

Abuse of rights – Judgment C-359/16, 6 February 2018 Altun and Others – Lawful stay

(staatssecretaris van Justitie en Veiligheid tegen de vreemdeling)

In the event of abuse of rights at the time of application, a review of EU law does not result in lawful residence.

The foreign national with Moroccan nationality has committed an abuse of rights by submitting the application for assessment under EU law, because it has become plausible that he did so only to be released from immigration detention.

In a previous ruling of 12 November 2021 (ECLI:NL:RVS:2021:2530), the Administrative Jurisdiction Division of the Dutch Council of State (Division) ruled that there is no legal basis for immigration detention following an application for assessment under EU law. Such an application to assess whether a person has a right of residence under EU law constitutes a form of procedurally lawful residence for which you cannot detain a foreign national, under the current legal framework.

The central question in the current judgment was whether the submission of such an application also in this case constitutes procedurally lawful residence, or whether this is an abuse of rights. There has recently been an increase in applications for assessment under EU law, from or just before the detention of aliens, without these applications being substantiated. For example, no purpose of residence has been ticked or a sponsor has been specified, no use has been made of the possibility to supplement the application with documents and there are no further indications that the foreign nationals could be eligible for a right of residence under EU law. The Administrative Jurisdiction Division ruled that there was an abuse of rights under these circumstances.

Because the foreign nationals have abused their rights in submitting the applications for verification under EU law in this case, these applications do not constitute procedurally lawful residence and there was a legal basis for immigration detention.

On 3 July 2024, the Division also ruled in a similar case with the same outcome (Judgment 202402797/1/V3, 3 July 2024, ECLI:NL:RVS:2024:2709).