

4. Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC:

(a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC?

If so:

(b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive 2008/48/EC and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

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(<sup>1</sup>) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

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**Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch  
(Netherlands) lodged on 26 January 2021 — X v Staatssecretaris van Justitie en Veiligheid**

**(Case C-39/21)**

(2021/C 128/24)

*Language of the case: Dutch*

**Referring court**

Rechtbank Den Haag, zittingsplaats's-Hertogenbosch

**Parties to the main proceedings**

*Applicant:* X

*Defendant:* Staatssecretaris van Justitie en Veiligheid

### Questions referred

1. Having regard to Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 6 of the Charter and Article 53 of the Charter and in the light of Article 15(2)(b) of the Return Directive,<sup>(1)</sup> Article 9(3) of the Reception Directive<sup>(2)</sup> and Article 28(4) of the Dublin III Regulation,<sup>(3)</sup> are the Member States permitted to structure the judicial procedure for challenging the detention of a foreign national ordered by the authorities in such a way as to prohibit the courts from carrying out an ex officio review and assessment of all aspects of the lawfulness of the detention and, where a court finds of its own motion that the detention is unlawful, from ordering that the unlawful detention be ended and the foreign national released immediately? If the Court of Justice of the European Union finds that such national legislation is incompatible with EU law, does that then also mean that, if the foreign national applies to the court for his or her release, that court is always required to carry out an active and thorough ex officio review and assessment of all the facts and factors relevant to the lawfulness of the detention?
2. Having regard to Article 24(2) of the Charter, read in conjunction with Article 3(9) of the Return Directive, Article 21 of the Reception Directive and Article 6 of the Dublin III Regulation, does the answer to Question 1 differ if the foreign national detained by the authorities is a minor?
3. Does the right to an effective remedy guaranteed by Article 47 of the Charter, read in conjunction with Article 6 of the Charter and Article 53 of the Charter and in the light of Article 15(2)(b) of the Return Directive, Article 9(3) of the Reception Directive and Article 28(4) of the Dublin III Regulation, mean that, where a foreign national requests a court of any instance to end the detention and order his or her release, that court must give an adequate substantive statement of reasons for any decision on that request, if the remedy is otherwise structured in the same manner as it is in this Member State? If the Court of Justice considers a national legal practice in which the court of second, and therefore highest, instance may confine itself to ruling without giving any substantive reasons to be incompatible with EU law, having regard to the way in which the legal remedy is otherwise structured in this Member State, does that then mean that such a power for the court of second and therefore highest instance in asylum and ordinary immigration cases must also be regarded as being incompatible with EU law, in the light of the vulnerable position of the foreign national, the considerable importance of immigration procedures and the fact that, in contrast to all other administrative procedures, in terms of legal protection, those procedures contain the same weak procedural guarantees for the foreign national as the detention procedure? Having regard to Article 24(2) of the Charter, are the answers to these questions different if the foreign national challenging a decision of the authorities concerning matters of immigration law is a minor?

<sup>(1)</sup> 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).

<sup>(2)</sup> 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).

<sup>(3)</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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 (OJ 2013 L 180, p. 31).

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**Request for a preliminary ruling from the Ustavno sodišče Republike Slovenije (Slovenia) lodged on  
28 January 2021 — Banka Slovenije v Državni zbor Republike Slovenije**

(Case C-45/21)

(2021/C 128/25)

*Language of the case: Slovenian*

### Referring court

Ustavno sodišče Republike Slovenije