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 1 October 2026, Case C-249/25, *Jilin*

Category: Asylum

Keywords/Relevant provisions: Directive 2001/55/EC – Directive 2013/32/EU – Temporary protection – Granting of international protection – Suspension of the running of the time limit for taking a decision on an application for international protection

Facts: UB, a Chinese national, arrived in the Netherlands with his Ukrainian wife and their child and lodged an application for asylum there. While that application was being examined, the competent authority informed him that he was entitled to temporary protection, since he had resided in Ukraine with his family before 24 February 2022. It therefore considered that there was no need to continue examining his application for international protection, the examination of which could resume once that protection had ended. UB brought proceedings on the ground that the time limits laid down in Directive 2013/32 for completing the examination of his application had not been complied with. The court upheld his action, holding that the maximum time limit of 21 months laid down in Article 31 of Directive 2013/32 for examining an application for asylum ran, in any event, from the date on which the application was lodged. Following an appeal brought by the Minister, the Netherlands Council of State referred questions to the Court of Justice for a preliminary ruling. It asked, in essence, whether Article 17(2) of Directive 2001/55 allows the examination of applications for international protection lodged by beneficiaries of temporary protection to be suspended for the entire duration of that protection and whether the time limits laid down in Article 31 of Directive 2013/32, in respect of applications lodged before or during that period, begin to run or resume running only once temporary protection has ended.

Reasoning: The Court of Justice clarified that Article 17(2) of Directive 2001/55/EC and Article 31 of Directive 2013/32/EU preclude the automatic suspension of the examination of applications for international protection lodged by beneficiaries of temporary protection, with the result that the time limits for taking a decision begin to run, or continue to run, notwithstanding the period of temporary protection. Article 17(2) of Directive 2001/55 governs only the examination of applications for international protection which have not been processed before the end of the period of temporary protection. It does not regulate the examination of such applications during that period or specify whether Member States may suspend it. Furthermore, the context and legislative history of that provision confirm that the EU legislature did not intend to establish a system in which the examination of applications for international protection would automatically be suspended during the period of temporary protection. In that regard, the Court also had regard to Article 3(1) of that directive, which provides that temporary protection is without prejudice to the recognition of refugee status under the 1951 Geneva Convention, and Article 17(1), which guarantees persons enjoying temporary protection the possibility of lodging an application for asylum at any time. Moreover, the Court held that, in exceptional circumstances, the competent authorities may temporarily defer the examination of certain applications for international protection, even where this entails exceeding the time limits laid down in Article 31 of Directive 2013/32. Such a deferral is permissible only where such a deferral results from measures necessary to address an objective impossibility of complying strictly with those time limits, despite all the reasonably conceivable measures to deal with the influx of applications, and to prevent the national international protection system concerned from becoming inundated. National courts must verify that any failure to meet the prescribed time limits stems from those necessary measures, rather than a general and automatic suspension of the examination of applications for international protection.

Court of Justice, Judgment of 8 October 2026, Case C-571/24, *YO and CT v. Bundesrepublik Deutschland*

Category: Immigration

Keywords/Relevant provisions: Directive 2003/86/EC – Article 10(3)(a) – Family reunification of a minor refugee – Time limit for lodging the application – Judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248)

Facts: The Applicants are the parents of a person who entered Germany and applied for asylum while still a minor, but was granted refugee status after reaching the age of majority. They initially refrained from applying for family reunification because, according to the information provided by their child and the national case-law, the right to family reunification ceased to exist once the child reached the age of majority. In its judgment of 12 April 2018, A and S (C-550/16), the Court of Justice clarified, however, that the relevant factor is whether the person concerned was a minor when entering the territory of the Member State and when lodging the application for asylum. It also held that the application for family reunification must be lodged within a reasonable period following recognition of refugee status, which is, as a general rule, three months. The child subsequently applied for family reunification on 24 April 2018. The parents applied for visas on 11 July and lodged their applications in person on 20 November of the same year. The consulate rejected those applications on the grounds that the child had reached the age of majority and that the applications had been lodged out of time. The Berlin Administrative Court upheld the refusal. It held that the prospect of the applications being rejected did not justify the Applicants' failure to act, and that there were no grounds either for extending the time limit or for postponing the date from which it began to run. On appeal, the Higher Administrative Court of Berlin-Brandenburg observed that, before the judgment in A and S, neither the national case-law nor the administrative practice had given the Applicants any reason to expect that their applications would be successful or enabled them to know of the three-month time limit. Having stayed the proceedings, that court therefore referred questions to the Court of Justice for a preliminary ruling. It asked, in essence, whether the three-month time limit applicable to applications based on Article 10(3)(a) of Directive 2003/86 must also apply without adjustment where it had already expired by the date of the judgment in A and S and the previous national approach had precluded family reunification with a child who had reached the age of majority. If not, it asked whether the starting point of that time limit should be postponed, possibly until the date of that judgment, or whether a longer period should be allowed.

Reasoning: The Court, referring to its judgment in A and S, reiterated that a refugee who applied for asylum as an unaccompanied minor but reached the age of majority while that application was being examined cannot exercise the right to family reunification under Article 10(3)(a) of Directive 2003/86/EC without any time limit. The application for family reunification must therefore be lodged within a reasonable period following recognition of refugee status, which is, in principle, three months. That period, inferred by analogy from the third subparagraph of Article 12(1) of the same directive, serves as a guideline and may be adjusted in the light of the specific circumstances of the case. In the present case, the three-month period had already expired by the time the judgment in A and S was delivered. Furthermore, until that judgment, the case-law of the German higher courts and the administrative practice of the national authorities offered no realistic prospect of success for applications lodged by the parents of refugees who had reached the age of majority during the asylum procedure. The Court therefore clarified that, where a third-country national entered the territory of a Member State as an unaccompanied minor, reached the age of majority during the procedure for examining his or her application for international protection and was granted refugee status before the judgment in A and S was delivered, the application for family reunification by his or her parents must be lodged within a reasonable period from the date on which the minor concerned was recognised as a refugee. Whether that period is reasonable must be assessed in the light of all the circumstances specific to each case. In particular, in the main proceedings, the referring court must take into account the following circumstances when assessing whether the application was lodged within a reasonable period: the fact that the Applicants could not have been aware of the three-month time limit before the judgment in A and S was delivered; the information they had received from the competent national authorities indicating that, under the previous national approach, their application had no prospect of success; and the fact that their son applied for family reunification on their behalf just

twelve days after that judgment was delivered. The latter circumstance may indicate that the Applicants acted diligently in exercising their right to family reunification and in good faith.

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Case law of the European Court of Human Rights

European Court of Human Rights, judgment of 1 October 2026, *M.C. v. Hungary*, App. no. 32317/23

Category: Borders

Keywords/Relevant provisions: Article 8 ECHR – Expulsion – Renewal of a residence permit – Denial on national security grounds – Hungary

Facts: The Applicant is a Serbian national who has resided in Hungary since 2010 and whose application for the renewal of a residence permit for employment purposes was ultimately dismissed, leading to his expulsion to Serbia. Although he fulfilled all standard statutory conditions regarding employment, housing, and financial means, the authorities rejected his application on the basis of a classified assessment by the Constitution Protection Office identifying him as a national security threat. Domestic courts upheld this decision and reviewed the classified documents, while the Applicant was denied access to the underlying reports and his final judicial review petition was declared inadmissible by the Supreme Court (*Kúria*). Before the ECtHR, the Applicant complains under Article 8 and 13 ECHR that his expulsion violated his right to private life and that he lacked sufficient procedural guarantees and an effective remedy due to his inability to access the grounds for the alleged national security risk.

Reasoning: The Court addressed the admissibility of the application regarding the exhaustion of domestic remedies. The Government argued the application was inadmissible because the Applicant failed to lodge a constitutional complaint. The Court noted that while a constitutional complaint is generally required, the Constitutional Court consistently rejects similar cases without examining the merits. This is because national security threats are treated as factual matters outside constitutional review, making such a complaint ineffective in this instance. Consequently, the Court declared the application admissible, rejecting the Government's non-exhaustion objection. On the merits, the Court chose to examine the application under Article 8 ECHR alone and found that refusing the residence permit and expelling the Applicant interfered with his right to private life. Neither the Applicant nor his lawyer could access the classified documents or obtain an outline of the national security allegations against him. This significant limitation of procedural rights was not sufficiently mitigated by counterbalancing safeguards during the judicial review. Furthermore, the domestic authorities failed to consider the Applicant's personal circumstances or balance the relevant interests at stake. The Court therefore concluded that the interference was not necessary in a democratic society and held that there had been a violation of Article 8 of the Convention.

European Court of Human Rights, judgment of 6 October 2026, *S.B. v. Russia*, App. no. 26760/21

Category: Borders

Keywords/Relevant provisions: Article 5 ECHR – Article 8 ECHR – Crimea – Russia – Expulsion

Facts: The Applicant is an Uzbek national whose husband was killed in 2021 during a security operation in Crimea. Following this event, local courts ordered her administrative removal to Uzbekistan and placed her in a temporary detention facility while her minor children remained behind. Although the ECtHR initially indicated an interim measure to halt her deportation, the authorities ultimately removed her to Uzbekistan in 2023, where her children later joined her. Before the Court, the Applicant raised multiple complaints under Articles 3, 5 and 8 of the Convention regarding the risk of inhuman treatment upon removal, the lawfulness and excessive length of her detention, the lack of an effective remedy to challenge that detention, and the interference with her right to respect for family life.

Reasoning: The Court examined its temporal jurisdiction and confirmed that it remains competent in respect of acts occurring before Russia ceased to be a party to the Convention on 16 September 2022. The Court established that the Applicant's detention, which originated in an order issued before that date, and the other relevant events fell within its jurisdiction, since Russia exercised effective control over Crimea. Following the applicant's withdrawal of the complaint under Article 3, the Court focused its examination of the application on the complaints based on Articles 5 and 8. The Court declared the remaining complaints under Articles 5 and 8 admissible for review. As regards Article 5 § 1, the Court reiterated that any deprivation of liberty must be lawful and prescribed by law. Recalling *Ukraine v. Russia (re Crimea)* [GC], it noted that Russian legislation extended to Crimea in contravention of international humanitarian law could not be regarded as "law" under the Convention. Consequently, the detention ordered by the local courts on the basis of that legislation lacked a lawful basis, which amounted to a violation of Article 5 § 1; the Court held that no separate examination was necessary under Article 5 § 4. The Court also found that the Applicant's removal and detention disrupted her family life with her minor children, constituting an interference. Since this interference was based on Russian legislation that failed to qualify as "law" under the Convention, the Court concluded that there had been a violation of Article 8.

European Court of Human Rights, decision (inadmissibility) of 10 September 2026, notified in writing on 1 October 2026, *T.F. v. Switzerland*, App. no. 17088/23

Category: Asylum

Keywords/Relevant provisions: Article 8 ECHR – Article 13 ECHR – Reconsideration of a denial of an asylum request – New elements – Switzerland

Facts: The Applicant is an Algerian national. His asylum application was rejected in 1999, but he submitted five requests for reconsideration between 2016 and 2022, relying on his lengthy residence in Switzerland and psychiatric disorders. Following the fifth request, the Federal Administrative Court declared his appeal inadmissible on the ground that repeatedly seeking reconsideration without presenting new elements constituted an abuse of process, and imposed a disciplinary fine of CHF 1,000 on his representative. The Applicant complained, under Articles 8 and 13 ECHR, that the refusal to examine his arguments concerning his private life and the fine imposed on his representative infringed his right to an effective remedy.

Reasoning: The ECtHR unanimously declared the application inadmissible. It found that the Applicant had an effective remedy against the original removal decision, as he had been able to present his arguments before the Federal Administrative Court, which delivered a reasoned judgment. His first request for reconsideration in 2016 relied on new circumstances concerning his lengthy residence and deteriorating health. As he had not applied to the ECtHR after those proceedings, the Court left the applicability of Article 13 at that stage undecided. The four subsequent requests relied on the same elements, and the Applicant therefore could not invoke the right to an effective remedy under Article 13 in those proceedings. The Court rejected this complaint as manifestly ill-founded. As regards the disciplinary fine imposed on his representative, the Court held that Article 13 did not apply to the fifth procedure seeking reconsideration of the final removal decision. It therefore rejected this complaint as incompatible *ratione materiae* with the Convention.

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Italian Case Law

Tribunal of Florence, Decree of 12 October 2026

Category: Asylum

Keywords/Relevant provisions: Regulation (EU) 2024/1348 – Article 42(1)(j) – Border procedure – Individual, objective and impartial examination – Category of persons with specific needs

Facts: A third-country national from Bangladesh lodged an application for international protection. The competent Territorial Commission examined that application under the accelerated border procedure and rejected it as manifestly unfounded. The Applicant therefore brought an action pursuant to Article 35-ter of Legislative Decree No 25/2008, as introduced by Decree-Law No 100/2026. He sought suspension of the enforceability of the decision and authorisation to remain in the national territory. He also argued that the conditions for granting refugee status or subsidiary protection were met or, in the alternative, that he was entitled to special protection under Article 19 of Legislative Decree No 286/1998.

Reasoning: The Tribunal examined the scope of Article 42(1)(j) of Regulation (EU) 2024/1348, which provides for the accelerated examination of applications lodged by third-country nationals whose country of origin has an average EU-wide recognition rate for international protection of 20% or less. It held that the provision serves a purely procedural purpose and does not establish a presumption that the country concerned is safe or that the application is unfounded. Nor does it alter the conditions for granting international protection or impose a heavier burden of substantiation on the Applicant. On that basis, the Tribunal held that an individual, objective and impartial examination of the asylum application must be ensured. Before applying the special procedure, the competent authorities must therefore ascertain whether the general data concerning the average recognition rate for international protection in a given country are representative of the Applicant's individual profile or whether specific protection needs arise. The Tribunal held that this assessment must take into account the Applicant's allegations or any indications that they may belong to a group whose specific protection needs differ from those of the general population in the country of origin. According to the Tribunal, that assessment must be carried out ex ante, on the basis of the information available when the procedure is selected, and must be repeated if new indicators emerge during the personal interview or during the subsequent examination of the application. This is because the conditions for applying the border procedure are not fixed once and for all at the outset. Consequently, in the Tribunal's view, the accelerated procedure cannot be maintained if, before a decision is taken, circumstances emerge which would have precluded its initial application. In the present case, the Tribunal considered that the indicators of possible human trafficking, violence and serious exploitation connected with the Applicant's migratory journey through Libya and the resulting exposure to debt were relevant both individually and cumulatively. Those indicators clearly showed that the general recognition rate for Bangladesh was not representative of the Applicant's individual circumstances. The Tribunal therefore concluded that the conditions laid down in Article 42(1)(j) of Regulation (EU) 2024/1348 were either not satisfied or, in any event, no longer fulfilled at the time the decision was taken. The Tribunal further held that the lodging of the application following disembarkation after a search and rescue operation was not, in itself, sufficient to make the application of the border procedure mandatory. The geographical and personal conditions laid down in Article 43 of the Regulation had to be accompanied, pursuant to Article 45 thereof, by one of the circumstances referred to in Article 42(1), including that set out in point (j). Since that condition was no longer satisfied, the application had to be examined under the ordinary procedure.