Reports of Cases

ORDER OF THE COURT (First Chamber)

5 July 2018 *

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Article 99 of the Rules of Procedure of the Court of Justice — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 46(6) and (8) — Manifestly unfounded application for international protection — Right to an effective remedy — Authorisation to remain in the territory of a Member State — Directive 2008/115/EC — Articles 2, 3 and 15 — Illegal stay — Detention)

In Case C-269/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 19 April 2018, received at the Court on 19 April 2018, in the proceedings

Staatssecretaris van Veiligheid en Justitie

v

C,

and

J,

S

v

Staatssecretaris van Veiligheid en Justitie,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund, J.-C. Bonichot (Rapporteur), A. Arabadjiev and E. Regan, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the referring court's request of 19 April 2018, received at the Court on 19 April 2018, that the reference for a preliminary ruling be dealt with under the urgent procedure pursuant to Article 107 of the Rules of Procedure of the Court,

* Language of the case: Dutch.

having regard to the decision of 15 May 2018 of the First Chamber granting that request,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 2 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) and Article 46(6)(a) and Article 46(8) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

2 The request has been made in the context of proceedings between (i) the Staatssecretaris van Veiligheid en Justitie (Secretary of State for Security and Justice, the Netherlands) ('the Secretary of State') and C, (ii) J and the Secretary of State, and (iii) S and the Secretary of State, concerning the lawfulness of detention measures adopted against C, J and S after their applications for international protection were rejected as manifestly unfounded within the meaning of Article 32(2) and Article 46(6)(a) of Directive 2013/32.

Legal context

EU law

Directive 2008/115

3 Recitals 9 and 12 of Directive 2008/115 state:

'(9) In accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [OJ 2005 L 326, p. 13], a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.

…

(12) The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. …'

4 Article 2(1) of Directive 2008/115 provides:

'This Directive applies to third-country nationals staying illegally on the territory of a Member State.'

5 Article 3 of that directive is worded as follows:

'For the purpose of this Directive the following definitions shall apply:

…

(2) "illegal stay" means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

(3) "return" means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

– his or her country of origin, or

– a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

– another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

(4) "return decision" means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

…'

6 Article 6 of that directive, entitled 'Return decision', provides:

'1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

…

4. Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.

…

6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.'

7 Article 13(1) and (2) of that directive provides:

'1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.'

8 Article 15 of Directive 2008/115 provides:

‘1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

…

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.’

Directive 2013/32

9 Article 1 of Directive 2013/32 provides:

‘The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)].’

10 Article 31(8) of Directive 2013/32 is worded as follows:

‘Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive [2011/95]; or

(b) the applicant is from a safe country of origin within the meaning of this Directive; or

(c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or

(d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or

(e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive [2011/95]; or

(f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(g) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal; or

(h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [OJ 2013 L 180, p. 1]; or

(j) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.'

11 Article 32 of Directive 2013/32 provides:

'1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [2011/95].

2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.'

12 Under Article 46 of Directive 2013/32:

'…

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

…

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting ex officio, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

…

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

…'

Netherlands law

13 Article 8 of the Vreemdelingenwet 2000 (Law on Foreign Nationals 2000) provides:

'A foreign national is lawfully resident in the Netherlands only:

…

(h) if, pending the decision on an objection or appeal, the present law, a provision adopted on the basis thereof, or a court order provides that the deportation of the applicant should be deferred until a decision has been taken on the objection or the appeal;

…'

14 Article 59(1) of that law is worded as follows:

'1. If required in the interests of public order or national security, the Secretary of State may detain, with a view to his deportation, a foreign national who:

(a) is not lawfully resident;

(b) is lawfully resident for the purposes of Article 8(f), (g) and (h), without being a foreign national within the meaning of Articles 59a and 59b;

…'

15 According to Article 59(5) of the Law on foreign nationals 2000, the detention may not exceed a period of six months, without prejudice to paragraph 4 of that article.

16 Article 59(6) of the Law on foreign nationals 2000 provides that, by way of derogation from paragraph 5 and without prejudice to paragraph 4 of that article, detention under paragraph 1 of that article may be extended for a period not exceeding a further 12 months if, despite all reasonable efforts, the expulsion will require more time due to the lack of cooperation of the foreign national with his expulsion or due to the absence of documents required for that purpose, which are expected by the third country.

17 Article 59b of that law provides:

'(1) A foreign national who is lawfully resident on the basis of Article 8(f), (g) or (h) may, in so far as an application for the issue of a residence permit within the meaning of Article 28 is concerned, be detained by the Secretary of State, if:

(a) detention is necessary in order to determine the identity or nationality of the foreign national;

(b) the detention is necessary to collect information needed for assessing an application for a residence permit for a fixed period, as referred to in Article 28, in particular if there is a risk of the foreign national absconding;

(c) the foreign national:
(1) is detained subject to a return procedure under the Return Directive;
(2) already had the opportunity to access the asylum procedure; and
(3) that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision; or

(d) the foreign national constitutes a threat to national security or public order within the meaning of Article 8(3)(e) of Directive [2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96)].

…'

18 Article 82 of the same law provides:

'1. The effect of a decision relating to a residence permit is suspended until the period for bringing an appeal has elapsed or, if an appeal is brought, until a ruling has been made on that appeal.

2. Paragraph 1 shall not apply if:

…

(c) the application is rejected as manifestly unfounded within the meaning of Article 30b, with the exception of Article 30b(1)(h);

…

6. By or pursuant to a general administrative order, more detailed rules may be laid down with regards to whether or not the person concerned has the right to stay in the Netherlands pending a decision on the application for interim measures.'

19 Under Article 7.3 of the Vreemdelingenbesluit 2000 (Decree on Foreign Nationals 2000):

‘1. Where an application for interim measures is brought in order to ensure that the expulsion does not take place before a decision has been made on an appeal brought against a decision adopted in the context of an application for a residence permit within the meaning of Article 28 of the [Law on Foreign Nationals 2000], the applicant shall be permitted to stay in the country pending the decision on that application.

…’

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 The dispute in the main proceedings concerns three third-country nationals, namely C, J and S, whose applications for international protection were rejected by the Secretary of State as manifestly unfounded, within the meaning of Article 32(2) of Directive 2013/32, and who were then detained with a view to preparing their return pursuant to Article 59(1)(a) of the Law on Foreign Nationals 2000, which transposes Article 15(1) of Directive 2008/115.

21 It is apparent from the case file before the Court that an appeal brought against a decision rejecting an application for international protection lodged by a third-country national as manifestly unfounded does not have a suspensive effect. However, that third-country national may bring an action before the courts in order to be granted permission to remain in the Netherlands pending the outcome of the appeal proceedings and may remain in the Netherlands until a ruling is made on that application for interim measures.

22 The application for international protection lodged by C on 23 November 2011 was rejected on 11 April 2017. C was detained on 13 April 2017. The judge at first instance having found that the detention was based on an incorrect legal basis, the Secretary of State appealed to the Raad van State (Council of State, Netherlands).

23 On 31 July 2017, the rechtbank Den Haag, zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle, Netherlands) dismissed the application for interim measures brought by C, who was removed on 15 August 2017.

24 The application for international protection lodged by J on 13 September 2017 was rejected on 24 October 2017. On the same day, J was detained. The lawfulness of that detention having been confirmed at first instance, J appealed to the Raad van State (Council of State).

25 On 29 March 2018, the rechtbank Den Haag, zittingsplaats Rotterdam (District Court, The Hague, sitting in Rotterdam, Netherlands) upheld J’s appeal against his continued detention. That court noted, in that regard, that, on 12 March 2018, J had been detained for an uninterrupted period of six months and that the Secretary of State had not weighed up the interests for maintaining the detention.

26 The application for international protection brought by S on 17 June 2017 was rejected on 6 November 2017. On 6 December 2017, S was detained. The judge at first instance having confirmed the legality of that detention, S appealed to the Raad van State (Council of State).

27 In reply to a request for clarification sent to the referring court pursuant to Article 101 of the Rules of Procedure of the Court of Justice, the referring court informed the Court that, by decision of 14 December 2017, the judge hearing the application for interim measures at the rechtbank Den Haag (District Court, The Hague, Netherlands) had dismissed the application for interim measures brought by S. Consequently, it ‘had not been necessary to cancel [his] detention’.

28 The Raad van State (Council of State) stated that C, J and S were detained on the basis of Article 59(1)(a) of the Law on foreign nationals 2000, which transposes Article 15(1) of Directive 2008/115, and that, in order for that legal basis to be capable of being properly applied, it was necessary that the persons concerned were staying illegally, within the meaning of Article 3 of Directive 2008/115.

29 Furthermore, the referring court observes that, under Netherlands law, a person who brings an appeal against a decision rejecting his application for international protection as manifestly unfounded is staying illegally, given that, pursuant to Article 82(2)(c) of the Law on Foreign Nationals 2000, which transposes Article 46(6)(a) of Directive 2013/32, an appeal against such a decision does not have automatic suspensive effect.

30 Admittedly, pursuant to Article 7.3(1) of the Decree on foreign nationals 2000, which transposes Article 46(8) of Directive 2013/32, a third-country national whose request for international protection is rejected as manifestly unfounded may apply for interim measures aimed at allowing him to remain on the territory. In that event, Netherlands law authorises that third-country national to remain in the Netherlands until a decision has been made on that application. However, that person's stay can be regarded as lawful only after the decision of the judge hearing the application for interim measures upholding that application.

31 According to the referring court, it is not excluded that those national provisions thus interpreted are contrary to EU law, in particular to Article 46(6) and (8) of Directive 2013/32, read in the light of Article 46(5) of that directive. In point 55 of his Opinion in *Gnandi* (C-181/16, EU:C:2017:467), delivered on 15 June 2017, Advocate General Mengozzi considered that it was apparent from paragraphs 44 to 49 of the judgment of 30 May 2013, *Arslan* (C-534/11, EU:C:2013:343), that 'a third-country national who is applying for asylum cannot be considered as staying illegally on the territory of the Member State in which he has lodged his application for international protection provided that he is granted a right to remain on that territory — pending the outcome of the proceedings relating to that application — under either EU law or national law'.

32 Therefore, in order to establish whether, in the cases brought before it, the detention measures were adopted lawfully, it is necessary, according to the Raad van State (Council of State), to determine whether an authorisation to remain granted by a Member State in accordance with Article 46(8) of Directive 2013/32 precludes the stay of the person concerned being regarded as illegal while there has been no decision on his application for interim measures.

33 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In the case where a determining authority has rejected an application for international protection as being manifestly unfounded within the meaning of Article 46(6)(a) of Directive [2013/32] and the appeal brought against that rejection before a court under national law does not have automatic suspensive effect, must Article 46(8) of that directive then be interpreted as meaning that the mere lodging of an application for interim relief results in the applicant's stay on the territory of the Member State no longer being illegal within the meaning of Article 3 of Directive [2008/115] and that he therefore comes within the scope of Directive [2013/33]?

(2) Is it material to the answer to Question 1 that national law — having regard to the principle of non-refoulement — provides that an applicant will not be removed before a court has, on request, ruled that the outcome of the appeal against the decision refusing international protection cannot be awaited?'

The urgent procedure

34 The referring court has requested that this reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure.

35 In support of its request, the referring court submits that S is currently detained. It notes in that regard that if the response to the first question referred is that, following the introduction of his application for interim measures, S is staying legally in the Netherlands, the detention measure laid down by Article 59(1)(a) of the Law on Foreign Nationals 2000 was incorrectly adopted.

36 In that regard, it should be stated, in the first place, that the present request for a preliminary ruling, which concerns the interpretation of Directives 2008/115 and 2013/32, raises questions that fall within Title V of Part Three of the FEU Treaty. It is therefore amenable to being dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure.

37 In the second place, it must be stated that, at the time consideration was given to whether the present reference should be dealt with under the urgent preliminary ruling procedure, S was detained and that the resolution of the case in the main proceedings may have the effect of immediately ending his deprivation of liberty.

38 By contrast, since C has been expelled from the Netherlands and J is no longer being detained, the urgent preliminary ruling procedure is not justified in their cases.

39 Having regard to the foregoing and, in view of the situation of S, the First Chamber of the Court decided, on 15 May 2018, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

40 Under Article 99 of the Rules of Procedure, where a question referred for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

41 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.

42 The referring court, starting from the principle that only a person who is staying illegally in the Netherlands may be detained, is unsure whether Directive 2008/115 must be interpreted as meaning that a third-country national who has brought an appeal against the decision by which his application for international protection was rejected as manifestly unfounded must be regarded as staying legally on that territory, given that, pursuant to Article 46(8) of Directive 2013/32, he must be authorised to remain on that territory until the resolution of the proceedings in which it must be decided whether or not he is to be granted leave to remain on that territory pending the outcome of the appeal proceedings. If so, Directive 2008/115 would therefore preclude national legislation such as that at issue in the main proceedings which regards such a person as staying illegally and consequently allows that person to be detained.

43 By its questions, the referring court therefore asks, in essence, whether Directives 2008/115 and 2013/32 must be interpreted as precluding a third-country national, whose application for international protection has been rejected as manifestly unfounded at first instance by the competent

administrative authority, is detained with a view to removal, where, in accordance with Article 46(6) and (8) of Directive 2013/32, he is lawfully authorised to remain in the Netherlands until a decision has been made on his action relating to the right to remain on that territory pending the resolution of the appeal brought against the decision which rejected his application for international protection.

44 Article 2(1) of Directive 2008/115 states that that directive applies to third-country nationals staying illegally on the territory of a Member State. In accordance with Article 6(1) of that directive, Member States are, in principle, to issue a return decision to any third-country nationals staying illegally on their territory (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 37).

45 It follows from the definition of 'illegal stay' set out in Article 3(2) of that directive that any third-country national who is present on the territory of a Member State without fulfilling the conditions for entry, stay or residence is, by virtue of that fact alone, staying there illegally (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 39).

46 It is true that the Court has held, in paragraphs 47 and 49 of the judgment of 30 May 2013, *Arslan* (C-534/11, EU:C:2013:343), that an authorisation to remain on the territory for the purposes of effectively exercising a right of appeal against a decision rejecting an application for international protection precludes the application of Directive 2008/115 to the third-country national who submitted that application until resolution of the appeal against that rejection decision (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 43).

47 However, it cannot be inferred from that judgment that such an authorisation to remain precludes the conclusion that, as soon as the application for international protection has been rejected, and subject to the existence of a right to stay or residence permit, the stay of the person concerned becomes illegal, within the meaning of Directive 2008/115. On the contrary, unless that person has been granted a right to stay or a residence permit as referred to in Article 6(4) of Directive 2008/115, a third-country national is staying illegally, within the meaning of Directive 2008/115, as soon as his application for international protection is rejected at first instance by the determining authority, irrespective of the existence of an authorisation to remain pending the outcome of an appeal against that rejection (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 44 and 59).

48 Therefore, upon the rejection of the application for international protection, or aggregated together with that rejection in a single administrative act, a return decision may, in principle, be adopted against the person concerned (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 59).

49 That said, it should be pointed out that Member States are required to ensure that all return decisions are consistent with the procedural safeguards set out in Chapter III of Directive 2008/115 and with other relevant provisions of EU law and national law. Article 6(6) of that directive explicitly lays down that requirement in the case where a return decision is adopted at the same time as the decision at first instance by the determining authority rejecting the application for international protection. That requirement must also apply in a situation where the return decision was adopted immediately after the decision rejecting the application for international protection, in a separate administrative act and by a different authority (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 60).

50 In that context, it is for the Member States to ensure the full effectiveness of an appeal against a decision rejecting an application for international protection, which means, inter alia, that all of the effects of the return decision must be suspended during the period prescribed for bringing that appeal and, if such an appeal is brought, until resolution of the appeal (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 61).

51 In that regard, the right to an effective judicial remedy means that all the legal effects of the return decision are suspended, which has the result, in particular, that the person concerned cannot be detained with a view to removal pursuant to Article 15 of Directive 2008/115 as long as he is authorised to remain on the territory of the Member State in question (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 62).

52 The same applies to a third-country national whose application for international protection is rejected as manifestly unfounded, in accordance with Article 32(2) of Directive 2013/32.

53 It is true that it follows from Article 46(5) and (6) of Directive 2013/32 that, in that case, the person concerned does not enjoy, by operation of law, a right to remain on the territory of the Member State in question pending the resolution of his appeal. However, in accordance with the requirements of the last sentence of Article 46(6) of that directive, the person concerned must be able to have recourse to the courts, which will decide whether he may remain on that territory until judgment has been given on his appeal. Article 46(8) of that directive provides that, pending the outcome of an action to determine whether or not the applicant may remain, the Member State in question must grant that person authorisation to remain in its territory.

54 It follows from all the foregoing that a third-country national whose application for international protection has been rejected as manifestly unfounded cannot be detained pursuant to Article 15 of Directive 2008/115 during the period prescribed for bringing an appeal against that rejection. If such an appeal is brought, the person concerned also cannot be detained on the basis of that article while he is authorised to remain in the territory of the Member State in question, in accordance with Article 46(8) of Directive 2013/32.

55 In the light of all the foregoing considerations, the answer to the questions referred is that Directives 2008/115 and 2013/32 must be interpreted as precluding a third-country national, whose application for international protection has been rejected as manifestly unfounded at first instance by the competent administrative authority, from being detained with a view to his removal, where, in accordance with Article 46(6) and (8) of Directive 2013/32, he is lawfully authorised to remain on that territory until a decision has been made on his action relating to the right to remain on that territory pending the outcome of the appeal brought against the decision which rejected his application for international protection.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as precluding a third-country national whose application for international protection has been rejected as manifestly unfounded at first instance by the competent administrative authority, from being detained with a view to his removal, where, in accordance with Article 46(6) and (8) of Directive 2013/32, he is lawfully authorised to remain on that territory until a decision has been made on his action relating to the right to remain on that territory pending the outcome of the appeal brought against the decision which rejected his application for international protection.

[Signatures]