FORUM "IMMIGRATION, BORDERS AND ASYLUM" (IFA)

CASE LAW UPDATES

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Edited by Erika Colombo and Francesco Luigi Gatta

Scientific Coordination by Daniela Vitiello

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Case law of the Court of Justice of the European Union

Court of Justice, Judgment of 16 July 2026, case C-26/25, *Bukla*

Category: Citizenship

Keywords/Relevant legislation: Article 20 TFEU – Directive 2008/115/EC – Family member of an EU citizen – Threat to national security – Classified information

Facts: PQ, a third-country national, had lived in Hungary since 2005 and, from 2011, with his Hungarian partner, with whom he had two children. After he applied for a national settlement permit, the Hungarian authorities, relying on classified information, found that his residence posed a threat to national security. The application was therefore rejected and followed by a return decision and a ten-year entry and residence ban. PQ challenged those measures, arguing, inter alia, that he had been unable to access or rely on the classified information underlying them. In the proceedings on his right of residence, the referring court had already sought a preliminary ruling from the Court of Justice, decided in its judgment of 25 April 2024, *NW and PQ (Classified Information)* (C-420/22 and C-528/22). Following that judgment, the residence decision was annulled, and the authorities were ordered to reassess his position. In the later proceedings concerning the return decision, the referring court again questioned the compatibility of Hungarian law with EU law, particularly because it did not require an individual assessment of the relevant circumstances, including family-life considerations, and imposed restrictions on access to and use of classified information.

Reasoning: The Court of Justice held that Article 20 TFEU and Article 5 of Directive 2008/115/EC preclude the adoption of a return decision against a third-country national who is a family member of EU citizens who have not exercised free movement rights, where the authorities, despite being aware of those family ties, have not first assessed the impact of the decision on family life and on the minor children concerned. EU law also precludes national rules which, as interpreted by the supreme judicial authority, prevent Article 20 TFEU from being relied upon in proceedings concerning a return decision. This applies where the right of residence derived from that provision, or the existence of a relationship of dependency, is invoked for the first time before the court, although the relevant family ties were already known. The same applies where the facts necessary for the application of Article 20 TFEU emerge during the proceedings, or where the return procedure follows a refusal of residence in the Member State concerned. The Court further held that Articles 20 TFEU and 5, 12 and 13 of Directive 2008/115 preclude legislation allowing a return decision based on national security considerations to be based solely on a binding and unreasoned opinion issued by a specialised body. Such a decision must follow a thorough examination of the individual circumstances and the proportionality of the measure. Those provisions, read in the light of the principle of good administration and Article 47 of the Charter, also preclude rules governing access to classified information. Where a return decision and an entry ban are based on information whose disclosure could jeopardise national security, access to that information cannot be made subject to prior authorisation without informing the person concerned of the essence of the grounds on which the decision is based. Nor may that person be prevented from using, in administrative or judicial proceedings, information to which access has been granted. The intervention of the public prosecutor alone is insufficient to safeguard that person's rights. Disclosure may nevertheless be refused where it could jeopardise national security. In that event, the national court must draw the necessary consequences from the failure to disclose all or part of the grounds and evidence, to safeguard the rights of the defence. Finally, the primacy of EU law and Article 267 TFEU preclude a national court from being bound by the legal assessment of a higher court where it considers them to be incompatible with EU law as interpreted by the Court of Justice.

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Case law of the European Court of Human Rights

European Court of Human Rights, judgment of 7 July, *Allabed v. Denmark*, App. no. 14983/25

Category: Borders

Keywords/Relevant provisions: Article 8 ECHR – Expulsion – Re-entry-ban – Family ties – Syria

Facts: The applicant is a Syrian national who arrived in Denmark in 2013 and was granted residence as a refugee. He was subsequently joined by his wife and six children, including two minors, by way of family reunification. In 2023, the applicant was sentenced to three years' imprisonment and issued a permanent expulsion order for 14 offences, including aggravated money laundering linked to drug proceeds. Upon appeal, Danish judicial authorities reduced his prison sentence to two and a half years and replaced the permanent re-entry ban with a six-year ban, concluding that his expulsion aligned with Article 8 ECHR. In 2025 the Supreme Court upheld the ruling, finding a right balance between the applicant's right to private and family life against public interest, determining that his serious financial crimes, high risk of reoffending, and the weak overall ties to Denmark outweighed his family considerations. It also emphasised that he maintained strong cultural ties to Syria and was well-equipped to adjust to life there. Before the Court of Strasbourg, the applicant complained that his expulsion, coupled with a re-entry ban in Denmark, amounted to a violation of Article 8 ECHR.

Reasoning: The Court confirmed that the applicant's expulsion and six-year re-entry ban interfered with his Article 8 rights but were lawful and pursued the legitimate aim of preventing crime. Danish courts properly applied Convention standards by balancing the gravity of his offences (aggravated money laundering involving drug proceeds) and his high risk of reoffending against his limited integration in Denmark and strong cultural ties to Syria. Although his family formed significant ties to Denmark, the domestic courts reasonably concluded that family life could be maintained remotely, through visits abroad, or by relocating together to Syria. Crucially, the Court accepted that the time-limited nature of the re-entry ban was a decisive factor in ensuring proportionality, as his wife's residence in Denmark leaves open a realistic prospect for future family reunification. Because the domestic judicial assessment was thorough and well-reasoned, the Court found no violation of Article 8.

European Court of Human Rights, judgment of 7 July 2026, *Nashiri v. Lithuania*, App. no. 31908/22

Category: Borders

Keywords/Relevant provisions: Articles 2-3 ECHR – Article 8 ECHR – War on terror – USA – Secret detention

Facts: The applicant, Mr Abd Al Rahim Hussein Al Nashiri, is a Saudi Arabian national of Yemeni descent. The United States authorities considered the applicant to have been one of the most senior figures in al-Qaeda who had been involved in various terrorist attacks in 1998, 2000 and 2002. As part of the broader "war on terror" launched by President Bush in the aftermath of the 9/11 attacks, the CIA established a programme to detain and interrogate terrorists at sites abroad. In this framework, the applicant alleged that as from 6 October 2005 until 25 March 2006 he had been detained in a CIA secret detention facility in Lithuania as one of the CIA's so-called "high value detainees". Before the Court of Strasbourg, he alleged that Lithuania had enabled the CIA to detain him secretly on its territory, and to subject him to torture, various other forms of mental and physical abuse and incommunicado detention, resulting in prolonged separation from his family. He also complained that Lithuania had allowed him to be transferred to other jurisdictions, exposing him to further arbitrary detention and ill-treatment, a flagrantly unfair trial and a risk of the death penalty. Lastly, he complained that Lithuania had failed to carry out a prompt and thorough investigation into his allegations. He claimed his treatment to be in violation of Articles 2 and 3 of the Convention in conjunction with Article 1 of Protocol No. 6, and Articles 3, 5, 6, paragraphs 1, 8 and 13 of the Convention.

Reasoning: Firstly, the Court found that the applicant's allegations had come under Lithuania's jurisdiction and could engage its responsibility under the ECHR. It was established that the Lithuanian authorities had hosted a CIA secret detention centre from 17 or 18 February 2005 to 25 March 2006 and that Mr Al Nashiri had been secretly detained there. Furthermore, the authorities had to have known about the CIA's activities in their country and had to have cooperated in the secret detention programme. However, the Court noted that another international body, namely the UN Working Group on Arbitrary Detention, had already examined and decided, in 2022, a case brought by Mr Al Nashiri covering some of the same allegations, such as the arbitrariness and conditions of his detention: the allegations under Articles 3, 5 and 13 ECHR, therefore, have been rejected by the Court as inadmissible. Regarding the remaining complaints, the Court found a violation of Article 8, because Mr Al Nashiri, who had been held in incommunicado detention and solitary confinement, had been denied any contact with his family; a violation of Article 6, paragraph 1, because Lithuania had assisted in Mr Al Nashiri's transfer from its territory, despite the real and foreseeable risk that he could face a flagrant denial of justice, linked to the widely expressed public concern that trials before the US military commissions did not meet the most basic guarantees of a fair trial; a violation of Articles 2 and 3 read together with Article 1 of Protocol No. 6, finding that Lithuania was responsible for the CIA transferring Mr Al Nashiri to the US military commission's jurisdiction where capital charges have been approved, subjecting him to a serious prospect of the death penalty.

European Court of Human Rights, judgment of 23 July 2026, *A.G. v. Switzerland*, App. No. 15345/20

Category: Immigration

Keywords/Relevant provisions: Article 8 ECHR – Detention – Family unity – Right to visit – Switzerland

Facts: The applicant, a Spanish national, was arrested in Switzerland in December 2019, while pregnant, after being caught transporting cocaine. Swiss judicial authorities placed her in provisional detention and repeatedly denied her proposed alternative measures, citing significant risks of absconding, collusion, and reoffending. During her detention, they rejected her requests to communicate with, receive visits from, or allow her current partner – the alleged father of her unborn child – to attend the birth. Upon appeal, the Federal Supreme Court exceptionally granted her one monitored and recorded phone call with him, while maintaining the refusal of in-person visits and his presence at the delivery due to collusion risks, although police reports found no suspicious involvement by the father. The applicant eventually gave birth, without her partner present. In 2021, she was definitively sentenced to 24 months' imprisonment and ordered to be expelled from Swiss territory. Before the Court of Strasbourg, she complained about a violation of Article 8 ECHR given the refusal of the competent authorities to allow her partner to visit her in prison during her pregnancy and to attend the birth.

Reasoning: The Court found a violation of Article 8 ECHR due to the insufficient balancing of interests by Swiss authorities. Although relevant domestic laws require protecting detainees' rights to private and family life through a careful weighing of public and private interests, national authorities failed to account for the applicant's specific situation. They have not demonstrated that the restrictions inherent in the detainee's rights were based on a pressing social need. They also failed to consider alternative, less restrictive measures that could have safeguarded rights while serving investigation goals. The Court, moreover, noted that this reflects broader criticisms from the Committee on the Prevention of Torture regarding Switzerland's overly security-driven approach to remand prisoners' contact with the outside world. Ultimately, while acknowledging the legitimate aim of preventing crime in drug trafficking cases, the Court ruled that the severe interferences with the applicant's rights were not necessary in a democratic society.

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Italian Case Law

Court of Bologna, Decree of 23 July 2026

Category: Asylum

Key words/Relevant provisions: Regulation (EU) 2024/1348 – Decree-Law No. 100/2026 – Accelerated border procedure – Obligation to "reside only" in a designated place – Freedom of movement

Facts: An applicant for international protection lodged an appeal against a prefectural order requiring him to reside exclusively in the "Ex Caserma Gamberini" reception centre in Ozzano dell'Emilia for a maximum period of twelve weeks. He argued that the measure was unlawful, in particular because it had been preceded by an analogous order, adopted following a decision of the Territorial Commission, which had subsequently been revoked *ex officio* for failure to carry out the preliminary vulnerability assessment required under Regulation (EU) 2024/1348 and the relevant national legislation. The applicant argued that the obligation to reside "only" in the designated centre amounted not merely to a restriction on freedom of movement, but to a deprivation of personal liberty, subject to the safeguards laid down in Article 13 of the Italian Constitution and to the judicial authorisation requirements applicable to the reception of applicants for international protection.

Reasoning: The Court upheld the appeal, holding that the competent authority had not established the lawfulness of either the contested order or the Territorial Commission's decision that had triggered the accelerated border procedure. Since the prefectural order depended on that decision, and no specific remedy was available against it, the Court considered that it had to review its lawfulness incidenter tantum. The Court then assessed whether the prefectural measure interfered with personal liberty, or merely restricted freedom of movement. It held that restrictions on individual freedoms must rest on clear, express and unequivocal legal provisions and cannot be inferred through extensive interpretation or implication. On that basis, the wording "reside only" was not sufficient, in itself, to impose an obligation to remain in the reception centre or to make any departure subject to prior authorisation, absent an express legal basis to that effect. The measure therefore concerned only freedom of movement and did not amount to a restriction of personal liberty under Article 13 of the Italian Constitution.

Court of Palermo, Decree of 27 July 2026

Category: Asylum

Key words/Relevant provisions: Regulation (EU) 2024/1348 – Decree-Law No. 100/2026 – Accelerated border procedure – Recognition rate for international protection – Duty to give reasons

Facts: A third-country national applied for international protection, but his application was rejected as manifestly unfounded under the accelerated border procedure, pursuant to Article 42(1)(j) of Regulation (EU) 2024/1348. That provision permits the use of the accelerated border procedure where the applicant is a national of, or, if stateless, was formerly habitually resident in, a third country for which the latest available Eurostat annual average data for the European Union as a whole show a recognition rate for international protection of 20% or less. Its application is, however, conditional on the determining authority establishing either that there has been a significant change in the situation in that country or that the applicant belongs to a category for which that rate does not reflect the actual need for protection. The applicant challenged the rejection decision and sought suspension of its effects, to be treated as an application for authorisation to remain in the national territory under Article 35-ter(2) of Legislative Decree No. 25/2008.

Reasoning: The Court of Palermo held that Article 42(1)(j) of Regulation (EU) 2024/1348 does not permit the accelerated border procedure to be applied automatically solely based on a recognition rate of 20% or less. That figure is merely indicative and must be supplemented by an individual assessment to determine whether the situation in the third country has undergone a significant change or whether the applicant belongs to a category for which the Eurostat figure is not representative of the actual need for protection. The competent

authority must therefore give specific reasons, in the individual case, both as to the absence of qualified risks affecting the category to which the applicant belongs and as to the actual relevance of the statistical data. In the absence of such an assessment, the accelerated border procedure cannot be regarded as having been validly initiated, since the omission affects the legal basis for the procedure chosen and does not constitute a mere formal irregularity. Consequently, Article 35-ter of Legislative Decree No. 25/2008 is inapplicable, and the derogations associated with the accelerated procedure cease to apply, including those concerning suspension, the time limits for determining the proceedings and the finding that the application is manifestly unfounded under Article 28-ter of Legislative Decree No. 25/2008. The ordinary procedure under Article 35-bis of Legislative Decree No. 25/2008 therefore applies.

Court of Trieste, Decree of 4 August 2026

Category: Asylum

Key words/Relevant provisions: Regulation (EU) 2024/1348 – Decree-Law No. 100/2026 – Accelerated border procedure – Designation of border areas – Ministerial decree

Facts: A Colombian national challenged the Territorial Commission's decision, declaring his application for international protection manifestly unfounded under Article 28-ter of Legislative Decree No. 25/2008. The decision had been adopted through the accelerated border procedure provided for in Articles 42(1)(j) and 45(1) of Regulation (EU) 2024/1348. Together with the appeal, the applicant sought authorisation to remain in the national territory.

Reasoning: The Court of Trieste held that the accelerated border procedure could not be applied. It noted that Decree-Law No. 100/2026, in force since 12 June 2026, had amended Article 28-bis of Legislative Decree No. 25/2008 and introduced Articles 28-bis.1 and 28-bis.2 to implement Regulation (EU) 2024/1348. Under the new Article 28-bis, the procedure is conditional on the prior designation, by decree of the Minister for the Interior, of border and transit areas. Since that decree had not yet been adopted, the statutory conditions for applying the procedure were not met. The consequences of its unlawful use therefore had to be set aside already at the interim stage. The Court accordingly granted the application for authorisation to remain in Italy, ordered that the case proceed under the ordinary procedure laid down in Article 35-bis of Legislative Decree No. 25/2008, and held that the contested decision was automatically suspended under paragraph 3 of that provision.