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Briefing note

# Briefing note on national and international case law related to MedCOI

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## Medical vulnerability and non-removal in European case law: Developments under Article 3 ECHR and EU law

Medical claims occupy a particularly complex position within European migration law. They sit at the intersection of human rights protection, asylum law, national migration regimes, and medical assessment, raising difficult questions concerning state responsibility, evidentiary standards, and the limits of protection against removal. A central element in the adjudication of such claims is the use of medical Country of Origin Information (COI), which serves to determine whether appropriate treatment is available in the country of origin and, crucially, whether it is accessible to the individual concerned upon return.

Against this background, the MedCOI Sector of the European Union Agency for Asylum (EUAA) commissioned an analysis to examine how the assessments of medical claims in migration cases has evolved and, in particular, what evidentiary requirements European and national courts have developed when assessing the risks associated with removal of sick third country nationals. This briefing note summarises a review of selected European and national case law concerning migration cases involving medical considerations, with a specific focus on how courts assess and rely on medical COI. The briefing note concentrates on recent jurisprudence from the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU), and selected national courts and tribunals. Particular attention is paid to the growing procedural importance of individualised, case-specific medical COI and to the increasing reliance on institutionalised sources, notably medical COI provided by the EUAA MedCOI Sector.

While the substantive threshold for protection against removal on medical grounds remains high, the cases analysed demonstrate a clear trend towards more demanding procedural obligations. Courts increasingly require decision-makers to engage in detailed, evidence-based assessments of both treatment availability and practical accessibility, grounded in up-to-date, reliable, and case-specific medical COI. This includes not only the existence of treatment or medication in the country of origin, but also whether the person concerned can realistically obtain and continue such treatment in light of their individual circumstances.

## Development of European jurisprudence on medical claims

The European jurisprudence on medical claims in migration law has developed gradually over the past 30 years. The starting point of the ECtHR's case law is the 1997 case of *D v United Kingdom*, in which the Court for the first time ruled that the removal of a seriously ill migrant could violate Article 3 ECHR, prohibiting torture and inhuman or degrading treatment. The applicant, terminally ill with AIDS, would have faced imminent death and intense suffering if returned to his country of origin, where adequate medical care and social support were lacking. The Court stressed the exceptional nature of the case, emphasising that the applicant was at an advanced stage of illness and fully dependent on care provided in the host state. By setting this high threshold for when return of a sick migrant may violate Article 3, the court at the same time clarified that Article 3 does not impose a general obligation on states to provide medical treatment to non-nationals. This high threshold was further consolidated in *N v United Kingdom*. The applicant, N, suffered from a serious and life-threatening illness and was facing a foreseeable and significant deterioration in health upon return; still, the Court found no violation of Article 3 ECHR: a serious but non-imminent decline in health was held to be insufficient.

A recalibration of the severity threshold for decision-making occurred with *Paposhvili v Belgium*, where the ECtHR clarified that Article 3 protection is not limited to cases of imminent death. Removal may also violate Article 3 where there is a real risk of a serious, rapid, and irreversible decline in health resulting

in intense suffering or a significant reduction in life expectancy. Importantly, the Court strengthened the procedural dimension of Article 3, requiring national authorities to carry out an individualised assessment of the availability and accessibility of treatment and/or medication in the country of origin once the applicant has substantiated such risks.

Subsequently, the ECtHR further clarified in *Savran v Denmark*, that the *Paposhvili* test applies equally to severe psychiatric disorders. MedCOI was used in the national proceedings to assess the availability of psychiatric treatment in Türkiye. The Court found no Article 3 ECHR violation, as the applicant had not demonstrated a real risk of serious, rapid, and irreversible deterioration, but found a violation of Article 8 ECHR owing to insufficient consideration of his long residence, social ties, and mental illness.

In parallel, the CJEU addressed medical claims under EU asylum law in *M'Bodj*. The Court held that serious illness resulting from the absence of adequate treatment in the country of origin does not constitute "serious harm" within the meaning of the Qualification Directive, unless intentionally inflicted by an actor of persecution. Therefore, the CJEU held that, it would be contrary to the general scheme and objectives of the Qualification Directive to grant refugee status and subsidiary protection status in such situations, while Member States retained the discretion to grant national residence permits, for example, based on humanitarian grounds. The subsequent MP judgment concerned a similar but different situation, involving the consequences of past torture. In *MP v Secretary of State for the Home Department*, the CJEU held that a person who had been tortured in the past, and who no longer faced a risk of torture on return, could nevertheless qualify for subsidiary protection where there was a real risk that the physical and psychological after-effects of the torture would seriously deteriorate because the person would be intentionally deprived of appropriate medical care in the country of origin. The assessment of that risk was left to the national court.

In *X v Staatssecretaris van Justitie en Veiligheid*, the CJEU held that removal may be precluded where it would expose a person to a real risk of a rapid, significant, and permanent **increase in pain** – including where the absence of treatment may lead to serious psychological consequences or suicide – and rejected the imposition of a **strict time limit** within which deterioration must occur.

Alongside these substantive developments, European courts have also placed increasing emphasis on the evidentiary requirements for establishing a real and specific medical risk upon return, including the need for sufficiently individualised evidence concerning the availability and accessibility of treatment in the country of origin. In *S.N. v France* and *A.K. v France*, the ECtHR found no Article 3 violation in either case. In both, the Court gave considerable weight to the assessments of the French Office for Immigration and Integration and recent MedCOI information indicating that psychiatric treatment and relevant medication were available in the countries of origin. The applicants' broader submissions were considered insufficiently individualised to establish a real and specific risk.

Overall, the supranational case law confirms that the Article 3 threshold remains high, whilst requiring national authorities to base their assessments on reliable, current, and sufficiently specific medical COI.

## Medical COI in the analysed national case law

National courts across jurisdictions demonstrate a high degree of convergence with ECtHR and CJEU standards, with particular emphasis on the distinction between the theoretical availability of treatment and its practical accessibility.

The *Saxon Higher Administrative Court* assessed both availability and accessibility for a Russian applicant with depression, PTSD and cancer, relying on EUAA MedCOI and considering medication supply, costs, social support, and access to healthcare in Chechnya. The *Swiss Federal Administrative Court* similarly relied on a wide range of medical COI in a case concerning Sri Lanka, finding removal unreasonable owing to medication shortages, limited psychiatric services, and the impact of the economic crisis on healthcare. Similarly, the *Czech Supreme Administrative Court* addressed a comparable procedural concern in a case concerning a child from Kyrgyzstan with cerebral palsy, finding that the authorities had failed to obtain sufficient information on the availability of medical care, social support, and specialised education in the country of origin, and that no adequate factual basis existed for concluding that appropriate care would be available upon return. The *Slovak Regional Court of Bratislava* criticised authorities for relying on outdated and general COI and held that the Article 3 assessment must address genuine practical accessibility, including costs, follow-up care, distance, and the absence of family support.

Individual circumstances feature prominently across the national cases. In a case before the *Immigration and Asylum Appeals Board* in Iceland, a Nigerian national with leukaemia requiring continuous imatinib treatment was granted a residence permit on humanitarian grounds, as access was severely constrained by cost, unreliable supply, and weak healthcare infrastructure. In Norway, the *Borgarting Court of Appeal* decided on a case in which serious uncertainty as to whether an applicant with both legs amputated could reliably reach medical facilities –

geographic accessibility – was held sufficient to cast doubt on access to treatment, notwithstanding its nominal availability.

Social and political barriers – so-called political accessibility – are also addressed. The Italian *Ordinary Court of Salerno* granted refugee status to a Ukrainian national with HIV, hepatitis C and a history of drug addiction, finding that dual vulnerability could expose him to discriminatory denial of life-saving treatment. The *Swedish Migration Court of Appeals* applied a vulnerability-sensitive approach in cases involving children, emphasising the best interests of the child and requiring sufficient COI on the availability of paediatric and specialist care.

French and Belgian courts illustrate the significant evidentiary weight attached to MedCOI. In the *Caen Administrative Court*, MedCOI was preferred over general, outdated or untranslated evidence submitted by the applicant. The Belgian *Council for Alien Law Litigation* similarly accepted MedCOI as reliable, provided it was sufficiently case-specific and up to date.

The national cases show that courts increasingly require a realistic and individualised assessment of access to healthcare. It is not sufficient to establish that treatment exists somewhere in the country of origin. Decision-makers must consider whether the person concerned can actually obtain, afford, reach and continue the required treatment, taking into account their health condition, financial situation, location, social network, vulnerability and possible exposure to discrimination.

## Key takeaways:

The analysed cases confirm that protection against removal on medical grounds remains exceptional in substantive terms. The Article 3 ECHR threshold continues to require a very serious level of harm, namely a real risk of serious, rapid, and irreversible deterioration, intense suffering, a significant reduction in life expectancy, or, following the CJEU's reasoning in *X*, a rapid, significant, and permanent increase in pain reaching the required severity threshold.

At the same time, the procedural framework governing medical claims has evolved significantly. Courts increasingly require national authorities to conduct detailed, individualised, and evidence-based assessments of the applicant's medical condition and the situation in the country of origin.

National courts across EU+ Member States repeatedly refer to and adapt the criteria developed by the ECtHR and the CJEU. This demonstrates a clear convergence of standards, particularly regarding evidentiary requirements, the structure of medical assessments, and the distinction between treatment availability and practical accessibility.

Institutionalised medical COI, and EUAA MedCOI in particular, has assumed a central role in this evolving framework. Where used, MedCOI is often regarded as a specific, reliable, and case-tailored source, and may be afforded greater evidentiary weight than general, outdated, or non-tailored COI.

Finally, the case law repeatedly underlines the importance of accessibility alongside availability. It is not sufficient to establish that medication or treatment exists in theory. Decision-makers must also assess whether the applicant can effectively access and make use of such treatment upon return, including economic accessibility, geographic accessibility, continuity of care, specialist expertise, supply reliability, family support, disability-related barriers, and possible discrimination.

## Cited case law:

- CJEU, Mohamed M'Bodj v État belge, C-542/13, ECLI:EU:C:2014:2452, 18 December 2014
- CJEU, MP v Secretary of State for the Home Department, C-353/16, ECLI:EU:C:2018:276, 24 April 2018
- CJEU, X v Staatssecretaris van Justitie en Veiligheid, C-69/21, ECLI:EU:C:2022:913, 22 November 2022
- ECtHR, D v the United Kingdom, Application no. 30240/96, 2 May 1997
- ECtHR, N v the United Kingdom, Application no. 26565/05, 27 May 2008
- ECtHR, Paposhvili v Belgium, Application no. 41738/10, 13 December 2016
- ECtHR, Savran v. Denmark, Application no. 57467/15, 7 December 2021
- ECtHR, S.N. v France, Application no. 14997/19, 18 April 2024
- ECtHR, A.K v France, Application no. 46033/21, 18 April 2024
- Belgium, Council for Alien Law Litigation, no. 291 299, 30 June 2023
- Czech Republic, Supreme Administrative Court, 5 Azs 70/2020-103, 21 January 2022
- France, Administrative Court of Caen, no. 2400407, 17 May 2024
- Germany, Saxon Higher Administrative Court, 6 A 9/18.A, 2 August 2023
- Iceland, Immigration and Asylum Appeals Board, Decision no. 432/2020, 17 December 2020
- Italy, Ordinary Court of Salerno, N.R.G. 4512/2020, 20 April 2022
- Norway, Borgarting Court of Appeal, LB-2021-41807, 16 June 2021
- Slovakia, Regional Court in Bratislava, BA-4SaZ/5/2020, 28 January 2021
- Sweden, Migration Court of Appeal, MIG 2021:18, UM 15232-20, 17 December 2021
- Switzerland, Federal Administrative Court, E-737/2020, 27 February 2023

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### Authors and acknowledgements

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