Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Abd Aziz Tam

(Case C-74/12)

(2012/C 118/27)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Abd Aziz Tam

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC ([1]) preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

([1]) OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Majali Abdel

(Case C-75/12)

(2012/C 118/28)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Majali Abdel

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC ([1]) preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

([1]) OJ 2008 L 348, p. 98.