



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

3 March 2022*

(Reference for a preliminary ruling – Area of freedom, security and justice – Directive 2008/115/EC – Common standards and procedures in Member States for returning illegally staying third-country nationals – Article 6(1) and Article 8(1) – National legislation providing for the imposition, in the event of illegal stay, of a fine together with an obligation to leave the territory – Possibility of regularising the stay within a prescribed period – Article 7(1) and (2) – Period for voluntary departure)

In Case C-409/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo no 1 de Pontevedra (Administrative Court No 1, Pontevedra, Spain), made by decision of 20 August 2020, received at the Court on 2 September 2020, in the proceedings

UN

v

Subdelegación del Gobierno en Pontevedra,

THE COURT (Third Chamber),

composed of K. Jurimäe, President of the Chamber, N. Jääskinen, M. Safjan (Rapporteur), N. Piçarra and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- UN, by E.M. Tomé Torres, A. de Ceballos Cabrillo and J.L. Rodríguez Candela, abogados,
- the Spanish Government, by J. Rodríguez de la Rúa Puig and L. Aguilera Ruiz, acting as Agents,
- the European Commission, by C. Cattabriga and I. Galindo Martín, acting as Agents,

* Language of the case: Spanish.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(3), Article 6(1) and (5), and Article 7(1) 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).
- 2 The request has been made in proceedings between UN and the Subdelegación del Gobierno e Pontevedra (Provincial Representation of the Government for Pontevedra, Spain) concerning UN's illegal stay on Spanish territory.

Legal context

European Union law

- 3 Recitals 2, 4, 6 and 10 of Directive 2008/115 state:
 - '(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.
...
 - (4) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.
...
 - (6) ... According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. ...
...
 - (10) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case. ...'
- 4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general

principles of Community law as well as international law, including refugee protection and human rights obligations.’

5 Article 3 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

...

(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;

(5) “removal” means the enforcement of the obligation to return, namely the physical transportation out of the Member State;

...

(8) “voluntary departure” means compliance with the obligation to return within the time limit fixed for that purpose in the return decision;

...’

6 Article 4 of that directive, entitled ‘More favourable provisions’, provides, in paragraph 3:

‘This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.’

7 According to Article 6 of Directive 2008/115, entitled ‘Return decision’:

‘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.

2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national’s immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.

3. Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Directive. In such a case the Member State which has taken back the third-country national concerned shall apply paragraph 1.

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.

5. If a third-country national staying illegally on the territory of a Member State is the subject of a pending procedure for renewing his or her residence permit or other authorisation offering a right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished ...

...'

8 Article 7 of that directive, entitled 'Voluntary departure', provides, in paragraphs 1, 2 and 4:

'1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. ...

...

2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

...

4. If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days.'

9 Article 8 of that directive, entitled 'Removal', provides, in paragraph 1:

'Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.'

Spanish law

The Law on foreign nationals

10 Article 28(3)(c) of the Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social (Basic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration) of 11 January 2000 (BOE No 10 of 12 January 2000, p. 1139), as amended by the Ley Orgánica 2/2009 (Basic Law 2/2009) of 11 December 2009 (BOE No 299 of 12 December 2009, p. 104986) ('the Law on foreign nationals'), provides that a foreign national must leave the Spanish territory in the event of an administrative refusal of an application made by that foreign national to continue to stay in that territory, or in the absence of authorisation to stay in Spain.

- 11 Article 53(1)(a) of the Law on foreign nationals defines as a ‘serious’ offence ‘being unlawfully present on Spanish territory, on the ground that the person concerned has not obtained an extension of permission to stay or a residence permit, or on the ground that these have expired more than three months previously, and that person has not applied for the renewal of that permission to stay or residence permit within the period laid down by law.’
- 12 Under Article 55(1)(b) of that law, the penalty to be imposed for a serious offence is a fine of between EUR 501 and EUR 10 000.

- 13 In accordance with Article 57 of that law:

‘1. Where an offender is a foreign national and commits offences which may be classified as “very serious” or “serious”, within the meaning of Article 53(1)(a), (b), (c), (d) and (f) of this basic law, having regard to the principle of proportionality, it is possible to order removal from the Spanish territory, instead of a fine, following the appropriate administrative procedure and by means of a reasoned decision which includes an assessment of the facts which constitute the offence.

...

3. Under no circumstances may the penalties of removal and a fine be imposed concurrently.

...’

- 14 Article 63 of that law, relating to the ‘Priority procedure’, provides, in paragraph 7:

‘In the situations covered by this article, the removal order shall be enforced immediately.’

- 15 Article 63a(2) of the Law on foreign nationals provides:

‘The decision ordering removal, made under the ordinary procedure, shall include a voluntary compliance period for the person concerned to leave national territory. That period will vary between 7 and 30 days and will begin to run when the aforementioned decision is served. The period for complying voluntarily with the removal order may be extended for an appropriate period having regard to the circumstances of each case, for example, the length of stay, the existence of dependent children attending school and the existence of other family and social links.’

Royal Decree No 240/2007

- 16 The Real Decreto 240/2007, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo (Royal Decree 240/2007, on the entry, free movement and residence in Spain of citizens of Member States of the European Union and of other States parties to the Agreement on the European Economic Area) of 16 February 2007 (BOE No 51 of 28 February 2007, p. 8558), transposes into Spanish law Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34).

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

- 17 On 9 May 2017, UN, a Colombian national, entered the territory of Spain legally, as a tourist, through Madrid-Barajas Airport (Spain) by way of a letter of invitation from her son, an adult Spanish national residing in Pontevedra (Spain).
- 18 Since UN's legal stay could not exceed 90 days, she was supposed to leave the territory of the European Union before the expiry of that period. However, she remained in Spain after the expiry of that period and registered in the register of Pontevedra residents, indicating her son's home as her address.
- 19 On 13 February 2019, the Ministerio del Interior (Ministry of the Interior, Spain) brought penalty proceedings against UN under Article 63a of the Law on foreign nationals on the ground that she did not have permission to stay in Spain.
- 20 In March 2019, UN submitted an application to the oficina de extranjería de Pontevedra (Immigration Office, Pontevedra, Spain) for a residence permit as a family member of an EU citizen for the purposes of family reunification with her Spanish son, in accordance with Royal Decree 240/2007.
- 21 At the same time, UN submitted her observations at the hearing in the context of the penalty proceedings initiated by the Ministry of the Interior. At that hearing, she stated that her family ties were in Spain, that she had no longer family nor means of subsistence in Colombia, her country of origin, and that she neither had a criminal record nor had been arrested previously. She also relied on humanitarian and family protection grounds and on an infringement of the principle of proportionality.
- 22 On 30 April 2019, the Director of the Pontevedra Immigration Office adopted a decision refusing UN's application for a residence card, on the ground that she had not shown that she had been dependent on her son in her country of origin and also did not have any private health insurance in Spain.
- 23 UN challenged that decision of 30 April 2019 before the Juzgado de lo Contencioso-Administrativo No 2 de Pontevedra (Administrative Court No 2, Pontevedra, Spain) and, according to the information available to the Court, those proceedings are still pending.
- 24 On 8 May 2019, the Subdelegada del Gobierno en Pontevedra (Representative of the Spanish State in Pontevedra, Spain) adopted, in parallel with the decision of 30 April 2019, a decision finding that UN was staying illegally, that is to say without a residence permit or a visa, and imposed on her a penalty consisting of her removal from the Spanish territory with a ban on entry for three years. In the grounds of that decision, that authority found that UN had committed the serious offence referred to in Article 53(1)(a) of the Law on foreign nationals and that she did not fall within the situations covered by the right to asylum.
- 25 On 31 October 2019, UN brought an action before the Juzgado de lo Contencioso-Administrativo No 1 de Pontevedra (Administrative Court No 1, Pontevedra, Spain), which is the referring court in the present case, seeking annulment of that decision or, in the alternative, that the removal

penalty be replaced by a financial penalty, namely a fine. UN also applied for the provisional suspension of that removal penalty, and the referring court granted that application by order of 19 December 2019.

- 26 The referring court notes that, although Article 57 of the Law on foreign nationals prohibits the imposition concurrently, in respect of a third-country national staying illegally on Spanish territory, of a fine and a removal penalty, that law permits those two penalties to be imposed consecutively on such a national.
- 27 In any event, the imposition of a fine does not exempt the third-country national concerned from the obligation to leave the Spanish territory in accordance with Article 28(3)(c) of the Law on foreign nationals if he or she does not obtain the necessary visa or residence permit. If the third-country national concerned fails to regularise his or her situation within a reasonable period, further penalty proceedings may be brought against him or her, which would result in a forced removal. In accordance with Spanish case-law, the fact that a fine was imposed on a third-country national whose stay in Spain is unlawful is regarded as an aggravating circumstance within the meaning of that law.
- 28 It is true that, in the judgment of 23 April 2015, *Zaizoune* (C-38/14, EU:C:2015:260), the Court held that Directive 2008/115 must be interpreted as precluding legislation of a Member State which provides, in the event of third-country nationals illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.
- 29 However, the interpretation of the Spanish legislation put forward by the referring court in the case which gave rise to that judgment differs from the interpretation adopted by the referring court in the case in the main proceedings. The fine laid down by the Spanish legislation at issue in the main proceedings corresponds to a formal notice to leave the Spanish territory voluntarily within a prescribed period. If the third-country national concerned does not voluntarily leave that territory before the expiry of that period, a mandatory removal order is taken if that national does not regularise his or her situation. Thus, the fine laid down by the Spanish legislation at issue in the main proceedings cannot, on its own, regularise that national's situation or prevent his or her subsequent removal.
- 30 Furthermore, the situation of the third-country national who was the subject of the case which gave rise to the judgment of 23 April 2015, *Zaizoune* (C-38/14, EU:C:2015:260), is characterised by the existence of an aggravating circumstance, namely a previous prison sentence of two years and six months for drug trafficking. However, there are no aggravating circumstances in the case in the main proceedings, since UN has no criminal background, and has papers and entered Spain legally. Moreover, UN could potentially regularise her stay in Spain by means of, inter alia, her family ties.

31 In those circumstances, the Juzgado de lo Contencioso-Administrativo No 1 de Pontevedra (Administrative Court No 1, Pontevedra) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘1. Must Directive 2008/115 ... (Article 4(3), Article 6(1) and (5), and Article 7(1)) be interpreted as precluding national legislation ... that penalises illegally staying foreign nationals in the absence of aggravating circumstances, initially, with a fine together with a request to return voluntarily to the country of origin followed, thereafter, by the penalty of removal if the foreign national neither regularises his or her situation nor returns voluntarily to his or her country?
2. Is an interpretation of the judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260) as meaning that the Spanish authorities and courts can directly apply Directive 2008/115 ... to the detriment of an individual, ignoring more advantageous national penalty legislation and thereby aggravating that individual’s liability to a penalty and possibly disregarding the principle that criminal penalties must be defined by law, compatible with its case-law on the limits on the direct effect of directives; or, conversely, should the national law more favourable to the individual continue to be applied until such time as it is amended or repealed by means of the corresponding legislative reform?’

Procedure before the Court

- 32 By letter of 15 October 2020, the Court Registry sent to the referring court the judgment of 8 October 2020, *Subdelegación del Gobierno en Toledo (Consequences of the judgment in Zaizoune)* (C-568/19, EU:C:2020:807), asking it to inform the Court whether, in the light of that judgment, it intended to maintain its reference for a preliminary ruling and, more specifically, the second question.
- 33 By decision of 2 November 2020, received at the Court on 19 November 2020, the referring court withdrew the second question, while maintaining the first question.

Consideration of the question referred for a preliminary ruling

- 34 By its question, the referring court asks, in essence, whether Directive 2008/115 must be interpreted as precluding legislation of a Member State which penalises a third-country national staying illegally in the territory of that Member State, in the absence of aggravating circumstances, initially, by a fine together with an obligation to leave the territory of that Member State within a prescribed period, unless, before the expiry of that period, that third-country national’s stay is regularised, and, subsequently, if that third-country national’s stay is not regularised, by a decision ordering his or her compulsory removal.
- 35 As a preliminary point, it should be noted that the referring court has asked the Court questions in a case concerning the same national legislation as that at issue in the case which gave rise to the judgment of 23 April 2015, *Zaizoune* (C-38/14, EU:C:2015:260). According to paragraph 29 of that judgment, it was apparent from the order for reference that illegally staying third-country nationals on Spanish territory may, under that legislation, be punished only by a fine, which is incompatible with removal from national territory, since removal is ordered only where there are additional aggravating factors.

- 36 The referring court states that that national legislation does indeed prohibit the imposition, concurrently, of a fine and a removal penalty on a third-country national staying illegally on the national territory, but provides, however, for the imposition of those two penalties consecutively in respect of such a national. Thus, the consequence of imposing such a fine is that the third-country national concerned, where there are no aggravating circumstances, is required leave the Spanish territory within a prescribed period unless, before the expiry of that period, that third-country national's stay is regularised by a national authority. Furthermore, the imposition of that fine is followed, in the event that that national's stay is not regularised, by a decision ordering his or her forced removal.
- 37 In that regard, it must be noted that it is settled case-law that it is not for the Court, in the context of the judicial cooperation established by Article 267 TFEU, to call into question or to verify the accuracy of the interpretation of national law made by the national court, as such interpretation falls within the exclusive jurisdiction of that court. Thus, the Court, when a question is referred to it by a national court, must base itself on the interpretation of national law as described to it by that court (judgments of 27 October 2009, *ČEZ*, C-115/08, EU:C:2009:660, paragraph 57, and of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 29).
- 38 Consequently, the question referred must be answered on the basis of the premiss, which is that set out by the referring court, that the legislation at issue in the main proceedings makes it possible, in the absence of aggravating circumstances, to penalise third-country nationals staying illegally on national territory by the imposition of a fine, together with an obligation to return, and, successively, a removal order.
- 39 In that regard, it must be recalled that the objective of Directive 2008/115, as is apparent from recitals 2 and 4 of that directive, is the establishment of an effective removal and repatriation policy. Article 1 of that directive sets out the 'common standards and procedures' to be applied by each Member State for returning illegally staying third-country nationals (judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraph 30).
- 40 Directive 2008/115 concerns only the return of illegally staying third-country nationals and is thus not designed to harmonise in their entirety the rules of the Member States on the stay of foreign nationals. Therefore, that directive does not preclude the law of a Member State from classifying an illegal stay as an offence and laying down fines to deter and penalise such an infringement (see, to that effect, judgment of 6 December 2012, *Sagor*, C-430/11, EU:C:2012:777, paragraph 31 and the case-law cited).
- 41 Nevertheless, Directive 2008/115 sets out specifically the procedure to be applied by each Member State for returning illegally staying third-country nationals and fixes the order in which the various, successive stages of that procedure should take place (see, to that effect, judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 34).
- 42 Thus, Article 6(1) of that directive provides, principally, for an obligation for Member States to issue a return decision against any third-country national staying illegally on their territory (judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraph 31 and the case-law cited).

- 43 Once it has been established that the stay is illegal, the national authorities must, pursuant to Article 6(1) of that directive and without prejudice to the exceptions laid down by Article 6(2) to (5) thereof, adopt a return decision (judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraph 32 and the case-law cited).
- 44 It must also be noted that, where a return decision has been issued against a third-country national, but that third-country national has not complied with the obligation to return, whether within the period for voluntary departure, or if no period is granted to that effect, Article 8(1) of Directive 2008/115 requires Member States, in order to ensure the effectiveness of return procedures, to take all measures necessary to carry out the removal of the person concerned, namely, pursuant to Article 3(5) of that directive, the physical transportation of the person concerned out of that Member State (judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraph 33 and the case-law cited).
- 45 Furthermore, as follows both from the duty of sincere cooperation on the Member States and the requirements of effectiveness referred to, in particular, in recital 4 of Directive 2008/115, 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 of the third-country national, must be fulfilled as soon as possible (judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraph 34 and the case-law cited).
- 46 In the present case, as is apparent from the order for reference, the imposition of a fine on an illegally staying third-country national entails an obligation on that national to leave the national territory within a prescribed period unless, before that period expires, that third-country national's stay is regularised by a national authority. It is only where, on expiry of that period, that national has neither regularised his or her situation nor departed voluntarily, that the competent authority must adopt a removal decision.
- 47 In the first place, although, in accordance with what has been stated in paragraph 40 of the present judgment, Directive 2008/115 does not preclude the law of a Member State from classifying an illegal stay as an offence and laying down penalties to deter and penalise such an infringement, such penalties cannot be liable to undermine the application of the common standards and procedures established by that directive and thus to deprive it of its effectiveness (see, to that effect, judgment of 6 December 2012, *Sagor*, C-430/11, EU:C:2012:777, paragraph 32 and the case-law cited).
- 48 In that regard, it must be noted that the Court has already held that the imposition of a fine is not, in itself, liable to impede the return procedure established by Directive 2008/115, since that penalty does not prevent a return decision from being made and implemented in full compliance with the conditions set out in Articles 6 and 8 of that directive (see, to that effect, judgment of 6 December 2012, *Sagor*, C-430/11, EU:C:2012:777, paragraph 36).
- 49 In the present case, it follows from the applicable national legislation that the fine imposed on a third-country national whose stay has been found to be illegal is necessarily accompanied by the obligation on that national to leave the national territory within a prescribed period.
- 50 In the second place, as regards compliance with the obligation resulting from the return decision, the Court has held that, as is apparent from recital 10 of Directive 2008/115, priority is to be given, except where otherwise provided for, to voluntary compliance with that obligation (see, to that effect, judgment of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 44 and the

case-law cited), and that forced removal may take place only as a last resort (see, to that effect, judgment of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 252).

- 51 Although it follows from the definition of the concept of ‘voluntary departure’ in Article 3(8) of Directive 2008/115 that the purpose of the period laid down in the return decision is to enable an illegally staying third-country national to comply with his or her obligation to return, it is nevertheless clear that no provision of that directive precludes that third-country national from being able to seek to have his or her stay regularised throughout that period.
- 52 On the contrary, Article 6(4) of Directive 2008/115 provides that 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. Where a return decision has already been issued, it is to be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.
- 53 As regards the length of time that may be granted to the person concerned for the purposes of voluntary compliance with the obligation to return, Article 7(1) of Directive 2008/115 provides that, without prejudice to the exceptions referred to in paragraphs 2 and 4 of that article, the return decision must, in principle, provide for an appropriate period for voluntary departure of between 7 and 30 days.
- 54 In that regard, Article 7(2) of that directive provides that Member States must, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links. That provision does not attach any particular condition to that possibility offered to the Member States.
- 55 Thus, even where an illegally staying third-country national has not complied with the obligation to return within the period for voluntary departure laid down in accordance with Article 7(1) of Directive 2008/115, paragraph 2 of that article allows, in certain circumstances specific to each case, the postponement of the time of enforcement of the obligation to return by way of removal.
- 56 Accordingly, although Directive 2008/115 does not govern the relationship between the procedure regarding an application for residence for the purposes of family reunification made by a third-country national and the procedure for the adoption of a return or removal decision, it nevertheless follows from the findings set out in paragraphs 51 and 55 of the present judgment that that directive permits, within the limits laid down in Article 7(1) and (2) of that directive, a Member State to postpone the enforcement of a third-country national’s obligation to return when he or she seeks, due to circumstances specific to his or her situation, to regularise his or her residence, *inter alia* for family reasons.
- 57 Furthermore, in that context, it should be noted that recital 6 of Directive 2008/115 states, *inter alia*, that, according to general principles of EU law, decisions taken under that directive should be adopted on a case-by-case basis and be based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. In particular, as the Court has already held, the principle of proportionality must be observed throughout all the stages of the return procedure established by that directive, including the stage relating to the return decision,

in the context of which the Member State concerned must rule on the grant of a period for voluntary departure under Article 7 of that directive (see, to that effect, judgment of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 49 and the case-law cited).

- 58 Consequently, it must be held that Directive 2008/115 does not, in itself, preclude a Member State from being able, in the absence of the circumstances referred to in Article 7(4) of that directive justifying the immediate removal of an illegally staying third-country national who is under an obligation to return, to extend the period for that third-country national's voluntary departure until the completion of a procedure to regularise his or her stay.
- 59 In that regard, it must, however, be noted that, according to the Court's case-law, national legislation cannot thwart the application of the common standards and procedures established by Directive 2008/115 and thereby undermine the effectiveness of that directive by delaying the return of a person who was the subject of a return decision (see, to that effect, judgment of 23 April 2015, *Zaizoune*, C-38/14, EU:C:2015:260, paragraphs 39 and 40 and the case-law cited).
- 60 Thus, as regards a return procedure commencing with the imposition of a fine together with an obligation to return and followed, where the third-country national concerned does not comply with that obligation within the period prescribed for that purpose, by the removal of that third-country national, it is important that that period should not be capable of giving rise to delays that could render Directive 2008/115 ineffective.
- 61 As stated in paragraph 45 of the present judgment, the obligation imposed by Article 8 of that directive on the Member States to carry out the removal must be fulfilled as soon as possible.
- 62 In particular, it is for the Member State concerned to ensure that any extension of the period for voluntary departure pursuant to Article 7(2) of Directive 2008/115 is limited to a period that is appropriate and, as follows from recital 10 of that directive, necessary because of the specific circumstances of each case.
- 63 In the present case, subject to verification by the referring court, it is apparent from the relevant Spanish legislation, first, that the duration of the period for voluntary departure of an illegally staying third-country national varies between 7 and 30 days and, second, that that period may be extended for a reasonable period in the light of the circumstances of the case, such as the length of stay, the existence of dependent children attending school or the existence of other family and social links. In so far as such an extension is granted in order to take account of an application for regularisation made by that illegally staying third-country national, it is important that the period thus granted be set in accordance with the requirements stated in the preceding paragraph.
- 64 In the light of all the foregoing considerations, the answer to the question referred is that Directive 2008/115, in particular Article 6(1) and Article 8(1) of that directive, read in conjunction with Article 6(4), and Article 7(1) and (2) of that directive, must be interpreted as not precluding legislation of a Member State which penalises a third-country national staying illegally in the territory of that Member State, in the absence of aggravating circumstances, initially by a fine together with an obligation to leave the territory of that Member State within a prescribed period unless, before the expiry of that period, that third-country national's stay is regularised and, subsequently, if that third-country national's stay is not regularised, by a decision ordering his or her compulsory removal, provided that that period is set in accordance with the requirements laid down in Article 7(1) and (2) of that directive.

Costs

- 65 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 (Third 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, in particular Article 6(1) and Article 8(1) of that directive, read in conjunction with Article 6(4), and Article 7(1) and (2) of that directive, must be interpreted as not precluding legislation of a Member State which penalises a third-country national staying illegally in the territory of that Member State, in the absence of aggravating circumstances, initially by a fine together with an obligation to leave the territory of that Member State within a prescribed period unless, before the expiry of that period, that third-country national's stay is regularised and, subsequently, if that third-country national's stay is not regularised, by a decision ordering his or her compulsory removal, provided that that period is set in accordance with the requirements laid down in Article 7(1) and (2) of that directive.

[Signatures]