



FORUM “IMMIGRATION, BORDERS AND ASYLUM” (IFA)

CASE LAW UPDATES

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In this issue:

Case law of the Court of Justice of the European Union	2
Opinion of Advocate General Rimvydas Norkus delivered on 3 September 2026, Case C-218/25, <i>Wompou</i>	2
Opinion of Advocate General Dean Spielmann delivered on 3 September 2026, Case C-394/25, <i>Volta</i>	2
Court of Justice, judgment of 24 September 2026, Case C-511/25, <i>Prokoda</i>	3
Case law of the European Court of Human Rights	3
European Court of Human Rights, judgment of 3 September 2026, <i>B.C. v. Italy</i> , App. No. 42909/23	3
European Court of Human Rights, judgment of 8 September 2026, <i>A.A. v. The Netherlands</i> , App. No. 7481/23	4
European Court of Human Rights, decision (striking out) of 10 September 2026, <i>S.S. v. Poland</i> , App. No. 37042/20	5
European Court of Human Rights, judgment of 24 September 2026, <i>A.M. and Others v. Greece</i> , App. No. 11022/17 and 3 others	5
Italian Case Law	5
Court of Milan, Specialised Section for Immigration, International Protection and Free Movement of European Union Citizens, order of 19 September 2026.....	5

Case law of the Court of Justice of the European Union

[Opinion of Advocate General Rimvydas Norkus delivered on 3 September 2026, Case C-218/25, *Wompou*](#)

Category: Borders

Keywords/Relevant provisions: Directive 2008/115/EC – Detention pending removal – Specialised detention facilities – Lawfulness of additional restrictions or constraints – Judicial review

Facts: BC, a third-country national detained at the Justitieel Complex Schiphol ('JCS'), challenged the detention order, arguing that the JCS was not a 'specialised detention facility' within the meaning of the first sentence of Article 16(1) of Directive 2008/115. The referring Court asked the Court of Justice to clarify the defining features of such facilities. In [*Landkreis Gifhorn*](#), the Court had held that detention in a specialised facility must be confined to the continuous placement of the person concerned in a restricted and enclosed space, insofar as strictly necessary to prepare for removal, and must be neither punitive nor comparable to imprisonment. The Court must now determine the permissible scope of those restrictions, whether measures not directly serving the removal process may be imposed, and the extent of national judicial review.

Reasoning: According to the Advocate General, Article 16 of Directive 2008/115/EC allows restrictions beyond confinement in a restricted space, provided that they are neither punitive nor render detention comparable to imprisonment. Any restriction affecting rights and freedoms guaranteed by the Charter must respect the absolute prohibition of inhuman or degrading treatment under Article 4. Under Article 52(1) of the Charter it must also have a legal basis, preserve the essence of the rights concerned, and be necessary and proportionate to an objective of general interest or the protection of others' rights. Legitimate objectives may include preventing disturbances and protecting detainees and staff. Given the impact of detention and its conditions on fundamental rights, national courts must rigorously review those conditions where there is serious evidence of a breach of Article 16(1) of the Directive.

[Opinion of Advocate General Dean Spielmann delivered on 3 September 2026, Case C-394/25, *Volta*](#)

Category: Immigration

Keywords/Relevant provisions: Directive 2003/86/EC – Right to family reunification – Article 7(2) – Integration measures – Principle of non-discrimination

Facts: The spouse of B and the partner of A (each referred to as a 'sponsor') applied for long-stay visas for family reunification in The Netherlands on behalf of the two third-country nationals concerned and, in A's case, her children. The State Secretary rejected both applications, and the subsequent complaints, because the Applicants had not passed the first stage of the civic integration examination abroad, requiring basic knowledge of the Dutch language and society, and did not qualify for an exemption or dispensation based on individual circumstances. The District Court of The Hague upheld A's and B's actions and annulled the decisions, holding that Article 17(1)(a) of the Vw 2000 created nationality-based differential treatment contrary to Article 14 ECHR, read with Article 8, and Article 7(2) of Directive 2003/86. It found that persons subject to the requirement were treated differently from exempt third-country nationals in comparable situations and that the Minister had not adequately shown either that the requirement promoted integration or that the distinction was objectively justified. The State Secretary appealed to the Council of State of The Netherlands, which referred questions to the Court of Justice on whether exemptions granted solely on grounds of nationality are compatible with the principles of non-discrimination and equal treatment, and on the limits of Member States' discretion under Directive 2003/86.

Reasoning: According to the Advocate General, the first subparagraph of Article 7(2) of Directive 2003/86/EC does not prevent national legislation from distinguishing, on the basis of nationality, between third-country nationals who must satisfy a pre-entry integration measure, such as the civic integration requirement abroad, to obtain a long-stay visa and those who are exempt. Identifying the categories subject to or exempt from such

measures entails policy choices that are not, as such, reviewable under the principle of equal treatment. Member States therefore retain discretion in defining those categories. However, they may not do so in a manner that gives rise to discrimination on any of the non-exhaustive grounds listed in Article 21(1) of the Charter of Fundamental Rights of the European Union. That provision prohibits discrimination on those grounds without the specific limitations governing nationality discrimination under Article 21(2). Recital 5 of Directive 2003/86 further requires Member States to implement the Directive in compliance with Article 21(1) of the Charter.

[Court of Justice, judgment of 24 September 2026, Case C-511/25, *Prokoda*](#)

Category: Asylum

Keywords/Relevant provisions: Regulation (EU) No 604/2013 – Article 3(2), first subparagraph – Application for international protection lodged in another Member State – Article 17 – Discretionary clause

Facts: E. K., a Russian national, applied for international protection in the Czech Republic. The Czech Ministry of the Interior determined that The Netherlands was responsible for examining the application under the first subparagraph of Article 3(2) of the Dublin III Regulation. On E. K.'s application, the Regional Court in Brno annulled that decision, finding that the Ministry had neither adequately assessed whether systemic deficiencies in the Dutch asylum system exposed the Applicant to a risk of inhuman or degrading treatment under Article 4 of the Charter nor sufficiently explained its refusal to exercise the discretion conferred by Article 17 of the Regulation. The Ministry appealed to the Czech Supreme Administrative Court, which asked the Court of Justice to clarify the interpretation of the first subparagraph of Article 17(1) of Regulation (EU) No 604/2013 and the scope of the discretionary clause it contains.

Reasoning: The Court of Justice noted that Article 17(1) of the Dublin III Regulation permits two interpretations. Its reference to a derogation from Article 3(1) might suggest that it applies only to the responsibility criteria in Chapter III, excluding the residual criterion in the first subparagraph of Article 3(2). However, the provision allows a Member State to examine an application even where it is not responsible under the criteria laid down in the Regulation, a phrase encompassing all criteria established by it. In light of the provision's context, objectives and origins, the Court therefore held that Article 17(1) permits a Member State to examine an application for international protection even where another Member State is responsible under the residual criterion in the first subparagraph of Article 3(2).

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Case law of the European Court of Human Rights

[European Court of Human Rights, judgment of 3 September 2026, *B.C. v. Italy*, App. No. 42909/23](#)

Category: Immigration

Keywords/Relevant provisions: Article 3 ECHR – Article 5 ECHR – Detention – Unaccompanied minor – Adult detention centre

Facts: The Applicant is a national of the Ivory Coast, who arrived, as an unaccompanied minor, in Italy in 2023 to seek international protection. He was subsequently placed in the adult reception centre and centre for asylum seekers “C.A.R.A.” of Restinco, Brindisi, which at the time was destined to host unaccompanied minors. The Applicant complained of the poor conditions of his stay and of his deprivation of liberty. He remained in the adult centre for approximately two and a half months, until, following indication of an interim measure under Rule 39, he was successfully transferred to a specialized facility for unaccompanied minors, and a new guardian was later appointed. Before the Court of Strasbourg, he claimed that he had been unlawfully deprived of his liberty and had been unable to challenge his detention, in breach of Article 5 ECHR, and kept in poor detention conditions, in breach of Article 3 ECHR.

Reasoning: With regard to Article 5 ECHR, the Court noted that the Applicant was unable to leave the centre and had been placed there without a clear and accessible legal basis or reasoned decision ordering his detention. It therefore found that his deprivation of liberty had been arbitrary. The absence of a legal basis also meant that he could not be properly informed of the reasons for his detention or provided sufficient information to be able to challenge the decision before a court. Consequently, the Court found a violation of Articles 5 §§ 1, 2 and 4 ECHR. Additionally, the Applicant alleged poor material conditions, overcrowding, and a lack of socialization under Article 3. However, the Court concluded, based on the available evidence, that the conditions and support provided – including medical, psychological, and educational assistance – did not reach the high threshold of severity required to constitute inhuman or degrading treatment, leading to the rejection of that specific complaint.

[European Court of Human Rights, judgment of 8 September 2026, *A.A. v. The Netherlands*, App. No. 7481/23](#)

Category: Immigration

Keywords/Relevant provisions: Article 8 ECHR – Family reunification – Polygamy – Yemen – The Netherlands

Facts: The Applicant is a Yemeni national who contracted three polygamous marriages in Yemen and had thirteen children. Arrived in the Netherlands, he asked and obtained the refugee status. The Dutch authorities granted family reunification with his first wife and their eight children but refused it in respect of the five children born of his second and third marriages on the grounds that polygamy was contrary to public order in the Netherlands. The authorities found that the children lived with their mothers in Türkiye where they had access to housing, education and healthcare. He unsuccessfully challenged the domestic decisions, highlighting reasons for family reunification such as the real risk of ill-treatment in Yemen and the impossibility of living there, the interest in exercising family life in the Netherlands, and the best interests of the Applicant's children born of his second and third marriages and their dependence on the Applicant father. Before the ECtHR, the Applicant complained that the refusal of the Dutch authorities violated his right to respect for his family life under Article 8 ECHR.

Reasoning: The Court first reiterated that the protection of family life applies to both “legitimate” and “illegitimate” families, and that the concept of family is not limited to marriage-based relationships. It therefore accepted that family life existed between the Applicant and his five children, irrespective of the fact that his second and third polygamous marriages were not recognised in the Netherlands. It then noted the strong European consensus prohibiting polygamy and that the Applicant had chosen to maintain all three marriages despite having been given the possibility of regularising his situation under Dutch law. It therefore considered that Contracting States enjoyed a wide margin of appreciation in deciding whether to allow family reunification between fathers and children born of polygamous marriages. Within that margin of appreciation, the Court found that the Dutch authorities had carried out an individual assessment of the Applicant's circumstances and balanced his right to family life against the interests of immigration control and public order. Despite the situation in Yemen, the children lived with their mothers in Türkiye where they had access to education and healthcare, and there was no evidence that they faced violence there. They had no ties to the Netherlands other than their relationship with the Applicant, who could maintain contact with and visit them, and no particular dependence on him beyond financial support. The Court recalled that, in family reunification cases, the best interests of the child are of paramount importance, but the best interests of the child alone cannot be decisive and do not in themselves require their admission to a Contracting State. The Court therefore concluded that the domestic authorities had struck a fair balance between the Applicant's right to family life and the State's interests in enforcing immigration controls and upholding public order and found no violation of Article 8 ECHR.

[European Court of Human Rights, decision \(striking out\) of 10 September 2026, *S.S. v. Poland*, App. No. 37042/20](#)

Category: Borders

Keywords/Relevant provisions: Article 3 ECHR – Article 13 ECHR – Article 1, Protocol 7 ECHR – Expulsion – Poland

Facts: The Applicant is a Tajikistani national challenging a Polish Interior Ministry return decision that also banned him from the Schengen area. Although the Supreme Administrative Court initially suspended the decision's execution and later quashed it, proceedings were discontinued after the Applicant voluntarily left Poland. The Applicant nevertheless brought an application before the Court of Strasbourg, despite his departure from Poland, invoking violations of Articles 13, 3 and 1 of Protocol No. 7 ECHR, regarding a lack of an effective remedy with suspensive effect. The Polish Government argued that the application should be dismissed; the Applicant, on his part, chose to maintain his pursuit of the case in Strasbourg.

Reasoning: The Court finds that the Applicant freely chose to leave Poland and live elsewhere, even though he had obtained two separate interim decisions under Rule 39 of the Rules of Court protecting him from being forcibly removed to Tajikistan from Poland. Furthermore, the Court notes that the Applicant himself has refrained from appealing against the decision adopted at domestic level in his regard. Consequently, it finds that the Applicant himself prevented comprehensive review of the decision ordering his return and the adoption of a final decision on the merits in his case. Therefore, he failed to demonstrate the necessary diligence. In view of such considerations, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) ECHR, and therefore it must be struck out of the Court's list of cases.

[European Court of Human Rights, judgment of 24 September 2026, *A.M. and Others v. Greece*, App. No. 11022/17 and 3 others](#)

Category: Asylum

Keywords/Relevant provisions: Article 3 ECHR – Asylum facilities – Overcrowding – Greece – Extremely poor living conditions

Facts: The Applicants are various nationals who complained of the reception and living conditions to which they had been subjected as asylum-seekers (including overcrowding, lack of access to necessities, lack of heating, inadequate access to sanitary facilities, inappropriate and inadequate food, lack of access to medical care) in various Greek facilities (including in Lesvos, Ritsona and Moria). Before the ECtHR they invoked a violation of Article 3 ECHR.

Reasoning: The Court found that the Applicants who had stayed in Ritsona camp and in the Moria Reception and Identification Centre on Lesvos, had been subjected to extremely poor living conditions and therefore found a violation of Article 3 ECHR.

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Italian Case Law

Court of Milan, Specialised Section for Immigration, International Protection and Free Movement of European Union Citizens, order of 19 September 2026

Category: Borders, Asylum

Keywords/Relevant provisions: Regulation (EU) 2024/1348 – Borders – Apprehension – Accelerated procedure – Reclassification

Facts: An application for international protection lodged by a third-country national was rejected as manifestly unfounded under Article 28-ter of Legislative Decree No 25/2008, following the accelerated border procedure provided for in Article 43(1)(b), read in conjunction with Article 42(1)(j), of Regulation (EU) 2024/1348. The Applicant subsequently challenged that decision before the Court of Milan.

Reasoning: The Court held that the conditions for applying the accelerated border procedure under Article 43(1)(b), as referred to in Article 45(1) and (3) of Regulation (EU) 2024/1348, were not met. The authorities had treated the case as concerning the apprehension of a third-country national in connection with an irregular external-border crossing. However, recital 57 of the Regulation and the Court of Justice's case-law require a close temporal and geographical link between the crossing and the apprehension: the procedure applies only where the person is apprehended at or near the border during or immediately after the crossing, not further inland ([Court of Justice, judgment of 7 June 2016, case C-47/15, *Affum*, paragraph 72](#)). Here, the file did not indicate where the Applicant had been apprehended, and the Territorial Commission's decision merely cited the relevant provision. Conversely, documents from the Agrigento Police Headquarters and notification of the screening procedure on Lampedusa suggested that the case might concern disembarkation following a search and rescue operation under Article 43(1)(c). As accelerated border procedures derogate from the ordinary procedure, the failure to give specific reasons establishing that the applicable conditions were met infringed the relevant procedural safeguards. In particular, the decision did not address the place of disembarkation, the Applicant's length of stay in the hotspot, or the duration and conditions of transfers undergone by Applicants for international protection, thereby preventing effective judicial review. The consequences of the erroneous use of the border procedure therefore had to be remedied at the interim-relief stage. The proceedings were to continue under Article 35-bis, rather than Article 35-ter, of Legislative Decree No 25/2008, with the resulting automatic suspension of the contested decision under Article 35-bis(3). Since the border procedure had not been lawfully applied, the exception in Article 68(3) of Regulation (EU) 2024/1348 – concerning applications rejected as unfounded or manifestly unfounded after examination under that procedure, subject to the exception for unaccompanied minors – was inapplicable. The contested decision was therefore suspended from the date the action was brought and for the entire duration of the proceedings.