



Reports of Cases

Case C-146/14 PPU **Bashir Mohamed Ali Mahdi**

(Request for a preliminary ruling from the Administrativen sad Sofia-grad)

(Visas, asylum, immigration and other policies related to free movement of persons — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 15 — Detention — Extension of detention — Obligations of the administrative or judicial authority — Review by a judicial authority — Third-country national without identity documents — Obstacles to implementation of a removal decision — Refusal of the embassy of the third country concerned to issue an identity document enabling the third-country national to be returned — Risk of absconding — Reasonable prospect of removal — Lack of cooperation — Whether the Member State concerned is under an obligation to issue a temporary document relating to the status of the person concerned)

Summary — Judgment of the Court (Third Chamber), 5 June 2014

1. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — Whether detention to be extended — Decision adopted on expiry of the maximum period allowed for the initial detention — Decision required to be in the form of a written measure that includes the reasons in fact and in law*

(Charter of Fundamental Rights of the European Union, Arts 6 and 47; European Parliament and Council Directive 2008/115, Art. 15(2), (3), (5) and (6))

2. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — Review of the conditions of detention at regular intervals — Procedural rules which are not laid down by EU law — Competence of the Member States*

(European Parliament and Council Directive 2008/115, Art. 15(3))

3. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — Whether detention to be extended — Scope of the review carried out by a judicial authority hearing an application for detention to be extended*

(European Parliament and Council Directive 2008/115, Art. 15(3) and (6))

4. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — National legislation providing for detention to be extended solely because of the lack of identity documents — Not permissible*

(European Parliament and Council Directive 2008/115, Art. 15(1) and (6))

5. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — Whether detention to be extended — Lack of cooperation — Meaning*

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

6. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Detention for the purpose of removal — Third-country national without identity documents released by the national court on the ground that there is no reasonable prospect of removal — Obligation to issue an autonomous residence permit or other authorisation conferring a right to stay — No such obligation — Obligation to provide the third-country national with written confirmation of his situation*

(European Parliament and Council Directive 2008/115, Art. 15(4))

1. Article 15(3) and (6) of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a third-country national, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision.

The only requirement expressly provided for in Article 15 of Directive 2008/115 as regards adoption of a written measure is the requirement set out in paragraph 2 thereof, namely that detention must be ordered in writing with reasons being given in fact and in law. The requirement that a decision be adopted in writing must be understood as necessarily covering all decisions concerning extension of detention. However, the provisions of Article 15 of Directive 2008/115 do not require the adoption of a written measure concerning the periodic reviews. The authorities which carry out the review of a third-country national's detention at regular intervals pursuant to the first sentence of Article 15(3) of the directive are therefore not obliged, at the time of each review, to adopt an express measure in writing that states the factual and legal reasons for that measure.

Nevertheless, if the authority dealing with a review procedure at the end of the maximum period for initial detention allowed by Article 15(5) of Directive 2008/115 takes a decision on the further course to take concerning the detention, it is obliged to adopt a written reasoned decision. In such a case, the review of the detention and the decision on the further course to take concerning the detention occur in the same procedural stage. Consequently, that decision must fulfil the requirements of Article 15(2) of Directive 2008/115. It must also, in every case, be subject to supervision by a judicial authority in accordance with Article 15(3) of that directive.

(see paras 44, 47-49, 52, operative part 1)

2. EU law does not preclude national legislation — which at the same time ensures that the fundamental rights are observed and that the provisions of EU law relating to that measure are fully effective — from providing that the authority which reviews the detention of a third-country national at reasonable intervals, in accordance with the first sentence of Article 15(3) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, must adopt, on the conclusion of each review, an express measure containing the factual and legal reasons justifying the measure adopted. Such an obligation would arise solely under national law.

(see paras 50, 51)

3. Article 15(3) 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 the supervision that has to be undertaken by a judicial authority dealing with an application for extension of the detention of a third-country national must permit that authority to decide, on a case-by-case basis, on the merits of whether the detention of the third-country national concerned should be extended, whether detention may be replaced with a less coercive measure or whether the person concerned should be released, that authority thus having power to take into account the facts stated and evidence adduced by the administrative authority which has brought the matter before it, as well as any facts, evidence and observations which may be submitted to the judicial authority in the course of the proceedings.

A judicial authority deciding upon an application for the extension of detention must be able to rule on all relevant matters of fact and of law in order to determine, in the light of the requirements arising under Article 15 of Directive 2008/115, whether an extension of detention is justified, which requires an in-depth examination of the matters of fact specific to each individual case. Where the detention that was initially ordered is no longer justified in the light of those requirements, the judicial authority having jurisdiction must be able to substitute its own decision for that of the administrative authority or, as the case may be, the judicial authority which ordered the initial detention and to take a decision on whether to order an alternative measure or the release of the third-country national concerned. To that end, the judicial authority ruling on an application for extension of detention must be able to take into account both the facts stated and the evidence adduced by the administrative authority and any observations that may be submitted by the third-country national. Furthermore, that authority must be able to consider any other element that is relevant for its decision should it so deem necessary. Accordingly, the powers of the judicial authority in the context of an examination can under no circumstances be confined just to the matters adduced by the administrative authority concerned.

(see paras 62, 64, operative part 2)

4. Article 15(1) 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 precluding national legislation pursuant to which an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents. It is for the referring court alone to undertake an individual assessment of the facts and circumstances of the case in question in order to determine whether a less coercive measure may be applied effectively to that third-country national or whether there is a risk of him absconding.

(see para. 74, operative part 3)

5. Article 15(6)(a) 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 a third-country national who has not obtained an identity document which would have made it possible for him to be removed from the Member State concerned may be regarded as having demonstrated a lack of cooperation within the meaning of that provision only if an examination of his conduct during the period of detention shows that he has not cooperated in the implementation of the removal operation and that it is likely that that operation lasts longer than anticipated because of that conduct, a matter which falls to be determined by the referring court.

Furthermore, Article 15(6) of Directive 2008/115 requires that, before it considers whether the third-country national concerned has shown that he has failed to cooperate, the authority concerned should be able to demonstrate that the removal operation is lasting longer than anticipated, despite all reasonable efforts: that means that the Member State in question should actively be seeking to secure the issue of identity documents for the third-country national.

Thus, in order to confirm that the Member State concerned has made reasonable efforts to carry out the removal operation and that there is a lack of cooperation on the part of the third-country national concerned, a detailed examination of the factual matters relating to the whole of the initial detention period is necessary. Such an examination is a question of fact which falls outside the jurisdiction of the Court in proceedings under Article 267 TFEU and is a matter for the national court.

(see paras 83-85, operative part 4)

6. Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that a Member State cannot be obliged to issue an autonomous residence permit, or other authorisation conferring a right to stay, to a third-country national who has no identity documents and has not obtained such documentation from his country of origin, after a national court has released the person concerned on the ground that there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of that directive. However, that Member State must, in such a case, provide the third-country national with written confirmation of his situation.

(see para. 89, operative part 5)