FORUM "IMMIGRATION, BORDERS AND ASYLUM" (IFA)

CASE LAW UPDATES

Monthly Bulletin no. 1 – January 2026

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Case law of the Court of Justice of the European Union

Court of Justice, judgment of 15 January 2026, case C-742/24, *Havvitt*

Category: Asylum

Keywords/Relevant provisions: Directive 2013/33/EU – Article 15(1) – Access to the labour market – Delay – Attribution

Facts: LK, a Georgian national, lodged an application for international protection in Ireland. The interview with the International Protection Office (IPO), initially scheduled for 16 September 2019, was not duly notified to the Applicant. Subsequently, LK attended a meeting on 12 December 2019, at which he was provided with the IPO 2 questionnaire translated into Georgian, to be completed by 6 January 2020. The IPO granted four extensions of the time limit, the final extension expiring on 24 August 2020. The IPO 2 questionnaire was nevertheless submitted by LK on 25 August 2020. LK applied for permission to access the labour market. That application was refused on the ground that the IPO 2 questionnaire had not been submitted within the prescribed time limit. Following a number of appeals and extensions (including those linked to the COVID-19 pandemic), the national courts found that the delay was, in part, attributable to LK due to a failure to cooperate. In those circumstances, a request for a preliminary ruling was made in order to clarify the interpretation of the concept of "delay" within the meaning of Directive 2013/33/EU.

Reasoning: The Court of Justice states that, under Article 15(1) of Directive 2013/33/EU, the delay which may be attributed to the Applicant for international protection covers not only the delay, or part of the delay, attributable exclusively to that Applicant. It also encompasses, where there is a time interval due to mixed causes – that is to say, the origin of which is attributable both to the conduct of that Applicant and to the host Member State and/or to external factors such as, in particular, a pandemic, the fraction of that time interval which appears, in the light of all the circumstances of the case, to correspond to the share of responsibility attributable to that Applicant. Thus, national legislation may allow the competent authority responsible for granting access to the labour market to refuse such permission to an Applicant for international protection if his application, pending for at least nine months within that Member State, has not yet received a first instance decision due, at least in part, to reasons attributable to the Applicant.

Opinion of Advocate General Dean Spielmann, delivered on 22 January 2026, Case C-877/24, *Shamsi*

Category: Asylum

Keywords/Relevant provisions: Directive 2008/115/EC – Articles 6, 8 and 9 – Return decision – Life imprisonment or long-term custodial sentence – Principle of proportionality

Facts: The main proceedings concern two return decisions adopted by the Dutch Minister for Asylum and Migration with regard to X, an Azerbaijani national, and Y, an Afghan national. Both individuals were sentenced to long-term custodial sentences (X to life imprisonment and Y to 25 years' imprisonment), and both were notified of a return decision adopted by the Minister and subsequently upheld by the court of first instance. Appeals were filed against these decisions before the referring court, which has expressed reservations regarding their validity. These concerns arise from the fact that, due to their detention, the individuals are unable to comply with the return orders, and additionally, the Minister lacks the ability to execute their removal under the present circumstances.

Reasoning: The Advocate General considers it necessary to distinguish between the situation in which a return decision is adopted in respect of an irregularly staying third-country national who has been sentenced to a long-term custodial penalty and that in which such a decision is adopted in respect of a person sentenced to life imprisonment. In the former situation, the Advocate General takes the view that Articles 6 and 8 of Directive 2008/115/EC do not preclude the adoption of a return decision, provided that the removal of the third-country national may take place upon completion of the custodial sentence. In such a case, the competent authorities

are required to verify periodically whether removal can reasonably be envisaged in practice, in the light of developments in the individual's criminal situation.

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Case law of the European Court of Human Rights

European Court of Human Rights, decision (inadmissibility) of 13 January 2026, *R.N. v. Türkiye*, App. No. 44592/17

Category: Borders

Keywords/Relevant provisions: Article 3 ECHR – Article 13 ECHR – Deportation – Uzbekistan – Türkiye

Facts: The Applicant is an Uzbek national who fled his country with his wife and children, allegedly for fear of persecution on account of his political and religious convictions. In 2013 the Applicant entered Türkiye with his family via regular means. In 2014 he entered Syria illegally, and remained there for approximately one week. He was later apprehended at the border while attempting to cross back into Türkiye in an irregular manner. He applied for international protection, claiming to have been persecuted in Uzbekistan on account of his membership of the "Rashad movement", an opposition group, and for his religious beliefs. The application for international protection was rejected and an order for his deportation was issued. The Applicant unsuccessfully challenged the decision, which became final and established that he posed a threat to public order and security. Before the Court of Strasbourg the Applicant complained about his deportation to Uzbekistan, arguing that such a decision was made without a proper assessment of the risk of ill-treatment or persecution to which he would be exposed by reason of his religious beliefs and political stance, in breach of Article 3, in conjunction with Article 3 ECHR, given that the absence of automatic suspensive effect under domestic law deprived him of an effective remedy to challenge the deportation order.

Reasoning: The application is declared inadmissible. The Court reiterates that in cases of removal to another State, the Applicant must provide the national authorities with specific and substantiated allegations that he would face a real risk of ill-treatment, including any individual risk factors. In the case at hand, the Applicant's submissions before the national authorities were limited to general concerns regarding the human rights situation in Uzbekistan and his adherence to the Muslim faith. He did not refer to any specific incidents or personal circumstances that would demonstrate an individualised risk of ill-treatment upon return. The Court further notes that the Applicant failed to raise, even summarily, the core elements of his Article 3 complaint before the domestic courts. It therefore concludes that the Applicant cannot be considered to have properly raised his complaints before the domestic authorities, thereby failing to afford them the opportunity to redress the alleged breach in the first place. Accordingly, the Court upholds the Government's preliminary objection and rejects these complaints for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

European Court of Human Rights, judgment of 22 January 2026, *A.N. and Others v. Greece*, App. No. 65267/19 and 2 Others

Category: Immigration

Key words/Relevant provisions: Article 3 ECHR – Reception Conditions – Samos – Greece – Unaccompanied Minors

Facts: The Applicants are Afghan nationals who arrived, as unaccompanied minors, in Greece on various dates and subsequently placed at the Reception and Identification Centre (RIC) on Samos. They submitted that the reception centre and its surrounding area were severely overcrowded and unsanitary. On the one hand, the official capacity of the facility, designed to accommodate 648 persons, in practice hosted several thousand, including families, single men and unaccompanied minors. There was no regular access to sanitation, showers

or laundry facilities, food was insufficient and of poor quality. Medical and psychosocial support was extremely limited. On the other hand, and as a consequence of such a situation, a vast informal settlement ("the Jungle") developed on the hillside adjacent to the RIC, consisting of tents, makeshift shacks and improvised shelters. The Applicants contended that most new arrivals, including unaccompanied minors, were compelled to reside in this informal area, as no space was available inside the official RIC. The area lacked electricity, running water, toilets and waste disposal. Before the Court of Strasbourg, the Applicants invoked a violation of Article 3 ECHR maintaining that they had remained in these conditions for several months (from 4 to 10) before being transferred to the mainland or to suitable shelters, despite the authorities' awareness of their minor status and vulnerability and despite the interim measures granted by the Court.

Reasoning: The Court notes that the Applicants have provided a coherent, detailed and mutually consistent account of their situation on Samos, corroborated by documentation by numerous independent reports from international and national bodies describing similar conditions at the Samos RIC. The evidence shows that the Applicants remained for prolonged periods in conditions characterised by overcrowding, inadequate sanitation and the absence of age-appropriate accommodation and that the facilities in and around the Samos RIC were manifestly insufficient to meet the basic needs of unaccompanied minors, including access to hygiene, nutrition, medical and psychosocial care, effective guardianship, and protection from violence or exploitation. The Court acknowledges the difficult operational circumstances in which the Greek authorities were required to act, characterised by a renewed migration crisis and compounded by the challenges of the COVID-19 pandemic. However, it reiterates that, having regard to the absolute character of Article 3, an increasing influx of migrants cannot absolve a State of its obligations under that provision. Having regard to the Applicants' age and particular vulnerability as unaccompanied minors, the Court concludes that the reception conditions to which they were subjected in and around the Samos RIC amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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Italian Case Law

Constitutional Court, judgment of 8 January 2026, n. 1

Category: Immigration

Keywords/Relevant provisions: Article 3 of the Constitution – Public residential housing – Reasonableness – Formal and substantive equality – State of need

Facts: The Court of Florence was called upon to rule, pursuant to Article 28 of Legislative Decree No. 150 of 2011, on the discriminatory nature of the conduct of the Municipality of Arezzo, which, in the 2022 call for applications for public residential housing, introduced a clause governing the allocation of scores for the purposes of ranking, based on the Applicant's "length of residence". The Court therefore raised questions of constitutional legitimacy concerning Article 10 of Regional Law of Tuscany No. 2 of 2019, entitled "Provisions on public residential housing", in so far as it refers to Annex B, point (c-1), to the same regional law. That provision assigns, for the purposes of the ranking list, scores of 1, 2, 3, 3.5, or 4 points, depending on whether at least one member of the household has been registered as resident or has carried out continuous employment within the territorial area covered by the call for applications for a period of at least three, five, ten, fifteen or twenty years respectively.

Reasoning: The Constitutional Court declared the contested provision to be unconstitutional. Although that provision does not make territorial rootedness a condition for access to public residential housing, it nevertheless accords, in the allocation of scores for the purposes of establishing the ranking list, precedence to criteria relating to territorial rootedness over indicators reflecting the Applicant's state of need. According to the Court, the statutory attribution of such precedence to the criterion of territorial rootedness over the state of

need is contrary to Article 3 of the Constitution for several reasons: (a) from the perspective of reasonableness and proportionality of the means employed in relation to the aim pursued by the legislation, in so far as it relegates the state of need to a subsidiary position vis-à-vis territorial rootedness; (b) from the perspective of formal equality, in that it results, for the purposes of the ranking list, in an unjustified difference in treatment between persons who are all in situations of vulnerability; and (c) from the perspective of substantive equality, since it limits the full development of the human person.

Constitutional Court, judgment of 22 January 2026, n. 6

Category: Immigration

Keywords/Relevant provisions: Decree-Law No. 34 of 2020 – Employment regularisation procedures – Schengen alert – Individual assessment – Constitutional Court

Facts: The Council of State reviewed an appeal against the judgment of the Campania Regional Administrative Court, which had dismissed a case brought by a third-country national. The appellant challenged a decree issued by the Questura of Salerno, which denied access to the employment regularisation procedure outlined in Article 103 of Decree-Law No. 34 of 2020, on the grounds that the individual was subject to a Schengen Information System (SIS) alert. Consequently, the Council of State referred a question of constitutional legitimacy regarding Article 103(10)(b) of Decree-Law No. 34 of 2020, considering its compatibility with Articles 3, 11, and 117(1) of the Constitution. These provisions were interpreted alongside Article 25 of the Convention implementing the Schengen Agreement and Articles 21, 24, 27, 28, 29, and 30 of Regulation (EU) 2018/1861. The provision under consideration excludes third-country nationals who are subject to an SIS alert for entry refusal from participating in employment regularisation procedures. The referring court questioned the constitutionality of this automatic exclusion, as it prevents the administration from conducting an individual assessment of the Applicant's potential risk or whether the substantive requirements for granting regularisation are met.

Reasoning: The Constitutional Court found the contested provision to be unconstitutional. The Court noted that the provision undermines the intent of Decree-Law No. 34 of 2020, which aims to regularise the status of third-country nationals within national borders who lack valid residence documents. The challenged provision, however, excludes third-country nationals subject to an SIS alert for violating entry or residence requirements from these procedures, thereby preventing them from accessing mechanisms designed expressly for regularisation. Additionally, the provision contravenes the principle of equality by creating disparate treatment among similarly situated individuals; specifically, it denies regularisation to those present without lawful residence who entered or resided irregularly in another Schengen State and received an SIS alert, yet grants access to those who entered directly into Italy under comparable circumstances. Furthermore, the Court emphasized that an SIS alert does not preclude non-alerting States from issuing or renewing residence permits. Instead, such States are obliged to assess the individual circumstances of each Applicant and may grant a permit if the person does not pose a threat to public policy or security.