



Reports of Cases

Case C-290/14

**Criminal proceedings
against
Skerdjan Celaj**

(Request for a preliminary ruling from the Tribunale di Firenze)

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Return of illegally staying third-country nationals — Return decision accompanied by an entry ban of three years' duration — Breach of an entry ban — Third-country national previously removed — Sentence of imprisonment in case of new unlawful entry into the national territory — Compatibility)

Summary — Judgment of the Court (Fourth Chamber) 1 October 2015

Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Directive 2008/115 — Decision to return such a national accompanied by an entry ban of three years' duration — Breach of an entry ban by that national — National legislation providing for the imposition of a penalty of imprisonment on such a third-country national — Lawfulness — Conditions — Verification by the national court

(European Parliament and Council Directive 2008/115, Art. 11)

Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not, in principle, precluding legislation of a Member State which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban.

Nevertheless, in so far as the situation of the third-country national concerned, which led to the removal preceding the new unlawful entry into the territory of a Member State, fell within the scope of Directive 2008/115, the imposition of a criminal law sanction, such as that at issue in the main proceedings, is admissible only on the condition that the entry ban issued against that national complies with Article 11 of that directive, a matter which is for the referring court to determine.

Last, the imposition of such a criminal law sanction is moreover subject to full observance both of fundamental rights, particularly those guaranteed by the European Convention on Human Rights and, as the case may be, of the Geneva Convention, in particular Article 31(1) thereof.

(see paras 31-33, operative part)