan, was accommodated with his wife and three children at the Mariabrunn federal care facility. A domestic violence incident occurred, during which he was accused of assaulting his wife and damaging property in front of their children. The police responded with protective measures, including a ban on entering the residence, which was later lifted when the family relocated, as well as a temporary weapons ban that remained in effect. Following the incident, the BFA withdrew the applicant's material reception support under Section 2(4) of the Federal Basic Care Act (GVG-B).

Upon appeal, the Federal Administrative Court acknowledged that the applicant had committed a dangerous act against his wife's health. However, it underscored that specific evidence was required under Section 2(4)(3) of the GVG-B to indicate a likelihood of further violent acts, and it found no basis for this assumption. Testimonies from reporting officers indicated that the applicant posed no ongoing threat, describing him as distressed during the incident. This was corroborated by his statements during questioning at the BFA, which revealed no intentions of reoffending, contradicting the BFA's concerns about potential future violence.

The court also highlighted that the applicant's behaviour following the incident did not demonstrate a pattern of aggression, as no subsequent incidents were reported. It pointed out that the family vacated the accommodation facility shortly after the incident, and the minor damage caused did not threaten other residents or significantly violate house rules. Thus, the court ruled that the authorities failed to meet the necessary threshold for a complete withdrawal of assistance under Section 2(4) of the GVG-B. It concluded that the complete withdrawal of support violated the recast RCD, which mandates that decisions on support withdrawal must be made in an individual, objective and proportional manner, ensuring that sanctions do not undermine the dignity and basic needs of individuals.

The court noted that less severe measures, such as a temporary restriction on benefits or a reduction in pocket money, would have been more appropriate and would have better addressed the applicant's conduct, while still providing him with the necessary support to maintain a dignified living standard.

In conclusion, the appeal was upheld, and the court ordered a 6-month suspension of pocket money, coupled with violence prevention counselling for the applicant. These measures were deemed proportionate and appropriate, taking into account the specifics of the case and the applicant's circumstances, while still aiming to promote behavioural change and prevent future incidents.

***Italy***

In March 2024 in *AF, and BF* v *Ministero dell'Interno – U.T.G. – Prefettura di Milano*, the Regional Administrative Court of Lombardia referred a question to the CJEU for a preliminary ruling on the recast RCD. The case concerned the withdrawal of reception conditions due to the applicant's repeated refusal of being transferred to another accommodation, which was ordered by the administrative authority for organisational reasons.

The decision was based on several factors, including the applicant's violent behaviour and that the accommodation designed for four people when only the applicant and his child were residing there. The main reason for the withdrawal, however, was the applicant's repeated refusal to comply with transfer orders issued by the administrative authority for organisational reasons. The applicant had refused these transfers on the grounds that the child was studying near their current accommodation centre. Additionally, the applicant contended that the decision did not consider their status, and that of the child, as vulnerable persons. He argued that if the reception conditions were withdrawn, he would be unable to meet the basic needs of himself and the child, in violation of Article 20 of the recast RCD, as interpreted by the CJEU in its *Haqbin* and *Ministero dell'Interno* v *TO* judgments.

The Regional Administrative Court of Lombardia submitted the following question to the CJEU for a preliminary ruling:

> "Does Article 20 of the recast RCD and the principles set out by the CJEU in its judgments in *Zubair Haqbin* v *Belgium* (C-233/18, 12 November 2019) and in *Ministero dell'Interno* v *TO* (C-422/21, 1 August 202) preclude national legislation which permits, following a reasoned individual assessment, relating also to the necessity and proportionality of the measure, withdrawal of reception, not for sanctioning reasons, but because the conditions for being granted it are no longer met, in particular, on account of the foreign national's refusal, on grounds which do not relate to covering basic vital needs and protecting human dignity, to agree to the transfer to another accommodation centre, designated by the administrative authority on account of objective organisational needs and guaranteeing, under the responsibility of the administrative authority itself, that the material reception conditions equivalent to those enjoyed at the centre of origin will be maintained, where the refusal to transfer and subsequent decision ordering the withdrawal place the foreign national in the position of being unable to meet basic needs of personal and family life?"

The case is yet to be decided by the CJEU (currently registered under C-184/24).

In July 2023, in *Applicant v Ministry of the Interior*, the Regional Administrative Court of Campania requested the Prefecture of Benevento to pay pecuniary compensation for withdrawing material reception conditions provided in cash due to a breach of the rules of the centre. The Nigerian applicant had his reception measures revoked by the prefect following a notification from the manager of the reception centre due to his non-compliance with facility rules. After 4 months, the Regional Administrative Court of Campania suspended the decree of withdrawal, but the staff of the reception centre did not enforce it.

The applicant claimed that the withdrawal of reception conditions was unlawful, arguing that his behaviour lacked the necessary and objective severity to justify the termination of the reception measures. He sought compensation for the damage caused by failing to reinstate his reception conditions, which exposed him to degrading living conditions during the COVID-19 pandemic. He also requested compensation for pecuniary damage equivalent to the value of material reception conditions not received in cash for 493 days, from the date the reception measures were revoked until the date the decision was overturned.

The court found the withdrawal of reception conditions unlawful, as it violated the principle of proportionality. It considered that such measures should only be taken when the conduct reasonably justifies ending the reception measures and must be a last resort due to the significant impact on the individual's needs. It noted that, according to the documentation submitted, the applicant had repeatedly introduced mattresses, old clothes and alcohol into the building, but had not engaged in violent conduct against people or property. It considered that the public administration took a disproportionate measure to withdraw reception measures.

Additionally, the court noted that the reception centre failed to execute the order to suspend the withdrawal of reception conditions. Consequently, it ordered the public administration to pay the applicant compensation for both pecuniary and non-pecuniary damages resulting from the withdrawal of reception conditions.

In February 2021, in *Ministero dell'Interno, Commissariato del Governo per la Provincia Autonoma di Bolzano v Applicant*, the Council of State confirmed the withdrawal of reception conditions for an applicant involved in serious acts contrary to public interest. The prefecture revoked the reception measures under Article 23(1)(e) of Legislative Decree No 142/2015 due to the applicant's repeated violations of internal rules of the reception centre, including unauthorised nighttime absences (documented with eight written warnings). Additionally, during a check near Bolzano Station, the applicant was found in possession of five packets of cocaine and EUR 130, likely proceeds from drug dealing. This led to the applicant being referred to the judicial authority for drug-related offenses. The applicant contested the withdrawal decision before the Regional Administrative Court of Bolzano, which annulled it due to the failure to communicate the initiation of the procedure, in violation of Article 7 of Law No 241/1990.

The court found that the claimed urgency related to the applicant's potential danger to public safety did not justify the procedural omission of informing the applicant about the initiation of the procedure. It also held that the withdrawal decision failed to clearly specify the violations and lacked evidence that the applicant was properly notified of the warnings.

Subsequently, the Ministry of the Interior appealed before the Council of State. The council affirmed that, in this context, the procedural error of failing to notify the start of the procedure does not invalidate the case if the evidence and seriousness of the facts suggest that the missing information could not have changed the outcome of the administrative decision. It further acknowledged the unlawful conduct attributed to the applicant, supported by video evidence and laboratory tests showing the significant danger of the seized narcotic substance, with no defensive evidence from the applicant to counter these findings. The council clarified that drug dealing, especially with serious indicators as in this case, is grounds for revoking reception measures under Article 23(1)(e) of Legislative Decree No 142/2015, as it is incompatible with the foreigner's stay in the accommodation facility.

Regarding the previously alleged violations of reception centre rules, the council found that, while they reinforced the case, they did not alter the overall justification for withdrawing reception conditions. Consequently, it deemed the withdrawal to be well reasoned and proportionate. Thus, the council upheld the appeal and overturned the first-instance judgment.

***Netherlands***

In January 2020, in *Applicant* v *Central Agency for the Reception of Asylum Seekers*, the District Court of The Hague seated in Groningen granted interim relief to an applicant, ruling that withdrawing reception conditions based on violent behaviour was unlawful. On 22 December 2019, the applicant was placed in the Extra Guidance and Supervision Location (*Extra Begeleiding- en Toezichtlocatie,* EBTL) in Hoogeveen. On 23 January 2020, the applicant punched and headbutted a fellow resident, with his violent behaviour being directed at both residents and staff. Thus, COA imposed a measure on the applicant under Article 10 of the RvA, as established in the Regulation on Withholding Benefits in Kind (*Reglement onthouding verstrekkingen kamer*, ROV). COA determined that the applicant's behaviour warranted Measure 6 of the ROV, which deprives the applicant of all benefits in kind, except for medical expenses, for a period of 14 days.

On 23 January 2020, the applicant filed an appeal against the decision and requested interim relief from the court, seeking readmission to the reception centre pending the resolution of the appeal. Following the CJEU judgment in *Haqbin*, the District Court of The Hague affirmed that a Member State may not impose the measure of a removal from a reception centre, regardless of the seriousness of the foreign national's misconduct. The court concluded that the recast RCD does not permit withdrawing material reception conditions, including housing, food and clothing, as a sanction. It also noted that the power to revoke, as outlined in Article 10 of the RvA, cannot extend to denying a foreign national reception, defined as accommodation in a suitable reception facility, even temporarily.

Furthermore, the court considered the applicant's medical records, which indicated a serious suicide attempt on 22 December 2019, recent psychological problems and ongoing medication. The court found that COA had not adequately considered these medical aspects in its decision-making process. As such, the court determined that COA improperly imposed a removal from the EBTL in Hoogeveen. Consequently, the court granted interim relief, ordering the applicant to be readmitted to the EBTL in Hoogeveen while the appeal (reference 20/560) was pending.

#### 4.1.2. The use of special reception centres for uncooperative applicants and detention as a sanction

The CJEU noted in *Haqbin* that Article 20(4) and (5) of recast RCD, which provides that Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centre as well as to seriously violent behaviour, does not preclude the use of detention as a sanction to protect national security or public order, pursuant to Article 8(3)(e) of the directive, as long as the conditions in Articles 8-11 are satisfied.

Moreover, some Member States implemented the use of specialised reception centres for uncooperative applicants, which entail certain restrictions and stricter regulations, such as mandatory reporting and curfews. National courts adjudicated the legality of placing applicants in such centres following serious breaches of reception centre rules or incidents of severe violent behaviour. Courts determined that, while these measures may significantly restrict freedom of movement, they do not automatically amount to a deprivation of liberty and can be deemed lawful, provided that adequate safeguards and guarantees are maintained within the centres.

***Netherlands***

In September 2024, the Council of State delivered two similar judgments on the transfer of applicants in Extra Enforcement and Supervision Locations (Handhavings- en Toezichtlocatie, HTL) due to disruptive behaviour. In both cases, the council acknowledged that transfers to the HTL impose significant restrictions on the freedom of movement, but do not amount to a deprivation of liberty.

In *Applicant v Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, the applicant violated reception centre rules by causing a disturbance, consuming alcohol and reacting violently when confronted by security. Due to this incident and prior problematic behaviour, COA transferred him to an HTL. After absconding from the HTL, his asylum application was dismissed. He later returned to the application centre and was transferred back to the HTL due to continued behavioural issues. The State Secretary for Justice and Security imposed a measure restricting his freedom, confining him to the HTL premises in Hoogeveen. The applicant appealed both the transfer and the freedom-restricting measure. The lower court upheld the transfer, finding it did not constitute a deprivation of liberty under Article 5 of the ECHR. The applicant then appealed to the Council of State.

In its assessment, the council referenced relevant case law on the restriction and deprivation of liberty, such as: CJEU judgment in *FMS and Others* v *Országos Idegenrendeszeti Főigazgatóság* (C-924/19 and C-925/19, 14 May 2020); ECtHR judgment in *Ilias and Ahmed (Bangladesh)* v *Hungary* (No 47287/15, 21 November 2019); and ECtHR judgment in *R.R. and Others* v *Hungary* (No 36037/17, 2 March 2021). The council acknowledged that transfers to the HTL impose significant restrictions on the freedom of movement, such as mandatory reporting, a structured daily programme, restricted visitation and confinement to the premises. However, it noted that residents can leave the HTL voluntarily without legal consequences, and such departures do not affect their future reception or asylum procedures. It added that asylum applications are not dismissed solely for leaving the HTL and that dismissal is based on failing to meet reporting obligations. Therefore, the council determined that these transfers did not amount to a deprivation of liberty.

Additionally, it noted that the maximum stay at the HTL is 13 weeks, and residents can reduce their time there by improving their behaviour. The council confirmed that residents retain some freedom to move within the HTL, receive visitors and use available facilities, albeit with restrictions. Ultimately, it dismissed the appeal of the lower court's decision on the transfer, denied a preliminary ruling on compatibility with EU law and stated it lacked jurisdiction to review the restriction of liberty.

In *Applicant* v *Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, the applicant was transferred from a regular reception centre to an HTL in Hoogeveen due to disruptive behaviour. Despite the transfer, his behaviour did not improve. Consequently, COA imposed an ROV measure, withholding his benefits in cash for 2 weeks. This measure was then extended twice for additional 2-week periods due to further incidents involving threats to COA staff and property damage. The applicant challenged COA's decisions and the restrictions imposed on him. The lower court upheld COA's decisions on the transfer to the HTL but ruled that the periods spent in the ROV room constituted an unlawful deprivation of liberty. Both COA and the applicant appealed this judgment before the Council of State.

The council referenced relevant CJEU and ECtHR jurisprudence on the restriction and deprivation of liberty. It acknowledged that transfers to an ROV room in the HTL impose significant restrictions on an applicant's freedom of movement, such as confinement to a separate part of the centre for 2 weeks and limitations on movement and visits. However, the council determined that these do not amount to a deprivation of liberty, since the applicant can leave the HTL at any time without impacting their asylum procedure. Regarding the duration of stay in an ROV room, the council emphasised that COA evaluates the necessity of such measures and that time spent there does not count toward the maximum 13-week stay at the HTL, potentially extending total time. Despite the restrictions, there remains some level of interaction and access to external contact for those placed in the ROV room.

The council concluded that, while the ROV room involves significant restrictions, it does not amount to a deprivation of liberty as it is time-bound and allows for voluntary departure without adverse effects on the asylum procedure. Additionally, it ruled that the lower court misinterpreted the legal framework for ROV transfers, affirming that COA can impose measures for serious violations. The council upheld COA's appeal, overturning the lower

court's decision to annul the ROV measures and award damages, and declared it had no jurisdiction to hear the applicant's appeal on liberty restrictions.

***Lithuania***

In May 2020, the Vilnius Regional Administrative Court in Lithuania, in *M.V. v State Border Guard Service*, annulled the detention measure imposed on an applicant who breached reception centre rules. The applicant, a national of the Russian Federation, was hosted at the Aliens Registration Centre. Over a period of 1.5 years, he violated the internal rules on 32 occasions. His breaches included disregarding the prohibition on entering the centre while under the influence of alcohol and refusing to comply with COVID-19 health regulations, specifically by not wearing a protective mask as required by the Lithuanian Minister of Health's quarantine rules. On 24 April 2020 the Migration Department rejected his application for asylum, which the applicant subsequently appealed. The State Border Guard Service (SBGS) requested his detention until a final decision was issued in first instance proceedings and claimed that the applicant could be a risk for national security or public order.

The Vilnius Regional Administrative Court established that the grounds for the detention of a third-country national, as enshrined by both national and EU laws, were not fulfilled and therefore the applicant could not be detained. It clarified that detention under Article 113(4)(2) of the Law of the Republic of Lithuania on the Legal Status of Aliens is only permitted if it is necessary to clarify the grounds for the asylum application and if there is a risk of absconding to avoid a return or expulsion. No evidence of such risks was found in the applicant's case.

Additionally, there was no evidence that the applicant posed a threat to national security. The court noted that, although the applicant was once administratively punished for a public order violation (appearing drunk in a public place, consuming alcohol or not following established procedures), this did not provide sufficient grounds to conclude that he posed a threat to state security or public order. Finally, detention was not justified on the grounds of possible abscondment, as no evidence was brought to suggest that the applicant was uncooperative during the asylum process or return decision.

***Switzerland***

In April 2020, in *A v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, the Federal Administrative Court of Switzerland concluded that there was no deprivation of liberty when an asylum applicant was assigned to a special reception centre due to their violent conduct as long as an effective remedy was available. The Libyan national requested international protection on 4 March 2019. In view of his disruptive behaviour at the federal asylum centre where he was residing, on 8 March the State Secretariat for Migration (SEM) assigned him to a special reception centre for uncooperative applicants, in accordance with the Asylum Act, Article 24a. He was allocated to the specific centre in Les Verrières for a period of 14 days.

Upon the applicant's request, SEM delivered a formal decision for his allocation to the special centre on 9 March. On 20 March, SEM decided on his transfer to Germany under the Dublin procedure. On 21 March, the applicant submitted an appeal contesting the measure of being

allocated to a special centre and alleging the measure amounted to a deprivation of liberty in the meaning of Article 5 of the ECHR, although the measure had ended. The applicant also complained under Article 13 of the ECHR of a formal denial of justice due to SEM not issuing a formal and contestable decision on the allocation to a special centre.

The Federal Administrative Court noted that the SEM decision of 8 March 2019 had an incidental character and could be appealed only together with the decision taken on the asylum procedure. The applicant was not deprived of an effective remedy since he filed the appeal on 21 March 2019 after SEM issued the Dublin transfer decision on 20 March 2019. The court stated that a deprivation of liberty within the meaning of Article 5 of the ECHR implies that the person is held against their will in a limited space for a minimum period of time, and it differs from a mere restriction on the freedom of movement by the intensity of the infringement.

The court noted that while the Les Verrières centre imposes a daily curfew from 5 p.m. to 9 a.m., residents can leave the centre during the remaining hours and are allowed visits daily from 2 p.m. to 8 p.m. with staff authorisation. Additionally, there was no evidence that residents are confined to their rooms or restricted in their movement within the centre. Consequently, it concluded that the applicant had a certain degree of freedom of movement during his stay in the special centre, as he could leave during non-curfew hours and was not confined to his room. The court concluded that the conditions at the Les Verrières centre, although limiting the applicant's freedom, were not restrictive enough to constitute a deprivation of liberty within the meaning of Article 5 of the ECHR.

Moreover, the court held that the restriction was justified due to the applicant's conduct, which included making insults and threats of physical violence and death, threatening to burn down the asylum centre with everyone inside, attempting to damage an external fence, and breaking a window and blinds. Therefore, the court found that the applicant clearly undermined public security and order, significantly compromising the functioning and security of the asylum centre. It also determined that assigning the applicant to the Les Verrières centre, with its stricter controls and geographic isolation, effectively prevented further disruption and protected staff and other asylum seekers.

Given the applicant's refusal to be accommodated elsewhere, his damage to premises and his violent behaviour requiring police intervention, a less severe measure was impractical. The court deemed the restriction proportional, as the impact on the applicant's personal freedom was moderate compared to the need to maintain public security and order. Therefore, it dismissed the appeal.

## 4.2. Abandoning the place of residence and failure to comply with reporting duties

Under Article 20(1)(a) and (b) of the 2013 recast RCD, Member States may reduce or withdraw material reception conditions if an applicant abandons their place of residence or does not comply with reporting duties. Two notable cases highlight these grounds, where the courts determined that

withdrawing material reception conditions due to short absences from the place of residence was excessive and that less severe measures would have been more appropriate.

In September 2023 in *Applicant v Ministry of the Interior*, the Regional Administrative Court of Lazio in Italy annulled the measure of withdrawing material reception conditions imposed on an applicant due to a one-night absence, deeming it unlawful and ruling that measures to reduce reception conditions were more adequate. The applicant appealed the decree ordering the withdrawal of reception conditions at the reception centre where he had been hosted since July 2022. The decree was issued by the prefecture on the grounds that he had allegedly abandoned the centre.

The Regional Administrative Court of Lazio ruled that the prefecture violated Legislative Decree No 142/15, Article 23(a) by withdrawing reception measures based on the assumption that the applicant had abandoned the centre. The court determined that the applicant did not abandon the reception centre but was absent for only 1 day. The court held that such behaviour may qualify as breaching the rules of the reception centre, which cannot, however, justify withdrawing reception conditions, as outlined by the recast RCD. It determined that only a reduction in measures could have been applied to the applicant, in accordance with Legislative Decree No 142/15, Article 13.

The court cited the CJEU judgment in *Haqbin* which established that a Member State cannot impose penalties that temporarily lift material reception conditions like accommodation, food or clothing, even in cases of serious breaches of reception centre rules, as this would deprive applicants of meeting their basic needs. The court specified that, in accordance with the recast RCD and this judgment, the Italian legislature repealed point (e) of the first paragraph of Article 23 of Legislative Decree No. 142/15 and amended the second paragraph. Based on the amendment, the provision mentions that the withdrawal of reception measures is no longer permitted in cases of serious or repeated breach of the rules of the structure in which the applicant is accommodated. Instead, less severe consequences can be applied, such as a transfer to another centre, temporary exclusion from activities or services of the reception centre, and a suspension or withdrawal of ancillary benefits, in line with the principle of proportionality. The court concluded that the decree must be annulled and upheld the appeal.

In September 2021, in *Applicant v Central Agency for the Reception of Asylum Seekers*, the District Court of The Hague seated in Hertogenbosch ruled that the termination of reception conditions for a Syrian applicant was disproportionate and violated Article 20(4) and (5) of the recast RCD. The reception conditions were withdrawn due to the applicant's failure to report on three consecutive occasions, despite his claims of justifiable reasons for the absences, such as illness, transportation difficulties and a lack of financial resources. He subsequently applied for interim relief.

The court examined the applicant's failure to report to COA on 20 May, 27 May and 3 June 2021. It found that the applicant did not adequately justify his absences on the first two dates because he failed to provide verifiable evidence or documentation for his claims of illness or transportation difficulties. For the report on 3 June 2021, although the applicant cited financial difficulties, COA deemed this explanation inadequate as he did not demonstrate how these difficulties prevented him from reporting or provide timely evidence of his financial situation.

Thus, the court determined that COA was correct in terminating the applicant's right to reception based on the Rva 2005.

According to the principles established in the CJEU judgment in *Haqbin*, the court determined that COA infringed Article 20(4) and (5) of the recast RCD by terminating the applicant's reception and benefits in kind without regard to the guarantees provided in Article 20(5) of the recast RCD. Moreover, the court acknowledged that the applicant claimed that he was homeless, had no means of subsistence or health insurance, and was completely dependent on third parties for his basic needs. He also declared that he had reported to the municipality of Beek in vain for shelter and assistance.

The court found that the termination of the injunctions was based solely on the fact that the applicant did not comply with the obligation to report. Therefore, it determined that, under these circumstances, COA violated the principle of proportionality as referred to in Article 3:4 of the General Administrative Law Act by fully applying Article 7(1l) of the Rva 2005. The court thus granted the application for interim relief, ordering COA to resume the applicant's reception and benefits in kind until a decision has been made on the appeal.

## 4.3. Concealing financial resources

Under Article 20(3) of the 2013 recast RCD, Member States may reduce or withdraw material reception conditions if an applicant fails to disclose financial resources, thereby unduly benefiting from the support provided. The jurisprudence on this ground is predominantly from Belgium, where labour courts have frequently overturned decisions to withdraw material reception conditions based on allegedly concealing financial resources. These courts have stressed the importance of maintaining human dignity and ensuring access to essential services, particularly in situations where the withdrawal of support could lead to severe hardship or a risk of homelessness. Courts also stressed the authorities' duty to do the necessary and adequate checks on applicants' income, to provide them with information on their obligations (including the obligation to inform authorities about their income), available services and alternative housing possibilities.

In May 2023, in *Applicant* v *Federal Agency for the Reception of Asylum Seekers (Fedasil)*, the Ghent Labour Court in Belgium annulled a decision of Fedasil requesting an asylum applicant to leave the reception centre, considering that he had sufficient income. The court held that further information and assistance should have been provided to protect the applicant's human dignity and prevent the risk of homelessness. The court acknowledged that the applicant had an employment contract of an indefinite duration and a net monthly wage higher than the minimum income. This meant that, in principle, he met the substantive conditions for the "removal of compulsory place of registration for applicants receiving income from salaried employment", laid down in Article 9 of the Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment-related activity.

The court specified that the removal of the mandatory place of registration ensures that the applicant is no longer provided with material assistance under the Reception Act, but he can in principle turn to the competent Public Welfare Centre (CPAS) to receive material services. The court highlighted the applicant's unsuccessful housing search, acknowledging the challenges that applicants for international protection face, such as rising rents, a lack of awareness of duty to provide information, language barriers and a precarious legal status, which may expose them to exploitation, homelessness or debt.

It then noted that there was no evidence that Fedasil assisted the applicant in the transition to social services. Specifically, it held that the information provided to the applicant on the services provided by the CPAS was insufficient. The court determined that the applicant risked not receiving reception from Fedasil nor social services from CPAS, which could result in homelessness and undermine his human dignity. It held that the 30-day deadline to leave the centre and find housing was too short, and although extensions were granted, the applicant remained at risk of having his dignity compromised due to the difficulty in securing a home.

The court also rejected Fedasil's argument that the applicant kept the income hidden, noting that it may not have been clear to the person that the information needed to be passed to the authorities in a specific way. The court concluded that a more appropriate measure was to charge the applicant, based on his income, for his stay in a reception facility while he seeks private housing.

In May 2023, in *Applicant (No 2) v Federal Agency for the Reception of Asylum Seekers (Fedasil)*, the Ghent Labour Court in Belgium annulled a decision of Fedasil requesting an asylum applicant to leave the reception centre considering the person's income. It held that Fedasil did not comply with its duty of care in verifying the evidence and if necessary, requesting additional documents. The court observed that the documents did not sufficiently show that the applicant had an employment contract meeting the requirements of Article 9 of the Royal Decree of 12 January 2011, as he had only held short-term or interim contracts, rather than a contract of at least 6 months or of indefinite duration. Hence, it noted that Fedasil did not comply with its duty of care, as the calculated employment data was not accurate.

Furthermore, the court held that the contested decision, dated 23 November 2022, relied only on employment data from 1 January 2022 to 30 September 2022, and income data from 1 January 2022 to 30 June 2022. Fedasil did not assess whether the applicant's situation had changed between June and November 2022, the date of the decision. The court noted that Fedasil did not hear the applicant and did not request updated employment and income data from him or third parties. It also remarked that Fedasil should have notified the claimant of its intention to make a decision, giving him an opportunity to respond. Conclusively, the court found that Fedasil failed to show that the applicant met the conditions specified in Article 9 of the Royal Decree of 12 January 2011, and it annulled the decision and directed Fedasil to provide material assistance to the applicant.

In March 2023, in *Applicant v Fedasil*, the Ghent Labour Court in Belgium annulled a decision of Fedasil requesting an asylum applicant to leave the reception centre based on his income. The court ruled that the decision was inconsistent with the principle of ensuring a dignified standard of living and human dignity. The court acknowledged that the applicant had an

employment contract of indefinite duration and a net monthly wage higher than the minimum income, thus meeting the conditions for a removal from the compulsory place of registration laid down in Article 9 of the Royal Decree of 12 January 2011.

The court noted that despite his income and efforts, the applicant had difficulties finding housing, mostly due to the temporary nature of his residence permit, which discouraged owners from renting to him. Therefore, it found the contested decision to be unlawful. The court specified that the Reception Act aims to ensure that asylum seekers have a dignified standard of living through social services. The court held that a removal of the mandatory place of registration is not appropriate when, as in this case, there are significant doubts about the applicant's self-reliance. Moreover, the court found the defendant's statement that the CPAS would not take responsibility until the asylum seeker had been homeless for one night inconsistent with human dignity.

In February 2022, in *Applicant* v *Fedasil*, the Brussels Labour Court ordered the immediate return of an asylum applicant to a Fedasil reception centre, finding the withdrawal of reception conditions contrary to the recast RCD and the CJEU judgment in *Haqbin*. The case concerned a national of Afghanistan whose access to material reception conditions had been temporarily revoked for 21 days. The court considered that the applicant, who was 18 years old, had lived within the Fedasil reception network for 16 years. It observed that it was plausible that he lacked a social network in Belgium to temporarily host him and noted that he had lived on the street for 1 week.

The court determined that the precarious situation met the criteria for interlocutory proceedings and justified the interim measures. Therefore, it ruled that the applicant must be immediately returned to the reception network by Fedasil and ordered Fedasil to provide the full material assistance required under Article 2(6) of the Reception Act.

## 4.4. Reduction of material reception conditions and the Dublin procedure

When provided for in national legislation, reductions of material reception conditions may be imposed when applicants fail to cooperate with the authorities or actively obstruct the execution of transfer decisions within the framework of the Dublin III Regulation. The jurisprudence in this context predominantly originates from Germany, where social courts have emphasised that these reductions must be meticulously justified.

In July 2024 in *Applicant* v *District A.*, the Federal Social Court referred questions to the CJEU for a preliminary ruling on the compliance of national provisions on the reduction of cash benefits with the recast RCD, specifically in the context of reception pending a Dublin transfer. The case concerned an Afghan applicant whose asylum application was determined to be the responsibility of Romania in accordance with the Dublin III Regulation. This led to the issuance of a transfer decision, however during this period the Romanian authorities had announced a temporary suspension of incoming transfers under the Dublin III Regulation due to the operational impact resulting from the war in Ukraine. His cash benefits were revoked, and he

received only in-kind support based on Section 1a(7) of the Asylum Seekers' Benefits Act (AsylbLG), which applies to foreign nationals required to leave the country in Dublin cases.

The Federal Social Court submitted the following questions to the CJEU for a preliminary ruling:

> "1. Does a provision of a Member State which grants applicants for international protection, depending on their status as persons required to leave the country within the transfer period under the Dublin III Regulation, only a right to accommodation, food, personal and healthcare, and treatment in the event of illness and, depending on the circumstances of the individual case, clothing and household durables and consumer goods, cover the minimum level described in Article 17(2) and (5) of the recast RCD?
>
> Should question 1 be answered in the negative:
>
> 2. a) Is Article 20(1)(c) of the recast RCD in conjunction with Article 2q of the APD to be interpreted as meaning that a subsequent application also covers situations in which the applicant has previously lodged an application for international protection in another Member State and, on that basis, BAMF rejected the application as inadmissible under the Dublin III Regulation and ordered the transfer to the responsible Member State?
>
> (b) In determining whether this situation constitutes a subsequent application within the meaning of Article 2q of the recast APD, does the date of withdrawal or the date of a decision by the other Member State, pursuant to Articles 27 or 28 of the recast APD, matter?
>
> (c) Is the first sentence of Article 20(1)(c) in conjunction with Article 20(5) and (6) of the recast RCD in conjunction with the EU Charter of Fundamental Rights to be interpreted as meaning that a restriction of the benefits granted as part of the reception to benefits to cover the need for food and accommodation, including heating, as well as personal and healthcare care and benefits in the event of illness and – depending on the individual case – for clothing and household consumer goods is permissible?"

The case is yet to be decided by the CJEU (currently registered under C-621/24).

In December 2022, in *A. v District of Hildesheim*, the Higher Social Court of Lower Saxony held that the suspension of benefits based on the applicant's alleged non-compliance with transfer decisions made in accordance with the Dublin III Regulation was unlawful. BAMF declared the asylum application made by a Sudanese national to be the responsibility of Hungary and made a transfer decision. On the day of the scheduled transfer in March, demonstrators blocked access to his apartment, resulting in the cancellation of the transfer. A subsequent transfer attempt in May failed because the authorities were unable to locate the applicant. BAMF rescinded the transfer decision and accepted responsibility to examine the application due to the expiration of the transfer deadline.

The District of Hildesheim limited him to benefits under Section 1a of AsylbLG (Limitation of entitlements) in April 2015, citing his responsibility for the failure of the Dublin transfer. The applicant appealed to the Social Court of Hildesheim, which ordered the withdrawal of the restriction and granted basic benefits for April 2015. The remaining claims for benefits from May to September 2015 were dismissed due to a lack of an express review request. The District of Hildesheim appealed to the Higher Social Court of Lower Saxony (based in Bremen), asserting that the restrictions on benefits were lawful. The applicant also filed an appeal, seeking full benefits for the disputed months.

The court found that the applicant was entitled to basic benefits under Section 3 of AsylbLG from May to September 2015, and Section 2 of AsylbLG (Benefits in special cases) for the period from 20-30 September 2015. The applicant had no income or assets prior to receiving these benefits; thus, the restriction from April was deemed unlawful. The court clarified that there were no personal reasons preventing the applicant's transfer from April onwards. A benefits restriction due to the applicant's actions applies only while such culpable behaviour continues, pursuant to Section 1a, No 2 of AsylbLG. The court held that the applicant's behaviour hindering the transfer occurred solely on the day of the planned transfer and had ceased by April. Additionally, the court confirmed that the applicant was not responsible for the failure to execute the transfer decision. Under Section 1a, No 2 of AsylbLG, it must be demonstrated that the failure to carry out the transfer resulted from circumstances attributable to the applicant. The court held that he did not actively resist the transfer but merely contributed to the failure to collect him by informing others of the scheduled time; he did not organise the blockade executed by approximately 100 unknown supporters and credibly stated he could not leave his apartment due to the blocked stairwell. He was also not responsible for the subsequent failed transfer attempt, as he was not in his apartment and had not been notified of the attempt.

Finally, the court ruled that for the specified period in September, the applicant was entitled to benefits under Section 2(1) of AsylbLG, as he had continuously resided in Germany for the required waiting period. He did not engage in behaviour constituting abuse of his stay during this time. The court clarified that passive non-participation in transfer efforts or making a truthful statement regarding the unwillingness to leave is generally not considered abusive behaviour. The court concluded that, since the applicant was not responsible for the failure to execute the transfer decision, there was no evidence of dishonest behaviour that would constitute abuse under Section 2(1) of AsylbLG and mandated that the applicant be provided basic benefits for April 2015 in accordance with Section 3 of AsylbLG.

## 4.5. Reduction of material reception conditions for beneficiaries of international protection in another Member State

Cases of limitations on material reception conditions for applicants who entered Germany after receiving international protection in another Member State were mainly addressed by German social courts. The courts emphasised the necessity to uphold the fundamental right to a dignified standard of living. They mandated that restrictions must be proportionate and

consider the potential risks of inhumane treatment that may arise upon a transfer to another Member State.

In March 2023, the Higher Social Court of Bavaria delivered two similar judgments in cases concerning the reduction of material reception conditions: *Applicants v Decentralised Accommodation* involving a married couple of Syrian nationals and *Applicants v Decentralised Accommodation* involving a married Palestinian couple from Syria. In both cases, the court overturned the decision to reduce benefits based on the authorities' failure to demonstrate a breach of duty and to consider the feasibility of the applicants' transfers to Greece.

Both couples entered Germany after being previously granted international protection in Greece, where they claimed to have faced significant hardships, including a lack of housing, medical care and employment. BAMF decided not to declare their applications inadmissible based on the substantial risk of inhumane treatment they could face in Greece and granted them international protection. The authorities then proposed a benefits restriction due to their ongoing protection and ability to return to Greece. A decision was issued limiting their in-kind benefits for personal care, healthcare, food and accommodation from 1 July to 31 December 2021. The applicants appealed the decision, arguing that restricting their benefits violated their dignity and that their prior international protection status should not warrant benefit limitations. The Bavarian State Social Court provisionally ordered full benefits from 5 July-31 December 2021. However, the authorities maintained that the restrictions were justified, asserting a breach of duty due to their entry into Germany. The Social Court dismissed their appeals, stating that any entry into Germany after receiving international protection in Greece constituted a violation of duty.

The applicants appealed to the Higher Social Court of Bavaria, contending that returning to Greece was unreasonable and that the benefit reductions were unjustified. They sought unrestricted basic benefits for the disputed period and requested the decision to be overturned. The court ruled that the decisions were unlawful, violating the applicants' rights, as they were entitled to unrestricted basic benefits for the relevant period under Section 3(1) of AsylbLG.

The court emphasised the fundamental right to a dignified standard of living and the principle of proportionality, stating that benefit restrictions require proof of culpability under Section 1a(4) of AsylbLG. It concluded that the applicants did not breach any duty regarding their presence in Germany, as merely entering the country did not constitute sufficient culpability. The court recognised justifiable reasons for their entry, including unmet basic needs and potential inhumane treatment in Greece, which violated Article 3 of the ECHR. Ultimately, the court ruled that the applicants' stay in Germany did not constitute a breach of duty, as returning to Greece was deemed unreasonable due to the risk of inhumane treatment.

Additionally, the court highlighted that the authorities failed to provide information on the possibility of avoiding benefit restrictions due to a voluntary departure prior to reducing their benefits. Furthermore, the court emphasised the lack of a reasonable timeframe for compliance, stating that the absence of clear guidance rendered the exit option inadequate to establish a breach of duty. Specifically, the absence of a deadline for leaving Germany to

avoid benefit restrictions was deemed unjustifiable, as it did not provide the applicants with a fair opportunity to respond. For these reasons, the court upheld the appeals, affirming that the applicants were entitled to basic benefits without restrictions during the relevant period.

## 4.6. Providing adequate information

Courts have emphasised that, when national legislation so provides, authorities must offer adequate information to individuals at risk of having their reception conditions withdrawn, including timely notification of the procedure's initiation and clear communication of previous sanctions, such as warnings. This ensures that applicants understand their obligations and the consequences of non-compliance. The requirement for detailed and clear communication about the procedure, obligations and potential consequences was highlighted by courts, and when these procedural requirements were not met, the withdrawals were overturned. Nonetheless, in some cases, the withdrawal of reception conditions was upheld despite procedural flaws when the applicant's violations – such as repeated breaches of internal rules or involvement in criminal activities – were deemed sufficiently serious.

As previously referenced, in May 2023, in *Applicant (No 2) v Federal Agency for the Reception of Asylum Seekers (Fedasil)*, the Ghent Labour Court in Belgium annulled a decision of Fedasil requesting an asylum applicant to leave the reception centre considering the person's income. It remarked that Fedasil should have notified the claimant of its intention to make a decision, giving him an opportunity to respond.

As mentioned earlier, in March 2023 in *Applicants v Decentralised Accommodation* and *Applicants v Decentralised Accommodation*, the Higher Social Court of Bavaria found that the applicants were not properly informed about how to avoid benefit reductions before the decisions were made. The court noted that the authorities failed to provide clear guidance, including information on voluntary departure options and a reasonable timeframe, which denied the applicants a fair opportunity to respond.

In July 2023, in *Applicant v Ministry of the Interior*, the Regional Administrative Court of Molise in Italy suspended the withdrawal of reception conditions because the order was issued before the applicant's access to the international protection procedure. The applicant, a national of Pakistan, was accommodated in an Extraordinary Reception Centre (CAS) in Molise due to the temporary exhaustion of available places in regular centres caused by a significant increase in arrivals. On 23 February 2022, the head of the cooperative managing the CAS notified the Prefecture of Isernia that the applicant had abandoned the centre on the previous night. Consequently, on 10 March 2022, the prefecture ordered the immediate withdrawal of the reception measures, pursuant to Legislative Decree No 142/2015, Articles 13 and 23(1a). In the meantime, the applicant relocated to another CAS in the Liguria region and, on 22 April, formally expressed for the first time his intention to apply for reception measures in connection with his international protection application, as stipulated by Legislative Decree No 142/2015, Article 6. On the same date, he was notified of the decision by the Prefect of Isernia to withdraw the reception measures, which had been issued on 10 March 2022.

The applicant appealed this decision to the Regional Administrative Court, claiming a violation of Legislative Decree No 142/2015, Articles 13 and 23, arguing that the conditions for the application of the contested measure were not met and that it lacked proportionality and adequate reasoning. The applicant invoked the disapplication of national legislation, particularly Articles 13 and 20(a) and (e) of Legislative Decree No 142/2015, if interpreted contrary to EU law, especially Article 20 of the recast RCD. The applicant argued that there was an infringement and inadequate application of Article 23(a) of Legislative Decree No 142/2015 due to the lack of investigatory requirements and grounds, and an infringement of the recast RCD as transposed into Legislative Decree No 142/2015 for failing to translate the documents into a language known to him.

The Regional Administrative Court of Molise determined that a measure as severe as the withdrawal of reception conditions requires the applicant to have been adequately informed about their status and obligations. According to Legislative Decree No 142/2015, Article 3(1), this information must be provided at the time of the formal application. Without such information, the applicant lacks awareness of their obligations and the consequences of non-compliance, making the withdrawal of reception conditions unjustifiable and disproportionate.

The court affirmed that withdrawal should not occur before the applicant is formally integrated into the international protection system, as outlined in Article 14(1) of Legislative Decree No 142/2015. It held that that the contested measure was based on erroneous and incomplete conditions, as the applicant had not been able to submit a formal request for reception or receive the requisite information at the time of the withdrawal decision.

Moreover, the court found that the prefecture’s reasoning was inadequate and defective, particularly regarding the principle of proportionality. The contested measure focused solely on the applicant's expulsion from the CAS, without assessing his conditions, behaviour, awareness and culpability, which are essential for evaluating liability. Having reached these conclusions based on the principles of adequacy and proportionality established by national case law, the court deemed it unnecessary to rely on the alleged conflict between national law and EU law, which was contested by the applicant. The court ruled that the withdrawal was unlawful and annulled it.

Publications Office
of the European Union

euaa
EUROPEAN UNION
AGENCY FOR ASYLUM