

Case C-61/11 PPU

Criminal proceedings against Hassen El Dridi, alias Soufi Karim

(Reference for a preliminary
ruling from the Corte d'appello di Trento)

(Area of freedom, security and justice — Directive 2008/115/EC — Return of
illegally staying third-country nationals — Articles 15 and 16 — National
legislation providing for a prison sentence for illegally staying third-country
nationals in the event of refusal to obey an order to leave the territory
of a Member State — Compatibility)

View of Advocate General Mazák delivered on 1 April 2011 I - 3017

Judgment of the Court (First Chamber), 28 April 2011 I - 3031

Summary of the Judgment

*Border controls, asylum and immigration — Immigration policy — Return of illegally staying
third-country nationals*

(European Parliament and Council Directive 2008/115, Arts 15 and 16)

Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State's legislation which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

Such a penalty, due inter alia to its conditions and methods of application, risks jeopardising the attainment of the objective pursued by that directive, namely, the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals.

(see paras 59, 62, operative part)