



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



SEMINAR

**European Convention on Human Rights and international refugee law
compliant procedures at state borders
Jurisprudence of the European Court of Human Rights and measures taken in
the context of the execution of judgments**

Presentation by Michael Hoppe,
Strasbourg, 25 October 2024

Safe Third Country – Non-Refoulement – Procedural Obligations

Strasbourg 25 October 2024

Michael Hoppe,
Presiding Judge, Higher Administrative Court of Baden-Württemberg



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Safe Third Country – Non-Refoulement – Procedural Obligations

- A German perspective
 - ECtHR, 15 October 2024 – 13337/19 – <H.T. v Germany and Greece>
- A European judicial perspective
 - CJEU, 4 October 2024 – C-406/22 – <CV v. Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky>



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The Case of H.T. / Germany and Greece

ECtHR, 15 October 2024 – 13337/19 –

- relevant facts (with regard to Germany) in a nutshell:
 - H.T., Syrian national, arrives in Greece in June 2018 and applies for asylum
 - leaves Greece during the procedure and arrives at the German border on 4 September 2018 – border controls between Germany and Austria are in place
 - in provisional arrest he indicates he wishes to apply for asylum
 - written refusal of entry decision under Schengen Border Code is issued
 - another written refusal of entry decision for asylum seekers – orally explained in English is issued at the airport
 - Return flight to Athens on the same day under an administrative Arrangement between Germany and Greece



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The Case of H.T. / Germany and Greece

ECtHR, 15 October 2024 – 13337/19 –

- relevant but disputed fact (with regard to Germany) in a nutshell:
 - no access to legal assistance / a lawyer was granted
- proceedings in Germany:
 - action at Regensburg Administrative Court in November 2018 to annul the refusal of entry decision, restitutio in integrum requested
 - action referred to Munich Administrative Court in December 2018
 - H.T. re-entered Germany in July 2021 and applied for asylum
 - → Subsidiary Protection (Art. 15 QD (recast)) granted in July 2022
 - Proceedings in Munich were discontinued in April 2023



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The Case of H.T. / Germany and Greece

ECtHR, 15 October 2024 – 13337/19 –

- ECtHR on the merits (Article 3 ECHR -> Germany)
 - core judgment on safe-third-country rule GC, 21 November 2019 – 47287/15 – Ilias and Ahmed v. Hungary which is applied by the chamber judgment
 - the duty of the removing State to examine thoroughly ... whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement (para 138)
 - examination must precede the removal (para 139)
 - failure to discharge the procedural obligation to assess the risk prior to removal constitutes as such a violation of Article 3 ECHR (para 140)



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The Case of H.T. / Germany and Greece

ECtHR, 15 October 2024 – 13337/19 –

- ECtHR on the merits (Article 3 ECHR -> Germany)
 - → Shortcomings in the 2018 Greek asylum system were known (para 144)
 - the administrative arrangement had no guarantees installed that could have protected persons to be deported to Greece
 - → all relevant circumstances seen as a whole => breach of Article 3 ECHR
- No examination under Article 13 ECHR (paras 152 et seq.).
 - But my opinion : A procedure that is designed to prevent persons from having effective access to legal assistance / a lawyer and that does not guarantee interpretation is preventing persons from having access to an effective remedy



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CJEU, 4 October 2024 – C-406/22 – <CV>

■ Effective remedy under EU Law

- ❑ Art. 46 APD (recast), Article 47 EU-Charter
- ❑ MS are required to order their national law in such a way that the processing of the actions ... includes an examination, ..., of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand (para 87)
- ❑ a possible failure to have regard to the rules of APD (recast) for the purposes of a designation of a safe country of origin constitutes a point of law which the referring court must consider as part of the full and *ex nunc* examination required by Article 46(3) APD (recast)



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Concluding remarks

- both decisions show:
 - high importance of procedures
 - access to procedures
 - in case this access is denied to (judicial) control
- New EU legislation is in line with ECtHR judgments
 - the individual will be able to challenge STC-decisions on the basis that they provide reasons why the concept does not apply to them (Article 59 (5), 67 (3) APR)
- role of the judiciary
 - find ways of an efficient way of controlling that does not make application of protection elsewhere cases impossible when the concept is in line with EU Law / national law / ECHR
 - efficiency does not mean lower standards of scrutiny



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