



Reports of Cases

Case C-601/15 PPU

J.N.

v

Staatssecretaris van Veiligheid en Justitie

(Request for a preliminary ruling from the Raad van State (Pays-Bas))

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Standards for the reception of applicants for international protection — Directive 2008/115/EC — Lawful residence — Directive 2013/32/EU — Article 9 — Right to remain in a Member State — Directive 2013/33/EU — Point (e) of the first subparagraph of Article 8(3) — Detention — Protection of national security or public order — Validity — Charter of Fundamental Rights of the European Union — Articles 6 and 52 — Limitation — Proportionality)

Summary — Judgment of the Court (Grand Chamber), 15 February 2016

1. *Fundamental rights — European Convention on Human Rights — Instrument which has not been formally incorporated into EU law*

(Art. 6(3) TEU; Charter of Fundamental Rights of the European Union, Art. 52(3))

2. *Border controls, asylum and immigration — Asylum policy — Minimum standards for the reception of applicants for international protection — Directive 2013/33 — Article 8(3), first subparagraph, point (e) — Detention for reasons relating to public order and public security — Assessment of the validity of that provision in the light of Articles 6 and 52 of the Charter of Fundamental Rights of the European Union — Validity*

(Charter of Fundamental Rights of the European Union, Arts 6 and 52(1) and (3); European Parliament and Council Directive 2013/33, Arts 8(3), first subpara., point (e), and 9(1))

3. *Border controls, asylum and immigration — Immigration policy — Return of illegally staying third-country nationals — Person who is subject to a return decision within the meaning of Directive 2008/115 — Introduction of an asylum application causing, according to national case-law, a return decision that has previously been adopted to lapse — Not permissible — Obligation to ensure the practical effect of Directive 2008/115 — Duty of sincere cooperation*

(Art. 4(3), TEU; European Parliament and Council Directives 2008/115, Recital 4 and Art. 8, and 2013/33, Art. 8)

1. See the text of the decision.

(see paras 45, 46)

2. There is no factor of such a kind as to affect the validity — in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union — of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 laying down standards for the reception of applicants for international protection, which allows an applicant to be detained for reasons relating to the protection of national security or public order.

Given that the objective pursued by that provision is the protection of national security and public order, a measure ordering detention which is based on the provision genuinely meets an objective of general interest recognised by the European Union. In addition, the protection of national security and public order also contributes to the protection of the rights and freedoms of others. Article 6 of the Charter of Fundamental Rights of the European Union states in this regard that everyone has the right not only to liberty but also to security of person.

As regards the proportionality of the interference with the right to liberty to which a measure ordering detention gives rise, the detention of an applicant where the protection of national security or public order so requires is, by its very nature, an appropriate measure for protecting the public from the threat which the conduct of such a person represents and is thus suitable for attaining the objective pursued by point (e) of the first subparagraph of Article 8(3) of Directive 2013/33. Moreover, it is apparent both from the wording and context of Article 8 of Directive 2013/33 and from its legislative history that the possibility — provided for in point (e) of the first subparagraph of paragraph 3 — of detaining an applicant for reasons relating to the protection of national security or public order is subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework in which such a measure may be used. In that regard, Article 9(1) of Directive 2013/13 provides that an applicant is to be detained only for as short a period as possible and may be kept in detention only for as long as the grounds set out in Article 8(3) of that directive are applicable.

Lastly, the strict circumscription of the power of the competent national authorities to detain an applicant on the basis of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 is also ensured by the interpretation which the case-law of the Court of Justice gives to the concepts of ‘national security’ and ‘public order’ found in other directives and which also applies in the case of Directive 2013/33.

The concept of ‘public order’ entails, in any event, the existence — in addition to the disturbance 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.

The concept of ‘public security’ covers both the internal security of a Member State and its external security. Consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security.

(see paras 53-55, 57, 62, 64-66, 82, operative part)

3. In relation to national case-law according to which the introduction of an asylum application by a person who is subject to a return decision automatically causes all return decisions that may previously have been adopted in the context of that procedure to lapse, the principle that Directive 2008/115, on common standards and procedures in Member States for returning illegally staying third-country nationals, must be effective requires that a procedure opened under that directive, in the context of which a return decision, accompanied, as the case may be, by an entry ban, has been adopted, can be resumed at the stage at which it was interrupted, as soon as the application for international protection which interrupted it has been rejected at first instance. Indeed, the Member States must not jeopardise the attainment of the objective which Directive 2008/115 pursues, namely the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals.

In this regard, it follows both from the duty of sincere cooperation of the Member States, deriving from Article 4(3) TEU, and from the requirements for effectiveness referred to, for example, in recital 4 of Directive 2008/115 that the obligation imposed on the Member States by Article 8 of that directive, in the cases set out in Article 8(1), to carry out the removal must be fulfilled as soon as possible. That obligation would not be met if the removal were delayed because, following the rejection at first instance of the application for international protection, a procedure such as that described above could not be resumed at the stage at which it was interrupted but had to start afresh.

It follows from the foregoing that, in adopting point (e) of the first subparagraph of Article 8 of Directive 2013/33 laying down standards for the reception of applicants for international protection, which allows an applicant to be detained for reasons relating to the protection of national security or public order, the EU legislature did not disregard the level of protection afforded by the second limb of Article 5(1)(f) of the European Convention on Human Rights: that provision permits the lawful detention of a person against whom action is being taken with a view to deportation or extradition.

(see paras 75-78)