



## FORUM “IMMIGRATION, BORDERS AND ASYLUM” (IFA)

### CASE LAW UPDATES

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## Case law of the Court of Justice of the European Union

[Court of Justice, judgment of 27 February 2025, case C-753/23, \*Krasiliva\*](#)

**Category:** Asylum

**Keywords/Relevant provisions:** Directive 2001/55/EC – Articles 8 and 11 – Implementing Decision (EU) 2022/382 – Temporary Protection – Subsequent Applications

**Facts:** A.N., a Ukrainian citizen, applied for temporary protection in Germany and, subsequently, in the Czech Republic. The latter application was rejected by the Ministry of the Interior as inadmissible because it followed the application already submitted in Germany. A. N. appealed against this decision, and the competent court held that: a) although A.N. had applied for temporary protection in Germany, she had not yet been granted such protection; b) Directive 2001/55/EC specifically lists the grounds on which a person shall be excluded from the benefit of temporary protection, and among those grounds, it does not include the fact that an application for temporary protection had previously been made in another Member State. The appeal was therefore upheld, and the case was referred to the Ministry of the Interior. The Ministry of the Interior lodged an appeal to the Supreme Administrative Court, which referred the case to the Court of Justice for a preliminary ruling.

**Reasoning:** The Court of Justice states that Article 8(1) of Directive 2001/55/EC – which requires Member States to take the necessary measures to ensure that beneficiaries of temporary protection are granted a residence permit for the entire duration of that protection – precludes national legislation which allows a person enjoying temporary protection to be refused a residence permit. Indeed, if a person who benefits from temporary protection has applied for a residence permit in a first Member State but has not yet obtained it, and subsequently moves to a second Member State and submits a similar application there, the second Member State cannot reject the application as inadmissible solely on the ground that an application has already been made in the first Member State. The second Member State is therefore required to examine the application on its merits. As a result, Article 47 of the Charter requires that a decision rejecting as inadmissible an application for a residence permit made by a beneficiary of temporary protection under Article 8(1) of Directive 2001/55 must be subject to an effective remedy before a court.

[Court of Justice, judgment of 27 February 2025, case C-454/23, \*K.A.M.\*](#)

**Category:** Asylum

**Keywords/Relevant provisions:** Directive 2011/95/EU – Article 14(4)(a) and Article 14(5) – Revocation or Refusal to grant Refugee status – Danger to the security of the host Member State – Conduct and facts prior to entry into the host Member State

**Facts:** K.A.M., a Moroccan national who had entered Cyprus irregularly, submitted an application for international protection. The Anti-Terrorism Office sent a confidential letter to the Asylum Service, referring to the danger posed by the applicant in the main proceedings. Consequently, although the Asylum Service found that the conditions for granting refugee status were met, it rejected the applicant's application for international protection on the basis of grounds for exclusion from the entitlement to such protection. K.A.M. filed an administrative appeal, but the competent authority upheld the rejection decision. The case was brought before the Administrative Court, which referred a question to the Court of Justice on the correct interpretation of Article 14(4)(a) and Article 14(5) of Directive 2011/95/EU.

**Reasoning:** The Court states that, under Article 14(4)(a) and Article 14(5) of Directive 2011/95/EU, a Member State may revoke refugee status or decide not to grant it where the reasonable grounds for considering that the refugee is a danger to the security of that Member State, within the meaning of Article 14(4)(a) of that directive, are based on acts or conduct of that person prior to his or her entry into the territory of that Member State. According to the Court, it is irrelevant that those acts and that conduct do not

constitute grounds for exclusion from refugee status as expressly provided for in Article 1(F) of the Geneva Convention, and Article 12 of the Directive. Nor can it be assumed that the withdrawal of refugee status or the refusal to grant that status cannot be regarded as implying the adoption of a position on the separate question of whether the person concerned can be expelled to his or her country of origin.

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## **Case law of the European Court of Human Rights**

[European Court of Human Rights, judgment of 6 March 2025, \*F.B. v. Belgium\*, App. No. 47836/21](#)

**Category:** Asylum

**Key words/Relevant provisions:** Art. 8 ECHR – Unaccompanied minor – Age assessment – Medical examination – Lack of procedural safeguards

**Facts:** The applicant is a Guinean national, who arrived in Belgium in 2019 and applied for international protection as an unaccompanied minor, declaring that, at the time, she was 16 years old. She produced an unofficial copy of her birth certificate and stated that she had fled her country of origin to escape mistreatment resulting from her forced marriage. The Belgian authorities ordered an age determination test, which consisted of x-ray of her jaw, wrist, and collarbone. The tests concluded that her estimated age was 21.7 years, with a margin of error of two years. Based on these results, the Guardianship Service determined that she was an adult and terminated her status as an unaccompanied minor, ending her guardianship and access to child protection services. Before the Court of Strasbourg, the applicant invoked a violation of Article 8 of the European Convention on Human Rights (ECHR), arguing that the age determination test had been conducted without her consent and without sufficient information about the medical assessments and their implications.

**Reasoning:** The Court underlined that the determination of the correct age of unaccompanied minors has significant consequences for their access to protection and must therefore be accompanied by appropriate guarantees to prevent arbitrariness. It noted that, in the case at hand, the applicant had not been given the opportunity to consult with a guardian or legal representative prior to medical examinations. Moreover, the Belgian authorities had failed to assess whether alternative, less intrusive methods could have been used. Although Belgian legislation allows for immediate recourse to medical tests in the event of doubt as to a person's age, the Court, by recalling its previous case law (notably [\*Darboe and Camara v. Italy\*](#)), emphasised that medical age tests must be used with caution because of their highly invasive nature. It further stressed that minors should be informed of their rights in a clear and accessible manner, in particular as regards the role of their consent in the procedure. Belgium was therefore found to be in breach of Article 8 ECHR, as the age assessment procedure applied to the applicant lacked adequate procedural safeguards.

[European Court of Human Rights, judgment of 25 March 2025, \*Almukhlas and Al-Maliki v. Greece\*, App. No. 22776/18](#)

**Category:** Borders

**Key words/Relevant provisions:** Art. 2 ECHR – Maritime border operation – Greek Coastguard – Use of force – Death of a migrant child

**Facts:** The applicants are two Iraqi nationals, parents of their minor son, who was fatally shot during an interception operation conducted by the Greek coastguard near the island of Symi in the summer of 2015. The child was hidden onboard a vessel carrying irregular migrants. The coastguard intercepted the vessel and a Greek officer fired at a suspected smuggler, but the bullet hit and killed the child instead. Before the Court of Strasbourg, the applicants alleged violations of the right to life (Article 2, ECHR) on both substantive and procedural grounds.

**Reasoning:** The ECtHR found several shortcomings in the investigation carried out by the Greek authorities. First, out of the 93 passengers on board, only 8 were invited to give evidence as witnesses, despite the family's request that all passengers be interviewed as witnesses. Second, the persons in charge of the investigation were colleagues of the coastguards involved in the incident in question. Finally, the necessary investigative measures were not taken, which affected the ability of the investigation to fully clarify the circumstances of the incident in question. The ECtHR therefore concluded that Greece had violated Article 2 ECHR on the procedural side, as the national authorities had failed to conduct an independent, thorough, and effective inquiry, which would have enabled to determine the exact circumstances surrounding of the child's death and establish accountability. Concerning the substantive part of Article 2, the Court found that the Greek coastguard knew or should have known that the vessel was carrying migrants but failed to act adequately in order to minimize the risk to life and avoid incidents. In particular, the use of force had proved to be especially dangerous, in the context of a vessel loaded with passengers, including children, in a state of panic. Moreover, the maritime operation lacked sufficient planning, risk assessment, and control of the use of firearms. The Court, thus, concluded that Greece had violated the substantive aspect of Article 2 ECHR regarding the manner in which the operation was conducted. However, it ruled out a violation of the same provision in view of the insufficient evidence that the Greek officers had used excessive force.

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## **Italian Case Law**

Supreme Court, United Section, judgment of 6 March 2025, no. 5992

**Category:** Asylum

### **Keywords/Relevant provisions:**

**Facts:** An Eritrean citizen, along with other nationals, filed a claim before the Court of Rome under Article 702-bis of the Italian Civil Procedure Code, seeking compensation for non-pecuniary damages caused by the unlawful restriction of their personal liberty on board the Italian Coast Guard ship "U. Diciotti" from 16 to 25 August 2018. Specifically, they claimed: for the first four days, due to the refusal to allow the ship to dock in Italian ports; for the following six days, after docking in Catania, due to the refusal to allow disembarkation; and alternatively, during this last period, for their forced and arbitrary detention aboard the ship without disembarkation. The Court declared a lack of jurisdiction, considering the actions to be political. On the contrary, the Court of Appeal of Rome upheld ordinary jurisdiction, stating it was an administrative, not political, act. However, it dismissed the claim on the merits, finding insufficient evidence of fault by the public administration and lack of evidence of consequential damages. The case was then brought before the United Sections of the Supreme Court.

**Reasoning:** The Supreme Court upheld the appeal and referred the case back to the lower court for a reassessment of the appellants' claim for compensation. First, the judges exclude that the refusal to authorize the disembarkation of migrants rescued at sea, which lasted for ten days, could be considered a political act beyond judicial review. On the contrary, it is an administrative act, which, although carried out in line with political direction, must comply with legal constraints, both national and international, and therefore cannot be beyond judicial scrutiny. Then, referring to the European Court of Human Rights ruling in the case of [\*Khlaifia and Others v. Italy\*](#), the Supreme Court finds that the detention of the migrants aboard the "Diciotti" ship was an arbitrary violation of personal liberty. As argued by the judges, the lack of a judicial order or subsequent validation of the government's actions is, in itself, enough to establish the arbitrariness of the detention under both Article 5 of the ECHR and Article 13 of the Constitution. This provision requires the double fulfilment of jurisdictional and legal conditions for any legitimate restriction of personal liberty. With regard to the existence of extracontractual liability on the part of the public administration, the Court holds that all the elements required by Article 2043 of the Civil Code are present, particularly the subjective

element of fault. In this regard, the Court clarifies that, contrary to the Government's submissions, neither the legal uncertainty as to the determination of the competent state for conducting the sea rescue of migrants, nor the flexibility allowed in the decisions concerning the identification of the place of safety and the authorization for disembarkation, can be considered as factors constituting an excusable error on the part of the public administration. The conduct of the administration resulted in a measure that infringed personal liberty, which is deemed intolerable under both the constitutional and supranational legal systems. Finally, the Court clarifies that the fact that, in the case of the "Diciotti" ship, the Senate of the Republic denied the authorization to proceed against the Minister of the Interior, requested by the Court of Ministers of Catania for the offense of aggravated kidnapping, does not lead to a different conclusion. The Court asserts that "a fundamental principle of a constitutional state of law is the justiciability of any act that violates the fundamental rights of the person, even if carried out by the Government and justified by political reasons. The exemption of political acts from such judicial scrutiny – although provided for constitutional norms under certain conditions – can only be considered as an exception, and as such, must be subject to strict interpretation, referring exclusively to criminal liability".

Constitutional Court, judgment of 26 March 2025, no. 31

**Category:** Immigration

**Keywords/Relevant provisions:** Article 3 of the Constitution – Article 2, paragraph 1, letter a), n. 2), of Decree-Law no. 4/2019 – Citizens' income – Reasonableness – Ten-Year Residency

**Facts:** The Court of Milan rejected the appeal for the recognition of the citizens' income ("reddito di cittadinanza") filed by some Romanian citizens who had not resided in Italy for at least ten years. The appellants filed an appeal against this decision, arguing that the ten-year residency requirement to access the citizenship income was discriminatory. The Court of Appeal of Milan raised questions of constitutional legitimacy with regard to Article 2, paragraph 1, letter a), no. 2) of Decree Law No. 4/2019, converted with amendments into Law No. 26/2019, in relation to Articles 3, 11, and 117, first paragraph, of the Constitution, in relation to Articles 21 and 34 of the Charter of Fundamental Rights of the European Union, Article 24(1), of Directive 2004/38/EC, and Article 7(2), of Regulation (EU) No. 492/2011. The contested provision, which is in force until 31 December 2023, states the applicant for the citizens' income must, among other things, "have resided in Italy for at least 10 years, the last two of which must have been continuous".

**Reasoning:** The Constitutional Court declares the contested provision unconstitutional in so far as it requires the recipient of the citizen's income to have resided in Italy "for at least 10 years", instead of "for at least 5 years". As stated by the Court, unlike other measures (such as the social allowance; see judgment no. 50 of 2019 and order no. 29 of 2024), the inclusion project envisaged by the citizens' income focuses on the future integration prospects, aiming at the stable labour and social inclusion of the individual concerned. Therefore, the ten-year residency requirement does not appear reasonably related to the specific purpose of the citizens' income and violates the principles of equality, reasonableness, and proportionality set out in Article 3 of the Constitution. In fact, the temporal barrier, resulting from the contested requirement, creates discrimination, even indirect: although it applies to all applicants, it seems designed to limit access, favouring Italian residents (who are more likely to satisfy the requirement) to the detriment of EU and third-country citizens. The Court, however, considers the five-year residency requirement reasonable as a condition for access to the citizens' income. This temporal requirement: *i*) it is the one adopted by the national legislator for the inclusion allowance (which replaced the citizens' income); *ii*) it was judged not unreasonable by this Court under Article 3 of the Constitution in judgment no. 19 of 2022, since it proves the "relative stability of the individual's presence on the territory"; *iii*) it is the requirement provided by Article 16(1), of Directive 2004/38/EC; *iv*) the European Court of Justice indicated it as a period that "demonstrates the applicant's establishment in the country in question" in its judgment of 26 July 2024, joined cases C-112/22, *C.U.*, and C-223/22, *N. D.*, concerning third-country nationals.