Court suspends obligation to reside in a specific location for applicants undergoing the border procedure

By decree of 27 June 2026, the Court of Palermo, ruling on an application lodged pursuant to Article 5-quinquies of Legislative Decree No 142/2015, ordered, without a further hearing, the suspension of the enforcement of the Prefect of Agrigento's order requiring an asylum seeker, who was subject to the new mandatory accelerated border procedure, to reside exclusively at the Villa Sikania reception centre (Agrigento) for a maximum period of 12 weeks.

The application challenged the lawfulness of the measure on several grounds, including: the failure to comply with information and disclosure requirements; the lack of jurisdiction of the President of the Territorial Commission to order the application of the accelerated border procedure; the authority's failure to assess the applicant's vulnerability; and the absence of a valid notification of the measure restricting the applicant's freedom of movement.

The applicant had disembarked in Lampedusa on 14 June 2026 and underwent the entire screening procedure in a single day. Although the screening report recorded that he had been referred to the anti-trafficking service, it did not identify him as a vulnerable person. Moreover, the final information report was drafted in a cursory manner and was not translated into a language he could understand. The prefectural order imposing the residence requirement was likewise not translated and failed to indicate the date and place of notification or to inform the applicant of the legal consequences of non-compliance.

The court considered the applicant's arguments to be *prima facie* well founded and granted the requested interim relief.

The application also raised a question about the constitutionality of Article 5-ter of Legislative Decree No 142/2015, as introduced by Legislative Decree No 100/2026, arguing that it is incompatible with Article 13 of the Italian Constitution, which requires restrictions on personal liberty to be based on a reasoned decision of the judicial authority. In particular, Article 5-ter does not provide for judicial validation of the prefectural order, leaving the measure entirely under the control of the Prefect and requiring the asylum seeker to challenge it through judicial proceedings. The application further argued that the

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provision violates Article 3 of the Constitution, since the residence requirement shares significant features with the measure provided for under Article 14(1-bis) of the Consolidated Immigration Act *(Testo Unico sull'Immigrazione)*, which is instead subject to judicial validation by the Justice of the Peace. The differing procedural safeguards were therefore alleged to constitute unjustified unequal treatment.

The court first addressed an important procedural issue, holding that interim relief under Article 700 of the Italian Code of Civil Procedure is available in proceedings brought under Article 5-quinquies of Legislative Decree No 142/2015. It observed that, although the newly introduced provision establishes a right of appeal against the prefectural order, it does not provide for any specific interim remedy capable of immediately suspending its effects. Accordingly, recourse to the residual form of interim protection under Article 700 is both admissible and necessary to ensure the effectiveness of judicial protection, as guaranteed by Articles 24 and 113 of the Constitution.

This decision represents one of the first judicial responses to the new border procedure framework introduced following the implementation of the EU Pact on Migration and Asylum. It confirms that the new measure authorising an asylum seeker to remain in a designated location is subject to review by the ordinary courts, both with regard to the legality of the procedure and the effective protection of the applicant's fundamental rights.

Source(s)

- Association for Juridical Studies on Immigration | Associazione per gli Studi Giuridici sull'Immigrazione (29 June, 2026), Sospeso l’obbligo di dimora del richiedente asilo in procedura di frontiera [Obligation to reside in a specific location suspended for asylum seekers undergoing border procedures], https://www.asgi.it/inlimine/sospeso-lobbligo-di-dimora-del-richiedente-asilo-in-procedura-di-frontiera/

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