



European Chapter Conference BRDO, 12 september 2022

Presentation Liesbeth Steendijk



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Unwanted immigrants

Exclusion



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1(F) Geneva Convention 12(2) QD (recast)

17(1) QD (recast)

14 QD (recast)

NO EXPULSION



Protection by art 3 ECHR and art 4 EU Charter

CJEU 14 May 2019, **M, X and X**, C-391/16, 78/17, 78/17)
(94): no expulsion of ***foreign national*** if there is risk of
refoulement.

Return decision?



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CJEU 14 May 2020, C-924/19PPU, FMS

CJEU 14 January 2021, C-441/19, TQ

CJEU 24 Februari 2021, C-673/19, M, A, & T

CJEU 3 June 2022, C-546/19, Westerwaldkreis

CJEU C-663/21, *pending case*

Bundesverwaltungsgericht Austria 20/10/2021

Right to lawful stay?



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M, X and X (104)

Westerwaldkreis (56)

CJEU 9 November 2010, C-57/09 and 101/09,
B&D (118)



Right to family reunification?

CJEU 2 May 2018, C-331/16, K and H.F. (66)



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Right to other provisions?

M, X and X (109)

- Provisions granted by EU Charter
- M, X and X is NOT about persons excluded from protection.

Right to other provisions?



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ECtHR M.S.S. etc.

CJEU Jawo etc.

“Extreme poverty, deprivation of basic needs”

Relevance for excluded migrants?



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Principle of Mutual trust



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CJEU C-163/17, Jawo

CJEU C-297/17, Ibrahim

19 March 2019



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Dublin regulation article 3(2) second para.

Exception to designation of responsibility in case of:

- **systemic flaws**
- **resulting in a risk of inhuman or degrading treatment**
(Article 4 EU Charter)



**iar
mj**

Jawo

(81) Importance of the principle of mutual trust

**(87) Not only systemic deficiencies, relevance of article 4
Charter**

(90) Rebuttable presumption. Evidence provided by applicant

(92) High threshold: extreme poverty, basic needs such as food, hygiene, place to live, undermining physical or mental health, incompatible with human dignity

(97) Not: more favourable conditions



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- Systemic flaws < > individual circumstances
- Absolute < > non absolute rights
- Burden of proof



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ECLI:NL:RVS:2021:2791, 15.12.2021 Dublin transfer Malta
Degrading circumstances?

ECLI:NL:RVS:2019:2385, 15 July 2019. Protection status in
Greece

Degrading circumstances; general <> individual

ECLI:NL:RVS:2017:2968, 3.11.2017, Dublin transfer France
Grave psychiatric problems; state secretary failed to assess
whether there would be sufficient care during and after
transfer



ECLI:NL:RVS:2022:1042, 13 April 2022, Dublin transfer
Croatia

Protection against refoulement?

ECLI:NL:RVS:2022:2644, 8 September 2022, Slovenia,
relevance of push back practices.

ECLI:NL:RVS:2022:1864, 6.11.2022, Denmark, policy of
refusal and revocation of protection to Syrians



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Relevance of CJEU cases about European
arrest warrant, Poland

CJEU 562/21 PPU, 22 February 2022



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**CJEU, C-392/22, *pending case*, District Court
The Hague, NL, 15 June 2022**

Is the principle of mutual trust divisible?