



## Reports of Cases

**Case C-383/13 PPU**

**M. G.  
and  
N. R.**

**v**

**Staatssecretaris van Veiligheid en Justitie**

(Request for a preliminary ruling from the Raad van State (Netherlands))

(Visas, asylum, immigration and other policies related to free movement of persons — Immigration policy — Illegal immigration and illegal residence — Repatriation of illegal residents — Directive 2008/115/EC — Return of illegally staying third-country nationals — Removal process — Detention measure — Extension of detention — Article 15(2) and (6) — Rights of the defence — Right to be heard — Infringement — Consequences)

Summary — Judgment of the Court (Second Chamber), 10 September 2013

*Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Detention for the purpose of removal — Extension of detention — Infringement of the right to be heard — Consequences — Lifting of the detention measure — Conditions*

*(European Parliament and Council Directive 2008/115, Art. 15(2) and (6))*

EU law, in particular Article 15(2) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, must be interpreted as meaning that, where the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.

Not to recognise that the national court has such a power of assessment, and to require that every infringement of the right to be heard automatically brings about the annulment of the decision extending the detention and the lifting of that measure, even though such a procedural irregularity might actually have had no impact on that extension decision and the detention fulfils the substantive conditions laid down in Article 15 of Directive 2008/115, would be liable to undermine the effectiveness of the directive.

(see paras 41, 45, operative part)