FORUM "IMMIGRATION, BORDERS AND ASYLUM" (IFA)

CASE LAW UPDATES

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In this number:

Case law of the Court of Justice of the European Union

Court of Justice, judgment of 4 February 2025, case C-158/23, *Keren*

Category: Asylum, Immigration

Keywords/Relevant provisions: Directive 2011/95/EU – Article 34 – Access to integration facilities – Fine – Proportionality

Facts: An Eritrean citizen arrived in the Netherlands at the age of 17 and was subsequently recognised as a beneficiary of international protection. At the age of 18, he was informed by the Minister that he was bound by the Law on civic integration to pass, in principle within three years, a civic integration examination. The three-year deadline was extended several times, but the applicant in the main proceeding failed to attend certain courses and examinations and did not pass those in which he was present. Therefore, the Minister imposed on the applicant a fine of 500 euros and required him to repay in full the loan he had taken out with the Dutch Education Enforcement Service, which amounted to 10,000 euros, for failing to complete the civic integration program within the prescribed period. The Eritrean national took legal action to defend his position. Therefore, the Dutch Council of State referred certain questions to the Court of Justice for a preliminary ruling on the compatibility of the Dutch system with the International Protection Directive.

Reasoning: The Court of Justice states that, in principle, national legislation that obliges beneficiaries of international protection to pass a civic integration examination is not contrary to Article 34 of Directive 2011/95/EU. However, a number of conditions must be fulfilled: a) the specific needs of such beneficiaries and the particular integration difficulties they face must be taken into account; b) the knowledge required to pass that examination must be set at an appropriate level, without exceeding what is necessary to promote the integration of those beneficiaries into the society of the host Member State; c) any beneficiary of international protection must be relieved of the obligation to pass that examination if he or she is able to demonstrate that he or she is already effectively integrated into the society of that State. Moreover, failure to pass such an examination cannot be systematically penalized with a fine, that could be imposed only in exceptional cases, such as an established and persistent lack of willingness to integrate. In any case, the fine cannot be of such an amount as to constitute an unreasonable financial burden for the person concerned, considering his or her personal and family situation.

Opinion of Advocate General Medina, delivered on 6 February 2025, case C-610/23, *Al Nasiria*

Category: Asylum

Keywords/Relevant provisions: Directive 2013/32 – Article 46 – Right to an effective remedy – Full and *ex nunc* examination – Failure of the applicant to appear in person

Facts: FO, a third-country national, lodged an application for international protection in Greece. He stated that he had been the subject of a tribal decision requiring him to be put to death and produced a document in support of his claim. His application for asylum was rejected, as his claims were considered unreliable and the document he produced was not admitted as evidence. FO filed an administrative appeal against the above decision before the competent Commission. However, he did not appear in person on the day of the examination of his appeal and the Commission rejected his application. FO brought an action for annulment of the above decision, arguing that his appeal was unlawfully dismissed on the sole ground that he was absent from the hearing and without a sufficient examination having been carried out of the appeal on its merits. He also represented that he was unable to attend the hearing because of financial difficulties that had prevented him from traveling from Thessaloniki, where he resided, to Athens, where the hearing was held. The competent Court referred certain questions to the Court of Justice for a preliminary ruling on the compatibility of the Greek legislation with the principle of effective remedy in asylum procedures.

Reasoning: The Advocate General argues that, in the context of a procedure for the examination of an application for international protection, the establishment of a presumption that an appeal has been improperly brought in case of failure to comply with the obligation of the applicant to appear in person is contrary to Article 46 of Directive 2013/32/EU, read in light of the principles of equivalence and effectiveness and Article 47 of the Charter of Fundamental Rights of the European Union. In particular, such a presumption disproportionately affects asylum seekers who are in a precarious financial situation or face other difficulties in attempting to appear in person. In fact, those who do not reside in the capital of the country are not provided with the material means to travel to the seat of the Independent Appeals Committees, which is in in that capital, to comply with the requirement of physical presence. Moreover, unless they fall under one of the exceptions restrictively set out in national law, the applicants have no alternative means of proving their presence in the territory and the genuineness of their appeal.

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Case law of the European Court of Human Rights

European Court of Human Rights, judgment of 4 February 2025, *A.B. and Y.W. v. Malta*, App. No. 2559/23

Category: Asylum

Keywords/Relevant provisions: Article 3 ECHR – Expulsion – *Ex nunc* rigorous risk assessment – Malta – Chinese asylum seekers

Facts: The Applicants are married Chinese nationals of Uighur ethnicity and Muslim faith from the Xinjiang Province. They arrived in Malta regularly, by air, from Italy, in 2016. They entered Malta with a valid Chinese passport bearing a Schengen visa which had been issued by the embassy of Malta in Beijing. The visa was valid for a three-month period, ending on the 1st of October 2016. In Malta, they applied for international protection based on alleged persecutions by Chinese authorities related to their belonging to the Uighur ethnic group. The asylum applications were rejected, on the reasons that the Applicants' fears were based on assumptions rather than personal experiences, that their departure from China and arrival in the EU had been legal, and that they were not considered high-profile dissidents. Following the rejection of the asylum claims, an expulsion order was issued *vis-à-vis* the Applicants on the grounds that they were unable to show that they had the means to support themselves and were therefore likely to become a burden on public funds; that they had contravened the provisions of the Immigration Act and the pertinent Maltese legislation; and that they were found to be overstaying in Malta since 2016. Before the Court of Strasbourg, the Applicants invoke a violation of Article 3 ECHR, arguing that their asylum requests were dismissed without a proper and renewed risk assessment in the light of the deteriorating situation of Uighurs in China.

Reasoning: The Court considers that the Greek State has not satisfied its procedural obligation under Article 3 of the Convention, failing to conduct a rigorous, *ex nunc* risk assessment of treatment contrary to that provision before confirming the removal of the Applicants (which, moreover, was suspended only following the interim measure issued by the Court itself under Rule 39 of its Rules of Court). It reiterated that States must assess the actual and personal risk faced by an individual at the time of removal. In the case at hand, the Court concludes that, given the significant deterioration in the human rights situation of Uighurs in China since 2017 (which was confirmed by significant international reports), and given the national authorities' reliance on outdated findings without an updated risk assessment, Greece would commit a violation of Article 3 ECHR if the Applicants were returned to China without a rigorous *ex nunc* assessment.

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Italian Case Law

Supreme Court, judgment of 31 January 2025, no. 4308

Category: Asylum

Keywords/Relevant provisions: Article 14(6), Legislative Decree no. 286/1998 – Detention – Articles 3, 24, 111(1) and (2) and 117 of the Constitution – Adversarial principle – Right of defense

Facts: A third-country national was placed in a detention centre for return, pursuant to Article 14(6) of Legislative Decree no. 286/1998, for a period of 60 days that could be extended. The Questore justified the measure by referring to the social dangerousness of the person concerned (deduced from his police record) to the concrete danger of flight identified in his regard, as well as considering that the application for international protection he had submitted was pretextual. The order was then validated by the competent Court of Appeal. The individual promoted an appeal to the Supreme Court, requesting the annulment of the validation decree and raising several issues of compatibility of the national legislation with the Constitution and European Union law.

Reasoning: The Supreme Court refers to the Constitutional Court the question of constitutional legitimacy of art. 14(6) of the Legislative Decree no. 286/1998, mentioned by art. 5 *bis*, Legislative Decree no. 142/2015[1], insofar as, by referring to the provisions of art. 22, co. 5-*bis*, fourth sentence, Law no. 69/2005, provides that, in case of an appeal against a detention order prior to deportation, the Supreme Court shall judge in accordance with the procedural model provided for the case of a "consensual" European arrest warrant. The above-mentioned Article 14 (as most recently amended by Law no. 187/2024) allows for an appeal before the Supreme Court against a measure validating or extending a detention prior to deportation, within the term of five days from the notification of the measure itself and only on the grounds referred to in letters a), b) and c) of Article 606(1), Criminal Procedure Code. The appeal does not suspend the execution of the order of detention, and the Supreme Court is called to judge on the grounds of the appeal and the requests of the General Prosecutor, without the participation of defense attorneys, within seven days of receiving the documents (as provided for in the aforementioned Article 22, paragraph 5-bis, fourth sentence, Law No. 69/2005). Therefore, the Supreme Court questions the conformity of the mentioned provision with the Constitution, recognizing a potential infringement of the principle of adversarial debate and a violation of the guarantees of defense accorded to those subjected to detention.

Court of Appeal of Palermo, First Civil Section, judgment of 6 February 2025

Category: Asylum

Keywords/Relevant provisions: Articles 36 and 37, Directive No. 2013/32 – Article 15(2) ECHR - Detention – Accelerated border procedure – Safe countries of origin

Facts: An asylum seeker from Egypt was placed in detention by a measure adopted by the Questura (Police Headquarters) of Agrigento pursuant to Article 6 *bis*, Legislative Decree No. 142/2015. He was subjected to the accelerated border procedure pursuant to Art. 28 *bis*, co. 2, lett. b-*bis*), Legislative Decree No. 25/2008, as he was an asylum seeker who applied for international protection directly at the border and came from a country of origin designated as safe. The procedure for validating the detention order was therefore referred to the Court of Appeal of Palermo.

Reasoning: The Court of Appeals believes that, in the present case, there are the conditions for a reference for a preliminary ruling to the Court of Justice of the European Union, also considering the multiple questions already raised by other Italian judges on the compatibility between the national legislation that

[1] Law No. 69 of April 22, 2005. Provisions to conform national law to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

identified safe countries of origin and the EU law. First, the judges ask the Court of Justice about the interpretation of Articles 36 and 37 of the Procedures Directive, wondering if a third country of origin of an asylum seeker can be defined as safe if, in that country, there are one or more categories of persons for whom the substantive conditions of that designation, contained in Annex I of the same directive, are not met. Then, the Court of Appeal raises the question of whether a third country of origin can be defined as safe when there is a concrete risk of violation of rights provided by Article 15(2) of the ECHR for one or more categories of persons. In case of an affirmative answer to this second question, according to the Italian judges, the inclusion of Egypt in the list of safe countries of origin by national law would be in conflict with the above-mentioned Procedure Directive.

Court of Milan, Labour Section, judgment of 15 February 2025, no. 753

Category: Immigration

Keywords/Relevant provisions: Ministry of the Interior – Public competition – Notice – Requirement of Italian citizenship – Discrimination

Facts: The Ministry of the Interior announced a public competition notice on a territorial basis for the recruitment of a total contingent of 1,248 in the civil administration roles of the same Ministry, in the Civil Servants Area. Article 2, co. 1(a) of the notice of competition reserved admission to Italian citizens only, referring to Prime Minister's Decree No. 174 of 1994, which allowed this limitation for all employment positions in certain Ministries' Departments. Some associations working in the field of anti-discrimination against foreigners brought an appeal before the competent court, claiming that the citizenship requirement, which entails the exclusion of all foreign citizens, is contrary to Italian and European law.

Reasoning: The Court of Milan upholds the appeal, assessing and declaring the discriminatory nature of Article 2, co. 1(a) of the notice of public competition for civil servants of the Ministry of the Interior. The Court points out that the 1994 Prime Minister's Decree has been implicitly abrogated by the subsequent Legislative Decree No. 165/2001, according to the principle of lex posterior and the principle of hierarchy among sources. Article 38 of the Legislative Decree, in accordance with Article 45 of the TFEU – as interpreted by the Court of Justice – allowed the possibility of making use of the nationality reservation only for jobs in public administrations that do not involve the direct or indirect exercise of public authority, or do not concern the protection of the national interest. Since these requirements do not apply in the present case, the Tribunal affirms the right to apply for access to public competitions for all European citizens and citizens of non-EU countries who hold one of the residence permits indicated in Article 38, Legislative Decree No. 165/01. Therefore, the judge orders the suspension of the competition, which have not yet been concluded, and requires the Minister to reopen the notice, setting a new reasonable deadline for the submission of further applications.