



Reports of Cases

Case C-166/13

Sophie Mukarubega
v
Préfet de police
and
Préfet de la Seine-Saint-Denis

(Request for a preliminary ruling from the tribunal administratif de Melun)

(Reference for a preliminary ruling — Visas, asylum, immigration and other policies related to free movement of persons — Directive 2008/115/EC — Return of illegally staying third-country nationals — Procedure for the adoption of a return decision — Principle of respect for the rights of the defence — Right of an illegally staying third-country national to be heard before the adoption of a decision liable to affect her interests — Administrative authority refusing to grant such a national a resident permit as an asylum applicant and imposing an obligation to leave the territory — Right to be heard before the return decision is issued)

Summary — Judgment of the Court (Fifth Chamber), 5 November 2014

1. *Fundamental rights — Charter of Fundamental Rights of the European Union — Right to good administration — Right to be heard — Right not enforceable against Member States*

(Charter of Fundamental Rights of the European Union, Art. 41(2)(a))

2. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — National subject to a return procedure under Directive 2008/115 — Return decision following refusal to grant that national a residence permit as an applicant for asylum — National who was heard in relation to application for asylum — Right to be heard before issue of return decision — None — Conditions*

(Directive 2008/115 of the European Parliament and of the Council, Art. 6)

1. See the text of the judgment.

(see paras 43, 44)

2. The right to be heard in all proceedings, as it applies in the context of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, and in particular Article 6 thereof, must be interpreted as meaning that a national authority is not precluded from failing to hear a third-country national specifically on the subject of a return decision where, after that authority has determined that the third-country national is staying illegally in the national territory on the conclusion of a procedure which fully respected that person's right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.

Given that a return decision is closely linked, under Directive 2008/115, to the determination that a stay is illegal, the right to be heard cannot be interpreted as meaning that, where the competent national authority is contemplating the simultaneous adoption of a decision determining a stay to be illegal and a return decision, that authority should necessarily hear the person concerned so as to permit that person to present his/her point of view specifically on the return decision, since that person had the opportunity effectively to present his/her point of view on the question of whether the stay was illegal and whether there were grounds which could, under national law, entitle that authority to refrain from adopting a return decision.

None the less, the obligation to adopt, with respect to third country nationals who are staying illegally in their territory, a return decision, laid down by Article 6(1) of that directive, within a fair and transparent procedure, entails that Member States must, within the context of their procedural autonomy, first, explicitly make provision in their national law for the obligation to leave the national territory in cases of illegal stay and, second, ensure that the person concerned is properly heard within the procedure relating to his residence application or, as the case may be, on the legality of his stay. In that regard, the right to be heard cannot be used in order to re-open indefinitely the administrative procedure, for the reason that the balance between the fundamental right of the person concerned to be heard before the adoption of a decision adversely affecting that person and the obligation of the Member States to combat illegal immigration must be maintained.

(see paras 60-62, 71, 82, operative part)