Reports of Cases

Case C-554/13

Z. Zh.
v
Staatssecretaris voor Veiligheid en Justitie
and

Staatssecretaris voor Veiligheid en Justitie
v
I.O.

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

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 7(4) — Concept of 'risk to public policy' — Circumstances in which Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days)

Summary — Judgment of the Court (Third Chamber), 11 June 2015

1. *EU law — Interpretation — Derogating provision — Restrictive interpretation*

2. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Concept of 'risk to public policy' — Genuine and present risk to public policy — National practice considering such a national to pose a risk to public policy on the sole ground that he is suspected, or has been criminally convicted, of an offence — Unlawful*

   (European Parliament and Council Directive 2008/115, Art. 7(4))

3. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Concept of 'risk to public policy' — Third-country national suspected, or who has been criminally convicted, of an offence — Criteria for assessment*

   (European Parliament and Council Directive 2008/115, Art. 7(4))

4. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Circumstances in which the Member States may refrain from granting a period for voluntary departure or may grant a period shorter than seven days — Obligation to conduct a fresh examination of the matters already examined to establish the existence of a risk to public policy — None — Conditions — Observance of fundamental rights*

   (European Parliament and Council Directive 2008/115, Art. 7(4))

1. See the text of the decision.

(see para. 42)

2. Article 7(4) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as precluding a national practice whereby a third-country national, who is staying illegally within the territory of a Member State, is deemed to pose a risk to public policy within the meaning of that provision on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law.

A Member State is required to assess the concept of 'risk to public policy', within the meaning of that provision, on a case-by-case basis, in order to ascertain whether the personal conduct of the third-country national concerned poses a genuine and present risk to public policy. When it relies on general practice or any assumption in order to determine such a risk, without properly taking into account the national's personal conduct and the risk that that conduct poses to public policy, a Member State fails to have regard to the requirements relating to an individual examination of the case concerned and to the principle of proportionality.

(see paras 50, 54, operative part 1)

3. Article 7(4) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted to the effect that, in the case of a third-country national who is staying illegally within the territory of a Member State and is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law, other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and the fact that that national was in the process of leaving the territory of that Member State when he was detained by the national authorities, may be relevant in the assessment of whether he poses a risk to public policy within the meaning of that provision. Any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence, as the case may be, is also relevant to that assessment.

The concept of 'risk to public policy', as set out in Article 7(4) of that directive, presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It follows that any factual or legal matter relating to the situation of the third-country national concerned which may throw light on whether his personal conduct poses such a threat is relevant to the assessment of that concept.

(see paras 60, 61, 65, operative part 2)

4. Article 7(4) 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 it is not necessary, in order to make use of the option offered by that provision to refrain from granting a period for voluntary departure when the third-country national poses a risk to public policy, to conduct a fresh examination of the matters which have already been examined in order to establish the existence of that risk. Any legislation or practice of a Member State on this issue must nevertheless ensure that a case-by-case assessment is conducted of whether the refusal to grant such a period is compatible with that person's fundamental rights.

A Member State cannot refrain automatically, by legislative means or in practice, from granting a voluntary period for departure where the person concerned poses a risk to public policy. However, it is open to the Member State concerned to take account of those matters, which may in particular be relevant when that Member State evaluates whether it is appropriate to grant a period for voluntary departure shorter than seven days.

(see paras 70, 74, 75, operative part 3)