

Judgment of the Court (Fifth Chamber) of 16 January 2018 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — E

(Case C-240/17) ⁽¹⁾

(Reference for a preliminary ruling — Third-country national staying illegally in a Member State — Threat to public order and national security — Directive 2008/115/EC — Article 6(2) — Return decision — Ban on entry to the territory of the Member States — Alert for the purposes of refusing admission to the Schengen Area — Third-country national holding a valid residence permit issued by another Member State — Convention implementing the Schengen Agreement — Article 25(2) — Consultation procedure between the Member State issuing the alert and the Member State which issued the residence permit — Time limit — Failure of the Contracting State consulted to adopt a position — Consequences for the enforcement of return decisions and entry ban)

(2018/C 083/09)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

E

Operative part of the judgment

1. Article 25(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 and which entered into force on 26 March 1995 must be interpreted as meaning that it is open to the Contracting State which intends to issue a return decision accompanied by a ban on entry and stay in the Schengen Area to a third-country national who holds a valid residence permit issued by another Contracting State to initiate the consultation procedure laid down in that provision even before the issue of the return decision. That procedure must, in any event, be initiated as soon as such a decision has been issued.
2. Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that it does not preclude the return decision accompanied by an entry ban issued by a Contracting State to a third-country national who is the holder of a valid residence permit issued by another Contracting State being enforced even though the consultation procedure laid down in that provision is ongoing, if that third-country national is regarded by the Contracting State issuing the alert as representing a threat to public order or national security, without prejudice to that third-country national's entitlement to rely on the rights he derives from that residence permit by going subsequently to the territory of the second Contracting State. However, after a reasonable time from the initiation of the consultation procedure and in the absence of a response from the Contracting State consulted, the Contracting State issuing the alert for the purposes of refusing entry must withdraw it and, if necessary, put the third-country national on its national list of alerts.
3. Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that a third-country national who is the holder of a valid residence permit issued by a Contracting State, and to whom a return decision accompanied by an entry ban has been issued in another Contracting State, may rely before the national courts on the legal effects deriving from the consultation procedure on the Contracting State issuing the alert and the requirements deriving therefrom.

⁽¹⁾ OJ C 213, 3.7.2017.