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, judgement of 3 April 2025, case C-283/24, *Barouk*

Category: Asylum

Keywords/Relevant provisions: Directive 2013/32/EU – Article 46(3) – A full and ex nunc examination – The powers of the court or tribunal of first instance – Medical examination

Facts: B.F., a Lebanese national, applied for international protection in Cyprus. In support of his application, he claimed that he had been tortured by the intelligence and military services in Lebanon for political reasons. The Asylum Service refused to grant B.F. refugee status, considering his statements to be inconsistent, contradictory and vague. Hearing an appeal by B.F. against this decision, the Administrative Court for International Protection considered it necessary to carry out a medical or psychological examination of the applicant in order to assess his credibility. However, the applicable national law did not provide for such a power. The court therefore referred a question to the Court of Justice on the scope of the right to an effective remedy under Article 46(3) of Directive 2013/32.

Reasoning: The Court has held that, in order to comply with the requirement of a full and ex nunc examination laid down in Article 46(3), a national court of first instance hearing an appeal against a decision of the determining authority rejecting an application for international protection must have the power to order a medical examination of the applicant for international protection if it considers that such an examination is necessary or relevant to the assessment of the application. That court may also order the determining authority to take the necessary measures to ensure that the applicant undergoes the medical examination ordered and to communicate the results of that examination to the court within a short period of time. According to the Court, not to allow such a court to order a medical examination of the applicant for international protection in such circumstances appears to be contrary to the obligation imposed on Member States by Article 46(3) of Directive 2013/32 to organise their domestic law in such a way that the handling of the actions referred to in that provision includes an examination by the court of all the facts and points of law necessary to make an up-to-date assessment of the case.

Court of Justice, judgment of 10 April 2025, case C-607/21, *État belge*

Category: Citizenship

Keywords/Relevant provisions: Directive 2004/38/EC – Family member – Condition of being 'dependent' – Relevant date – Material dependence

Facts: XXX, a Moroccan national, is the mother of a Belgian national who lives in Belgium with his partner, Mrs N.E.K., a Dutch national. XXX applied to the Belgian authorities for a residence card as a direct dependent relative in the ascending line of her son. This application was rejected by the Belgian State on the grounds that, following an amendment, Belgian legislation no longer provided for family reunification for direct relatives in the ascending line of persons with Belgian nationality. XXX then submitted a second application for a residence card, this time as a family member of Ms N.E.K. In support of her application, she submitted documents relating to the period prior to her arrival in Belgium in order to demonstrate her material dependence on the family members she had subsequently joined. However, the application was also rejected on the grounds that the documents submitted were out of date and therefore insufficient to prove the alleged dependency. The matter was referred to the Belgian Council of State, which acted as the referring court. That court referred a question to the Court of Justice for a preliminary ruling in order to determine the relevant date under EU law for assessing the condition that the parent who is a third-country national must be 'dependent' on the Union citizen to whom he is joining.

Reasoning: The Court underlines the elements which, according to Article 2(2)(d) of Directive 2004/38/EC, the competent national authority must take into account in order to determine whether the direct relative in

the ascending line of the Union citizen's partner is dependent on that Union citizen and/or that partner. Firstly, the authority must take into account the situation of that direct relative in the ascending line in his or her country of origin on the date on which he or she left that country and joined the said Union citizen in the host Member State, where appropriate on the basis of documents issued before that date. Secondly, the authority must take account of the situation of that relative in the ascending line in that Member State on the date on which the application for a residence card was submitted, if several years have elapsed between those two dates. The Court also states that a direct relative in the ascending line of the partner of a Union citizen enjoys a right of residence derived from the rights of a Union citizen for a period of more than three months, as evidenced by the issue of a residence card. This is subject to the following conditions: a) the relative in the ascending line can prove that he/she is dependent on the Union citizen and/or his/her partner, both at the time of application for the residence card, which must be submitted several years after his/her arrival in the host Member State, and at the time of arrival; b) the Union citizen satisfies the conditions laid down in Article 7 of Directive 2004/38/EC. This right of residence cannot be refused on the ground that, according to national legislation, the relative in the ascending line is residing illegally in the territory of that Member State at the time of the application.

Advocate General's Opinion, delivered on 10 April 2025, case C-136/24 P, *Hamoudi v. Frontex*

Category: Asylum

Keywords/Relevant provisions: Non-contractual liability – Frontex – Collective expulsions – Regulation (EU) 2019/1896 – Right to asylum

Facts: A Syrian national claimed that he had come to Greece to seek asylum and that he had been the victim of a collective expulsion with 21 other people. He confirmed that a Turkish coastguard vessel took him on board and transferred him to Turkish territory. According to him, while he was at sea, a private surveillance plane operated by Frontex flew over the scene several times. In an action before the General Court of the European Union, this Syrian national requested that Frontex be ordered to pay him a total of €500,000 in compensation for the non-material damage he claimed to have suffered as a result of the collective expulsion. The Tribunal dismissed the action as manifestly unfounded in law since the national had failed to prove the actual damage he claimed to have suffered. The Syrian national appealed against that decision to the Court of Justice.

Reasoning: Advocate General Rimvydas Norkus suggests that the Court should consider whether the state of the proceedings before the General Court, and in particular its findings of fact, enable it to assess whether the appellant has established a prima facie case of damage in his action before the General Court. If the Court of Justice considers, first, that it is in such a position and, second, that the appellant has failed to adduce prima facie evidence of his presence and participation in the alleged pushback, the appeal should be dismissed. If, on the other hand, the General Court considers that it is not in such a position or, alternatively, that the appellant has adduced prima facie evidence of his presence at and participation in the alleged incident, the appeal is well founded, the contested decision should be set aside and the case referred back to the General Court for it to rule on the applicability of the conditions for reversal of the burden of proof.

Advocate General's Opinion, delivered on 10 April 2025, joined cases C-758/24, *Alace* and C-759/24, *Canpelli*

Category: Asylum

Keywords/Relevant provisions: Directive 2013/32/EU – Safe Country of Origin – Designation Procedure – Personal Exceptions – Right to Effective Judicial Remedy

Facts: The applicants in the main proceedings, nationals of Bangladesh, were rescued at sea by the Italian authorities and transferred to the Gjadër detention centre pursuant to Article 3(2) and (3) of the Italy-Albania

Protocol. Each of them submitted an application for international protection. These applications were examined by the Territorial Commission in Rome under an accelerated border procedure, as they were submitted by nationals of a third country designated as safe. The applications were rejected as manifestly unfounded on the grounds that the applicants had failed to rebut the presumption of safety of their country of origin. The applicants appealed against the rejection decisions to the Ordinary Court of Rome, which referred a request for a preliminary ruling to the Court of Justice, seeking clarification on the application of the concept of 'safe country of origin' and on the obligations of Member States with regard to effective judicial review.

Reasoning: Advocate General De La Tour proposes that the Court of Justice interpret Articles 36 and 37 of Directive 2013/32/EU as not precluding a practice whereby a Member State designates a third country as a safe country of origin by means of a legislative act. As the Advocate General observes, the directive does not specify which national authority or authorities are to be entrusted with the designation of safe countries of origin at national level, nor does it prescribe the specific instrument to be used for that purpose. Such an approach must respect the primacy of European Union law and ensure the full effectiveness of the Directive in accordance with the obligations it imposes and the objectives it seeks to achieve. Moreover, the Advocate General considers that the basic framework of the concept of a safe country of origin and the objectives pursued by the EU legislature in that context impose an obligation on the Member States to ensure access to the sources of information on the basis of which the safety of the countries concerned is presumed. Consequently, the national court hearing an action challenging the rejection of a request for international protection must, in order to assess the lawfulness of that act, have access to the sources of information on which that determination is based. If the legislature has not disclosed those sources of information, the competent judicial authority may, in the light of the conditions set out in Annex I to the Directive, review the lawfulness of such a decision on the basis of sources of information which it has itself gathered from among those referred to in Article 37(3) of the Directive. Finally, Advocate General Richard de la Tour considers that the Directive does not preclude a Member State from designating a third country as a safe country of origin while identifying limited categories of persons who are likely to be persecuted or seriously harmed in that country. This is subject to the condition that (a) the legal and political situation in the country concerned reflects a democratic regime in which the general population enjoys durable protection against such risks; and (b) the Member State concerned explicitly excludes these categories of persons from the application of the safe country of origin concept and the associated presumption of safety.

Court of justice, judgement of 29 April 2025, case C-181/23, *Commission v. Malta*

Category: Citizenship

Keywords/Relevant provisions: Article 20 TFEU – Article 4(3) TEU – Citizenship of the Union – Naturalisation – Investors

Facts: In 2020, Malta amended its Citizenship Law to allow foreign investors to access the naturalisation process by meeting a number of requirements, mainly of a financial nature. According to the European Commission, this legislation – by granting access to Maltese citizenship solely on the basis of financial criteria (such as pre-determined payments and investments), without requiring a genuine link between the applicant and the Republic of Malta – is contrary to the obligations arising from Article 20 TFEU on citizenship of the Union and the principle of sincere cooperation. As a result, the Commission initiated infringement proceedings, which led to the present action.

Reasoning: The Court of Justice declares that the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU. By setting up and operating an institutionalised citizenship investment scheme which provides for a transactional naturalisation procedure in exchange for pre-determined payments or investments and which thus amounts to the commercialisation of the granting of citizenship of a Member State and, by extension, of citizenship of the Union, Malta has failed to fulfil its

obligations under European Union law. Each Member State has a wide margin of discretion in the choice of criteria for granting nationality. However, the exercise of this power is not unlimited. Union citizenship is based on the common values enshrined in Article 2 TEU and on the mutual trust between Member States that none of them will exercise this power in a way that is manifestly incompatible with the very nature of Union citizenship. Moreover, under Article 20(1) TFEU, the special relationship of solidarity and good faith between each Member State and its nationals also forms the basis of the rights and obligations reserved to Union citizens by the Treaties. Therefore, a Member State manifestly disregards the requirement of such a special relationship of solidarity and good faith, and thus breaks the mutual trust on which Union citizenship is based, when it establishes and implements a naturalisation programme based on a transactional procedure between that Member State and the persons who apply under that programme, at the end of which the nationality of that Member State, and thus the status of Union citizen, is essentially granted in exchange for predetermined payments or investments.

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Case law of the European Court of Human Rights

European Court of Human Rights (Grand Chamber), decision of inadmissibility of 29 April 2025, *Mansouri v. Italy*, App. No. 63386/16

Category: Borders

Key words/Relevant provisions: Article 3 ECHR – Article 5 ECHR –Expulsion – Deprivation of personal liberty on board a ship – Repatriation to Tunisia

Facts: The applicant is a Tunisian national who resided legally in Italy from 2014 to 2016 on the basis of a temporary residence permit. In 2016, he returned to Tunisia and, upon his return to Italy, was subjected to an identity check at the Palermo maritime border while on board an Italian cruise ship. During the identity check, the Italian border police discovered that the applicant's residence permit had expired, that the Chief of Police (Questore) had refused to renew it and that he did not have a visa to enter the country. As a result, the police issued a refusal of entry order against the applicant and ordered the captain of the ship to return him to Tunisia. The applicant alleged that, during the seven-day voyage, he had been confined to a cabin under constant and strict surveillance by the ship's security officers, in violation of Article 5 ECHR, and in material conditions amounting to a violation of Article 3 ECHR, for which he had no domestic remedy, in violation of Article 13 ECHR.

Reasoning: The Grand Chamber, by a majority, declared the application inadmissible on the ground that the applicant had failed to exhaust the available and effective domestic remedies in respect of the Article 5 ECHR complaint (namely an action for damages and an urgent application for interim relief under the Italian Civil Code and Civil Procedure Code, respectively). The Grand Chamber also noted that, in the absence of any proceedings brought before it by the applicant, the Italian courts had not had the opportunity to examine any question concerning the interpretation of the provisions of the Schengen Borders Code and/or any other question of compatibility with fundamental rights and, where appropriate, to request a preliminary ruling from the Court of Justice of the European Union. As regards the complaints under Articles 3 and 13 of the ECHR, the Grand Chamber considered that the general conditions of accommodation on board the ship during the voyage, although they may have caused the applicant a certain degree of frustration, did not rise to the minimum level of seriousness required to constitute a violation of the Convention. The complaints under these provisions were therefore declared manifestly ill-founded.

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Italian Case Law

Constitutional Court, judgment of 10 April 2025, no. 39

Category: Immigration

Keywords/Relevant provisions: Article 14, paragraph 6, of Legislative Decree No. 286/1998 – Detention – Validation – Consensual Procedure for the European Arrest Warrant – Right to be Heard

Facts: The Supreme Court raised questions regarding the constitutional legitimacy of Article 14, paragraph 6, of Legislative Decree No. 286/1998, as amended by Article 18-bis, paragraph 1, letter b), no. 2, of Decree-Law No. 145/2024. The question concerns the reference to the fourth sentence of paragraph 5-bis of Article 22 of Law No. 69 of 2005, instead of paragraphs 3 and 4 of the same Article. The amended Article 14, paragraph 6, establishes the application of Article 22, paragraph 5-bis, of Law No. 69/2005 – which regulates the consensual procedure for the European arrest warrant – in the judgment on the validation of the detention. Pursuant to this provision, the Supreme Court shall, within seven days of receiving the case file, rule in camera on the grounds of the appeal and the requests of the Attorney General, without the participation of the parties, and shall issue its decision with reasons immediately after the hearing. The referring court questions whether the new procedure for reviewing the validity of the detention of an expelled alien or an applicant for international protection is compatible with Articles 3, 24, 111(1 and 2) and 117 of the Constitution, in conjunction with Article 6(1) of the European Convention on Human Rights.

Reasoning: The Court confirms the constitutional illegality of the regulation in question. The amendment to Article 14(6) of Legislative Decree No 286/1998, which extends the procedure for the consensual European arrest warrant to judicial review of the validation of the detention, is manifestly unreasonable. It imposes the application of a procedural model that is structurally inadequate to ensure a proper dialectical confrontation between the parties. The inadequacy of this procedure stems from the objective and functional heterogeneity between the judgment on the consensual European arrest warrant, for which this procedure was designed, and the judgment on the validation of the foreign national's detention, to which the same procedure has been extended. The particular concentration and simplification of the procedure for the consensual European arrest warrant is justified not only by the guarantee of habeas corpus and the need to complete the surrender procedure within the time limits laid down in Framework Decision 2002/584/JHA, but also because the scope of judicial review is more limited, given the consent given by the person concerned. On the other hand, the assessment of the lawfulness of the validation of the detention is characterised by a confrontation between the parties, involves fundamental rights and may extend to an examination of issues going beyond the lawfulness of the adoption of the restrictive measure itself. Thus, the Court identifies the procedural regulation on the ordinary European arrest warrant, as set out in Article 22(3) and (4) of Law No. 69/2005, as the legal provision that offers a solution to the violations found. According to the judges of the Court of Justice, this regulation constitutes an efficient, simplified procedural model, capable of ensuring the resolution of the legitimacy review within a very short period of time. It also preserves the core of the judicial guarantees recognised to them, by giving the parties the opportunity to be heard. In any event, as the Court has pointed out, the legislator retains the right to intervene at any time to establish a different form of judgment.

Court of Appeal of Rome, judgement of 19 April 2025

Category: Asylum

Keywords/Relevant provisions: Article 6, paragraph 3, of Legislative Decree No. 142/2015 – Italy-Albania Protocol – Detention – Validation – Status of Asylum Seeker

Facts: A non-EU citizen, who had been issued with an expulsion order pursuant to Article 13(2)(c) of Legislative Decree No. 286/1998, was detained pursuant to Article 14 of the same decree. He was then

transferred to the Permanent Detention and Repatriation Centre in Gjader, Albania, where he expressed his intention to apply for international protection. However, the Questore ordered his detention pursuant to Article 6, paragraph 3, of Legislative Decree No. 142/2015, considering that, given the specific circumstances of time and place, the asylum application was pretextual and aimed solely at delaying or preventing the execution of the deportation order. Therefore, the request for validation of the detention was submitted to the Court of Appeal of Rome.

Reasoning: The Court of Appeal finds that the detention under Article 6, paragraph 3, of Legislative Decree No. 142/2015 is not lawful in the present case. First, the Court clarifies that the request for international protection lodged on Albanian territory is equivalent to a border or transit area for the purposes of the Italy-Albania Protocol and the procedures provided for therein (Article 3, paragraph 3, of Law No. 14/2024). For this reason, the request must be considered as a valid application for asylum lodged in Italy. Therefore, the valid submission of the request for international protection has changed the basis of the foreign national's detention, which is no longer aimed at enforcing his or her return (pursuant to Article 14 of Legislative Decree No. 286/1998), but at processing the asylum request (pursuant to Article 6, paragraph 3, of Legislative Decree No. 142/2015). As a result of the new status of asylum seeker, the foreign national: a) is no longer subject to border procedures, since he/she has already entered Italian territory; b) is not subject to the return procedures provided for by articles 13 and 14 of Legislative Decree no. 286/1998, since the submission of the application for international protection prevents the immediate execution of the expulsion order. Since detention in the permanent detention and return centres in Albania is only justified by one of the two procedures, either border or return, the detention cannot be validated in this case. Therefore, the asylum seeker has the right to remain on the national territory until the deadline for appealing against the possible negative decision of the Territorial Commission has expired, as well as during the pending appeal (if the validity of the contested decision is suspended).