

## **Slovenia - Administrative Court of the Republic of Slovenia, I U 495/2016, 6 April 2016**

**Country of Decision:**

Slovenia

**Country of Applicant:**

Pakistan

**Date of Decision:**

06-04-2016

**Citation:**

I U 495/2016

**Court Name:**

Administrative Court of the Republic of Slovenia

**Keywords:**

Detention

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**Relevant Legislative Provisions:**

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1] > [Article 6](#) [2]

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**Headnote:**

The mere fact that the applicant does not have an identity document does not mean that there was a reason for limiting his freedom of movement based on the first alinea of Article 51(1) of IPA (establishment of identity). The mere presumption that the applicant has deliberately thrown the passport away in order to conceal his identity and country of origin does not mean that doubts exists concerning the applicant's identity. Doubts of the identity of applicants for international protection may exist for example if the applicants change their personal information during the procedure.

**Facts:**

The applicant's freedom of movement was restricted on two grounds:

1. He claimed that he lost his documents while traveling on a boat between Turkey and Greece.

The Asylum authority does not find this explanation credible and is of the opinion that the applicant got rid of his documents on purpose in order to hide his real country of origin and identity. Since the applicant did not submit any documents on the basis of which it would be possible to establish his identity, the Asylum authority questions his identity and therefore the legal requirement to restrict the movement in order to establish the identity of the claimant is established (first ground for detention).

2. The applicant's intention was to apply for asylum in Italy. He did not apply for asylum when apprehended by the Police, but only nine days later. According to the Asylum authority, the applicant misused and misled the asylum procedure because he did not apply for international protection as soon as possible, he only applied for international protection in order not to be returned to his country of origin (second ground for detention).

According to the Asylum authority alternatives to detention cannot be applied because by using less restrictive measures, such as restriction of movement in the area of the reception centre, it would be impossible to achieve the purpose of the measure, given that in the asylum home there is no appropriate mechanism to prevent the departure of the asylum seekers, the applicant may move to another country.

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### **Decision & Reasoning:**

The Court ruled that the first ground of detention - freedom of movement can be restricted if it is necessary to determine the identity of the applicant - does not exist in this case. The mere fact that the applicant does not have an identity document does not mean that there was a reason for limiting his freedom of movement. The mere presumption that the applicant has deliberately thrown the passport away in order to conceal his identity and country of origin does not mean that doubts exist concerning the applicant's identity. Regarding the applicant's claims in the proceedings, the Court does not see any reason for not believing his alleged identity. Doubts of the identity of applicants for international protection may exist for example if the applicants change their personal information during the procedure, but this was not the case.

However, the Court does agree with the reasoning of the Asylum authority regarding the second ground for detention - restriction of movement due to the suspicion that the applicant has misled and abused the asylum procedure on grounds that he has lodged an application for international protection only in order to delay or frustrate the removal from the country.

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### **Outcome:**

Restriction of movement was maintained by the Court.

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### **Attachment(s):**



[UPRS sodba in sklep I U 495\\_2016-06.04.2016.pdf](#)[3]

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### **National / Other Legislative Provisions:**

[Slovenia - International Protection Act \(ZMZ\) Article 51\(1\)](#) [4]

[Slovenia - International Protection Act \(ZMZ\) Article 55](#) [5]

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### **Links:**

[1] <https://www.asylumlawdatabase.eu/node/453>

[2] [https://www.asylumlawdatabase.eu/node/453#toc\\_39](https://www.asylumlawdatabase.eu/node/453#toc_39)

[3]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UPRS%20sodba%20in%20sklep%201%20U%2006.04.2016.pdf>

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-511>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-55>