



C/2024/633

15.1.2024

Appeal brought on 14 November 2023 by WS, WT, WY, WZ, YA and YB against the judgment of the General Court (Sixth Chamber) delivered on 6 September 2023 in Case T-600/21, WS and Others v Frontex

(Case C-679/23 P)

(C/2024/633)

Language of the case: English

Parties

Appellants: WS, WT, WY, WZ, YA and YB (represented by: A.M. van Eik, L.-M. Komp, advocaten and E. Sharpston, Barrister-at-Law)

Other party to the proceedings: European Border and Coast Guard Agency (Frontex)

Form of order sought

The appellants claim that the Court should:

- set aside the contested judgment in its entirety;
- refer the case back to the General Court if the Court considers that to be necessary so that the General Court may make all relevant findings of fact and decide on pleas 1 to 8 advanced by the Appellants in the light of the Court's judgment in the present appeal;
- alternatively, should the Court consider it possible to do so, give final judgment in the matters that are the subject of this appeal and to declare well-founded pleas 1 to 8 advanced by the Appellants at first instance;
- in any event to order Frontex to pay the Appellants' costs arising from the present appeal, together with those arising from Case T-600/21 before the General Court, together with interest thereon.

Pleas in law and main arguments

1. The General Court erred in law by mischaracterising the Appellants' action as a challenge to the decision to refuse them international protection and/or to the (implied) return decision taken in respect to them. The Appellants therefore submit that the General Court erred in law in holding (implicitly) that Frontex was under no obligation to verify, as a minimum, whether the return operation concerned actual returnees in respect of each of whom a written return decision had been issued by the competent national authorities. In addition, the General Court failed to assess whether Frontex had failed to deal properly with the complaints that the Appellants had submitted to Frontex's internal complaints mechanism.
2. The General Court erred in law in holding that there was no causal link between Frontex's acts and omissions and the damage suffered by the Appellants. The Appellants contend that the General Court erred in law by interpreting the Frontex Regulation so as to imply that Frontex has no independent obligation to ensure compliance with fundamental human rights during return flights. In so holding, the General Court erred in law regarding both Frontex's own competence and the monitoring tasks Frontex performs whilst assisting Member States during the operation of return flights. Such an interpretation of the Frontex Regulation runs counter to the Charter and renders the relevant provisions of the Frontex Regulation ineffective and meaningless. The General Court's interpretation also undermines the proper application of Directive 2008/115/EC⁽¹⁾.

⁽¹⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008, L 348, p. 98).

3. The General Court erred in law by holding that the requisite causal link between Frontex's acts and omissions and the damage suffered was broken by the Appellants' own 'choices'. The Appellants contend that the damages suffered by them were a foreseeable consequence of Frontex's failure to comply with its duties to ensure respect for fundamental rights during return operations and to prevent any person from being disembarked in a country in contravention of the non-refoulement principle. In addition, the General Court failed to take into account (as required by art. 3 ECHR and corresponding art. 4 of the Charter) that the Appellants were asylum seekers and therefore vulnerable persons. Moreover, the General Court erred in law by holding that there is no causal link between Frontex's unlawful conduct and the fees incurred by the Appellants for the internal complaints procedure.
 4. The General Court erred in law by declaring annexes C.1, C.3 to C.6 and E.1 inadmissible, as this concerned fresh evidence or the amplification of evidence offered in response to arguments made by the defendant in its defence.
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