Judgment of the Court (Second Chamber) of 24 November 2022 (request for a preliminary ruling from the Överklagandenämnden för studiestöd — Sweden) — MCM v Centrala studiestödsnämnden

(Case C-638/20) ([1])

(Reference for a preliminary ruling — Freedom of movement for persons — Article 45 TFEU — Equal treatment — Social advantages — Regulation (EU) No 492/2011 — Article 7(2) — Financial aid for higher education studies in another Member State — Residence requirement — Alternative requirement of social integration for non-resident students — Situation of a student who is a national of the State granting the aid, residing since birth in the State of studies)

(2023/C 24/04)

Language of the case: Swedish

Referring court

Överklagandenämnden för studiestöd

Parties to the main proceedings

Applicant: MCM

Defendant: Centrala studiestödsnämnden

Operative part of the judgment

Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

must be interpreted as meaning that those provisions do not preclude legislation of a Member State by which the grant of financial aid for the pursuit of studies in the host Member State, to the child of a person who has left the host Member State in which that person worked in order to return to live in the first Member State, of which he or she is a national, is made subject to the requirement that the child have a connection with the Member State of origin, in a situation where, first, the child has lived since birth in the host Member State and, second, the Member State of origin makes other nationals not satisfying the residence requirement and who apply for such financial aid to study in another Member State subject to the requirement of the existence of a connection.

([1]) OJ C 53, 15.2.2021.

Judgment of the Court (Grand Chamber) of 22 November 2022 (request for a preliminary ruling from the Rechtbank Den Haag — the Netherlands) — X v Staatssecretaris van Justitie en Veiligheid

(Case C-69/21) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Articles 4, 7 and 19 of the Charter of Fundamental Rights of the European Union — Prohibition of inhuman or degrading treatment — Respect for private and family life — Protection in the event of removal, expulsion or extradition — Right of residence on medical grounds — Common standards and procedures in Member States for returning illegally staying third-country nationals — Directive 2008/115/EC — Third-country national who is suffering from a serious illness — Medical treatment for pain relief — Treatment is not available in the country of origin — Conditions under which removal must be postponed)

(2023/C 24/05)

Language of the case: Dutch

Referring court

Rechtbank Den Haag

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Justitie en Veiligheid

Operative part of the judgment

1. Article 5 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, read in conjunction with Articles 1 and 4 of the Charter of Fundamental Rights of the European Union as well as Article 19(2) thereof

must be interpreted as precluding a return decision from being taken or a removal order from being made in respect of a third-country national who is staying illegally on the territory of a Member State and suffering from a serious illness, where there are substantial grounds for believing that the person concerned would be exposed, in the third-country to which he or she would be removed, to a real risk of a significant, permanent and rapid increase in his or her pain, if he or she were returned, on account of the only effective analgesic treatment being prohibited in that country. A Member State may not lay down a strict period within which such an increase must be liable to materialise in order to preclude that return decision or that removal order.

2. Article 5 and Article 9(1)(a) of Directive 2008/115, read in conjunction with Articles 1 and 4 of the Charter of Fundamental Rights as well as Article 19(2) thereof

must be interpreted as precluding the consequences of the removal order in the strict sense on the state of health of a third-country national from being taken into account by the competent national authority solely in order to examine whether he or she is able to travel.

3. Directive 2008/115, read in conjunction with Article 7, as well as Article 1 and 4 of the Charter of Fundamental Rights

must be interpreted as:

— meaning that it does not require the Member State on whose territory a third-country national is staying illegally to grant that national a right of residence where he or she cannot be the subject of a return decision or a removal order because there are substantial grounds for believing that he or she would be exposed, in the receiving country, to a real risk of a rapid, significant and permanent increase in the pain caused by the serious illness from which he or she suffers;

— the state of health of that national and the care he or she receives on that territory, on account of that illness, must be taken into account, together with all the other relevant factors, by the competent national authority when it examines whether the right to respect for the private life of that national precludes him or her being the subject of a return decision or a removal order;

— the adoption of such a decision or measure does not infringe that right on the sole ground that, if he or she were returned to the receiving country, that national would be exposed to the risk that his or her state of health deteriorates, where such a risk does not reach the severity threshold required under Article 4 of the Charter.

(1) OJ C 163, 3.5.2021.