



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

30 September 2020\*

(Reference for a preliminary ruling – Area of freedom, security and justice – Directive 2008/115/EC – Return of illegally staying third-country nationals – Third-country national suffering from a serious illness – Return decision – Judicial remedy – Automatic suspensory effect – Conditions – Grant of social assistance – Articles 19 and 47 of the Charter of Fundamental Rights of the European Union)

In Case C-233/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour du travail de Liège (Higher Labour Court, Liège, Belgium), made by decision of 11 March 2019, received at the Court on 18 March 2019, in the proceedings

**B.**

v

**Centre public d'action sociale de Liège,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen (Rapporteur), C. Toader and N. Jääskinen, Judges,

Advocate General: M. Szpunar,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 22 January 2020,

after considering the observations submitted on behalf of:

- B., initially by D. Andrien and P. Ansay, avocats, then by D. Andrien, avocat,
- Centre public d'action sociale de Liège, initially by M. Delhaye and G. Dubois, avocats, and subsequently by M. Delhaye and J.-P. Jacques, avocats,
- the Belgian Government, by P. Cottin, C. Pochet and C. Van Lul, acting as Agents, and by C. Piront and S. Matray, avocates,
- the Czech Government, by M. Smolek, acting as Agent,

\* Language of the case: French.

- the Netherlands Government, by J. Langer and J.M. Hoogveld and by M.K Bulterman and H.S. Gijzen, acting as Agents,
- the European Commission, by A. Azema and C. Cattabriga, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 May 2020,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 5 and 13 and Article 14(1)(b) 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 B., a third-country national, and the centre public d'action sociale de Liège (Public Centre for Social Welfare, Liège, Belgium) ('the CPAS') concerning the CPAS's decisions withdrawing B.'s entitlement to social assistance.

### **Legal context**

#### *EU law*

- 3 Article 3(2) of Directive 2008/115 defines the concept of 'illegal stay' as '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 [Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1)] or other conditions for entry, stay or residence in that Member State'.

- 4 Article 5 of that directive states:

'When implementing this Directive, Member States shall take due account of:

...

(c) the state of health of the third-country national concerned,  
and respect the principle of non-refoulement.'

- 5 Article 9(1) of that directive is worded as follows:

'Member States shall postpone removal:

...

(b) for as long as a suspensory effect is granted in accordance with Article 13(2).'

6 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.’

7 Article 14(1) of Directive 2008/115 provides:

‘Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

- (a) family unity with family members present in their territory is maintained;
- (b) emergency health care and essential treatment of illness are provided;
- (c) minors are granted access to the basic education system subject to the length of their stay;
- (d) special needs of vulnerable persons are taken into account.’

### ***Belgian law***

8 Article 57(2) of the loi organique du 8 juillet 1976 des centres publics d’action sociale (Basic Law of 8 July 1976 on public social welfare centres), in the version applicable to the dispute in the main proceedings, provides as follows:

‘By derogation from the other provisions of this law, the functions of the public social welfare centre shall be limited to:

1. the grant of urgent medical assistance, in respect of a foreign national residing illegally in the Kingdom;

...

A foreign national who has declared himself a refugee and has asked to be recognised as such will be deemed to be staying in the Kingdom illegally where his application for asylum has been rejected and an order to leave the territory has been served on him.

With the exception of urgent medical assistance, social assistance granted to a foreign national who was in receipt thereof at the time when an order to leave the territory was served on him will be stopped on the day when that foreign national actually leaves the territory and, at the latest, on the day when the period prescribed in the order to leave the territory expires.

...’

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 9 On 4 September 2015, B. made an application for asylum in Belgium. That application was rejected by the competent authority. On 27 April 2016, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) dismissed the appeal brought by B. against that decision.
- 10 On 26 September 2016, B. submitted an application for leave to reside on medical grounds based on the fact that she suffers from a number of serious illnesses.
- 11 As that application was declared admissible on 22 December 2016, B. became eligible for social assistance from the CPAS.
- 12 By decisions of 28 September 2017, of which B. was given notification on 23 October 2017, the application for leave to reside submitted by B. was rejected and the competent authority issued her with an order to leave Belgian territory.
- 13 On 28 November 2017, B. brought an action for annulment and suspension of those decisions before the Council for asylum and immigration proceedings.
- 14 By two decisions of 28 November 2017, the CPAS withdrew B.'s entitlement to social assistance with effect from 23 October 2017. On the other hand, she was granted emergency medical assistance on 1 November 2017.
- 15 On 28 December 2017, B. brought an action against the CPAS's decisions withdrawing her entitlement to social assistance before the tribunal du travail de Liège (Labour Court, Liège, Belgium) and requested that court to reinstate her entitlement to social assistance with effect from 23 October 2017.
- 16 By judgment of 15 March 2018, the tribunal du travail de Liège (Labour Court, Liège) dismissed that action in so far as it concerned entitlement to social assistance.
- 17 On 16 April 2018, B. brought an appeal against that judgment before the cour du travail de Liège (Higher Labour Court, Liège, Belgium) ('the national court').
- 18 The national court notes that, in the light of the date of notification of the order to leave Belgian territory and following a new decision adopted by the CPAS, the period covered by the appeal is from 23 November 2017 to 31 January 2018. It points out that, during that period, B. did not have a residence permit.
- 19 After ruling out the possibility of granting B. social assistance under the Belgian social assistance legislation because it might be impossible for her to return on medical grounds, the national court states that the outcome of the main proceedings depends on the lessons to be drawn from the solution adopted by the Court in its judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453).
- 20 It considers that it should uphold B.'s appeal if the action for annulment and suspension brought before the Council for asylum and immigration proceedings should be endowed with suspensive effect. The national court notes that, in accordance with Belgian law, that action does not have suspensive effect, but that it might be necessary to endow it with suspensive effect on the basis the judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453). Nevertheless, the national court takes the view that it is difficult to determine under what conditions a social court must decide that such an action has suspensive effect, since the Belgian courts have adopted divergent decisions on that question.

21 In those circumstances, the cour du travail de Liège (Higher Labour Court, Liège) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Articles 5 and 13 of Directive 2008/115 ... read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, and Article 14(1)(b) of that directive, read in the light of the judgment [of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453)], be interpreted as endowing with suspensive effect an appeal brought against a decision ordering a third-country national suffering from a serious illness to leave the territory of a Member State, in the case where the appellant claims that the enforcement of that decision is liable to expose him or her to a serious risk of grave and irreversible deterioration in his or her state of health:

- without it being necessary to examine the appeal, its mere introduction being sufficient to suspend the enforcement of the decision ordering the third-country national to leave the territory of that Member State; or
- following a marginal review as to whether there is an arguable complaint, lack of grounds for inadmissibility or whether the action brought before the Council for asylum and immigration proceedings is manifestly unfounded; or
- following a full and comprehensive judicial review carried out by the labour courts in order to determine whether the enforcement of that decision is indeed liable to expose the appellant to a serious risk of grave and irreversible deterioration in his or her state of health?’

### **Consideration of the question referred**

#### ***The jurisdiction of the Court and the admissibility of the question referred***

22 The Belgian Government submits, in the first place, that the reference for a preliminary ruling is inadmissible in so far as it seeks an interpretation of Belgian law by the Court. First, the conditions for the grant of a residence permit and social assistance are, in the main proceedings, governed exclusively by that law. Secondly, it is not for the Court to decide between the various lines of national case-law referred to by the national court.

23 In that regard, it should be borne in mind that it is settled case-law of the Court of Justice that it is not for the Court, in preliminary ruling proceedings, to interpret national legislation or regulations (see, to that effect, judgments of 27 February 2014, *Pohotovost*, C-470/12, EU:C:2014:101, paragraph 60, and of 20 January 2016, *DHL Express (Italy) and DHL Global Forwarding (Italy)*, C-428/14, EU:C:2016:27, paragraph 70).

24 However, in the present case, the national court is asking the Court, not about the interpretation of the provisions of Belgian law governing residence or social assistance, but about the precise scope of the procedural obligation arising from EU law requiring that, in certain cases, an appeal against a return decision must be guaranteed suspensive effect. The fact that the scope of that obligation arising under EU law has been understood in different ways by various Belgian courts is not such as to preclude the Court from being asked to give a preliminary ruling seeking to clarify the scope of that obligation.

25 In the second place, the Belgian Government considers that it is not necessary to answer the question referred in order to decide the case in the main proceedings. In order to rule on B.’s application, the national court simply has to rule out that it is impossible for B to return on medical grounds, which it has already done, and that court could refer to the possibility for the person concerned to apply for an extension of the period for voluntary departure granted to her, which would enable B. to continue to receive social assistance.

- 26 Similarly, the effect of the question referred on the outcome of the main proceedings was disputed by the Belgian Government in its oral observations and by the Czech and Netherlands Governments, on the ground that B. would continue to reside illegally on Belgian territory, even if the return decision taken in respect of her were suspended. Those governments deduce from this that her application for social assistance could still be rejected following such a suspension, since EU law does not preclude an illegally staying third-country national from receiving social assistance of a lower amount than that granted to a legally staying third-country national.
- 27 The Belgian Government submits, moreover, that the national court does not have jurisdiction, as a labour court, to grant suspensory effect to an appeal falling within the sole jurisdiction of another Belgian court and that the Cour de cassation (Court of Cassation, Belgium) has already answered the question referred in a recent judgment.
- 28 According to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 26 and the case-law cited).
- 29 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 27 and the case-law cited).
- 30 In the present case, it must be held that, having regard to the definition of the concept of 'illegal stay' set out in Article 3(2) of Directive 2008/115, any suspension of the return decision taken in respect of B. does not mean that her stay must be classified as 'legal', within the meaning of that directive. In those circumstances, it cannot be held that EU law requires the Kingdom of Belgium, following such a suspension, to ensure that B. enjoys rights equivalent to those enjoyed by third-country nationals staying legally in that Member State.
- 31 However, it is clear from the order for reference that Belgian legislation provides that, in a situation such as that at issue in the main proceedings, where the person concerned has lodged an asylum application which has been rejected and where that person does not have a residence permit, entitlement to social assistance is limited only after a return decision has been notified to that person. The national court considers, moreover, that that limitation may begin, not on the day on which the illegality of B.'s stay was established, but at the earliest on the day of expiry of the period for voluntary departure granted to her in the decision ordering her return.
- 32 Having regard to the connection found by the national court between the effects of a return decision and the limitation of the social assistance granted under the Belgian legislation, it cannot be considered that the interpretation sought of the rules of EU law concerning a possible suspension by operation of law of the effects of such a decision is clearly unrelated to the purpose of the main action, except to call into question the interpretation of national law given by the national court which falls within its exclusive jurisdiction in proceedings under Article 267 TFEU (see, to that effect, judgments of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 25, and of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 37).

- 33 That finding cannot be called into question by the fact that B.'s action against the return decision taken regarding her was brought only on 28 November 2017, whereas the dispute in the main proceedings concerns entitlement to social assistance for the period from 23 November 2017 to 31 January 2018. That does not mean, in any event, that the question referred for a preliminary ruling is manifestly hypothetical in respect of the period from 28 November 2017 to 31 January 2018.
- 34 In addition, as the Commission points out, it follows from the Court's case-law that certain guarantees pending return, which may include the provision of basic needs for the person concerned, must be provided, pursuant to Article 14(1) of Directive 2008/115, in situations where the Member State concerned is obliged to offer that person an appeal with automatic suspensive effect against a return decision taken against him or her, even if that person is staying illegally in the territory of the Member State in question (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 53, 55 and 58 to 60).
- 35 In those circumstances, the fact that B. may have had other procedural options under the Belgian legislation regarding entitlement to social assistance, if that is established, does not render the question referred for a preliminary ruling inadmissible. Since the national court did not consider that the possibility of B. having other procedural options prevented her from validly bringing the action in the main proceedings, that does not rule out the need for an answer to that question in order to decide the dispute in the main proceedings.
- 36 Similarly, the Belgian Government's claim that the national court did not have jurisdiction, under the rules of national law, to adopt a position on the suspensive effect of an appeal brought against a return decision does not suffice to lead to the inadmissibility of that question, in so far as it is not for the Court to call into question the national court's assessment of the rules of national law governing the organisation of the courts and their procedure (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 26, and of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 30).
- 37 Moreover, although the Belgian Government relies on the existence of a recent judgment of the Cour de cassation (Court of Cassation) which may provide an answer to the questions referred by the national court, it should be borne in mind that, even if that court is bound by the approach adopted in that judgment, that cannot deprive it of the right, provided for in Article 267 TFEU, to refer to the Court of Justice questions of interpretation of EU law intended to enable it to give a judgment which is in accordance with EU law (see, to that effect, judgment of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 42).
- 38 In the third place, the Belgian Government submits that the Court has no jurisdiction to interpret Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') in the present case. That article applies only within the scope of EU law. Whilst the national court refers to certain provisions of Directive 2008/115, that court does not establish a link between those provisions and the national legislation at issue in the main proceedings, although it is required to do so under Article 94(c) of the Rules of Procedure of the Court of Justice.
- 39 In that regard, it should be noted that, under Article 94(c) of the Rules of Procedure, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.
- 40 In the present case, it appears that, by setting out, first, the relationship established, under Belgian law, between the effects of a return decision and the limitation of entitlement to social assistance in the situation at issue in the main proceedings and, secondly, its questions as to the actual consequences

that must follow, in that situation, from the judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453), the national court has complied with the obligation laid down in Article 94(c) of the Rules of Procedure.

- 41 Moreover, since that court has established that the outcome of the main proceedings depends on the application of the rules laid down in Directive 2008/115 on appeals against a return decision, the Court's jurisdiction to interpret Article 47 of the Charter cannot be challenged in the present case.
- 42 It is in the light of the foregoing considerations that the question referred must be answered.

### *Substance*

- 43 By its question, the national court asks, in essence, what are the circumstances in which Articles 5 and 13 of Directive 2008/115, read in the light of Article 19(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, hearing a dispute on social assistance, the outcome of which is linked to the possible suspension of the effects of a return decision taken in respect of a third-country national suffering from a serious illness, must hold that an action for annulment and suspension of that decision automatically entails suspension of that return decision, even though that suspension does not result from the application of national legislation.
- 44 At the outset, it should be recalled that, under Article 13(1) and (2) of Directive 2008/115, a third-country national must be afforded an effective remedy to appeal against or seek a review of a decision ordering his or her return, but that such a remedy does not necessarily have suspensive effect (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 43 and 44).
- 45 However, the characteristics of that remedy must be determined in accordance with Article 47 of the Charter, under which everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article and with the principle of non-refoulement, guaranteed, inter alia, in Article 19(2) of the Charter and in Article 5 of Directive 2008/115 (see, to that effect, judgments of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 45 and 46, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 52 and 53).
- 46 From the foregoing considerations, the Court has concluded that, in order to ensure that the requirements arising from Article 47 of the Charter and the principle of non-refoulement are complied with in respect of the third-country national concerned, an appeal against a return decision must have automatic suspensive effect, since the enforcement of that decision may, inter alia, expose that national to a real risk of being subjected to treatment contrary to Article 19(2) of the Charter (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 56).
- 47 That is so, in particular, where the enforcement of a return decision may expose a third-country national suffering from a serious illness to a serious risk of grave and irreversible deterioration in his or her state of health (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 53).
- 48 The primary responsibility lies with the national legislature to adopt the measures necessary to meet that obligation. Thus, it is for the national legislature, where appropriate, to amend national legislation to ensure that an appeal brought by a third-country national has, in the situations referred to in paragraphs 46 and 47 of the present judgment, automatic suspensive effect (see, by analogy, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 65).



- 49 As EU law does not define precisely the actual modalities of the automatic suspensive appeal against the return decision, Member States have some leeway in this respect.
- 50 Therefore, in the context of the organisation of appeal procedures against a return decision, a Member State may provide for a specific remedy for that purpose, in addition to an action for annulment without suspensive effect, which may also be brought against the decision, provided that the applicable national procedural rules are sufficiently precise, clear and foreseeable to enable individuals to know precisely their rights (see, by analogy, judgment of 8 March 2017, *Euro Park Service*, C-14/16, EU:C:2017:177, paragraph 40).
- 51 Furthermore, since the Belgian Government maintains that an appeal with automatic suspensive effect should be guaranteed only against a removal decision and not against a return decision, it should be pointed out that it is apparent from paragraphs 44 to 49 of today's judgment, *CPAS Seraing* (C-402/19) that judicial protection guaranteed to a third-country national who is the subject of a return decision, the execution of which may expose that person to a real risk of being subject to treatment contrary to Article 19(2) of the Charter, is insufficient if that third-country national did not have an appeal with automatic suspensive effect against that decision as soon as that person was notified of that decision.
- 52 Furthermore, while that government maintains that the Belgian legislation is in accordance with EU law, it should be borne in mind that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law (see, to that effect, judgments of 17 December 1981, *Frans-Nederlandse Maatschappij voor Biologische Producten*, 272/80, EU:C:1981:312, paragraph 9, and of 30 April 2020, *CTT– Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 28).
- 53 In that regard, it is for the national courts, taking account of the whole body of rules of national law and applying the methods of interpretation recognised by those rules, to interpret those rules in accordance with Directive 2008/115, including by changing established case-law, where necessary, if it is based on an interpretation of national law which is incompatible with that directive (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraphs 69 and 70).
- 54 On the other hand, in the light of the principle of the primacy of EU law, where it is impossible for the national court to interpret national law in compliance with the requirements of EU law, any national court which is called upon within the exercise of its jurisdiction has, as an organ of a Member State, the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before that court (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 58 and 61, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 139).
- 55 It is clear from the Court's case-law that Article 47 is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right which they may rely on as such (see, to that effect, judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 78, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 140).

- 56 The same applies to Article 13(1) of Directive 2008/115, since the characteristics of the remedy provided for in that article must be determined in a manner consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 141).
- 57 Therefore, in a situation where the national court concludes that the Belgian legislation does not offer a third-country national, who is in the situation described in paragraphs 46 and 47 of this judgment, a remedy against the return decision governed by clear, precise and foreseeable rules and leading to the automatic suspension of that decision, it is for that court to hold that the appeal brought by the third-country national has suspensive effect for the purpose of the annulment or suspension of the return decision taken in respect of that third-country national, if necessary refusing to apply the national legislation precluding that appeal from having such an effect (see, by analogy, judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 66; of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 77; and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 144).
- 58 Conversely, if the national court considers that there is such a remedy in Belgian law and that the person concerned has not made use of it, even though that remedy would have involved the automatic suspension of the return decision taken concerning him or her, the national court is not required to disregard the national procedural rules in order to find that the action for annulment and suspension brought by that person has suspensive effect.
- 59 Moreover, the fact that the national court does not have jurisdiction, under the Belgian legislation, to rule on the action for annulment and suspension of the return decision at issue in the main proceedings does not preclude that court from applying directly the rules of EU law, with a view to deciding the question referred for a preliminary ruling, necessary for the resolution of the dispute before it, concerning the possible automatic suspensive effect, under Article 13(1) of Directive 2008/115, read in the light of Articles 19 and 47 of the Charter, of that action for annulment and suspension brought before another court.
- 60 Although the national court is not called upon, in a situation such as that at issue in the main proceedings, to exercise the power to order the suspension of a return decision, provided for in Article 13(2) of Directive 2008/115, which has been conferred by the Belgian legislature on another court, it is, however, for it to ascertain, for the sole purpose of resolving the dispute before it, if an appeal against such a decision fulfils the conditions necessary for it to have suspensory effect, which must be automatic and must therefore be binding on all the national authorities in their respective areas of competence, including the national courts ruling on social assistance.
- 61 However, a national authority called upon to give a determination in such a situation is not necessarily required to assume, because of the shortcomings of the applicable national legislation, that any appeal against a return decision would have automatic suspensive effect, since, as noted in paragraph 44 of this judgment, such an appeal does not as a matter of course have such an effect under EU law.
- 62 Consequently, it is for that authority to ascertain whether the conditions to which the guarantee of suspensive effect is subject, under EU law, are met in the case before it, depending on the situation of the person concerned.
- 63 It follows from the Court's case-law, referred to in paragraph 47 above, that such automatic suspensive effect must be guaranteed to appeals brought against a return decision the enforcement of which 'may' expose a third-country national suffering from a serious illness to a 'serious risk' of a grave and irreversible deterioration in his or her state of health.

- 64 In that context, in order to assess whether the enforcement of the return decision under appeal ‘may’ expose the person concerned to such a risk, a national authority is not called upon to determine whether the enforcement of that decision actually entails such a risk.
- 65 Indeed, if such a solution were adopted, the conditions for the application of automatic suspensive effect would be confused with those for the success of the appeal against the return decision. This would mean, first, that the preventive dimension of the suspensive effect of the appeal against the return decision would be disregarded and, secondly, that any authority called upon to give due effect to that suspensive effect would, in practice, itself have to carry out the review which is the responsibility of the court having jurisdiction to decide on the lawfulness of the return decision.
- 66 Therefore, such an authority must confine itself to assessing whether the appeal brought against the return decision contains an argument that the enforcement of that decision would expose a third-country national suffering from a serious illness to a serious risk of grave and irreversible deterioration in his or her state of health that does not appear to be manifestly unfounded. If that is the case, it is incumbent upon that authority to hold that the return decision is suspended with automatic effect, from the lodging of that appeal, and to give due effect to that finding under its powers.
- 67 That obligation is without prejudice to the Member States’ right to determine rules of national law governing the organisation of the courts and legal proceedings and to provide, in that context, that a decision on the suspensive effect of an appeal against a return decision, taken by a court with jurisdiction to decide on such an appeal, is to be binding on the authorities and courts which have to decide on guarantees concerning social assistance enjoyed by the third-country national concerned.
- 68 In the light of all the foregoing considerations, the answer to the question referred must be that Articles 5 and 13 of Directive 2008/115, read in the light of Article 19(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, hearing a dispute on social assistance, the outcome of which is linked to the possible suspension of the effects of a return decision taken in respect of a third-country national suffering from a serious illness, must hold that an action for annulment and suspension of that decision leads to automatic suspension of that decision, even though suspension of that decision does not result from the application of national legislation, where:
- that action contains arguments seeking to establish that the enforcement of that decision would expose that third-country national to a serious risk of grave and irreversible deterioration in his or her state of health, which does not appear to be manifestly unfounded, and that
  - that legislation does not provide for any other remedy, governed by clear, precise and foreseeable rules, which automatically entail the suspension of such a decision.

### **Costs**

- 69 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:

**Articles 5 and 13 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 the light of Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a national court, hearing a dispute on social assistance, the outcome of which is linked to the**

**possible suspension of the effects of a return decision taken in respect of a third-country national suffering from a serious illness, must hold that an action for annulment and suspension of that decision leads to automatic suspension of that decision, even though suspension of that decision does not result from the application of national legislation, where:**

- that action contains arguments seeking to establish that the enforcement of that decision would expose that third-country national to a serious risk of grave and irreversible deterioration in his or her state of health, which does not appear to be manifestly unfounded, and that**
- that legislation does not provide for any other remedy, governed by precise, clear and foreseeable rules, which automatically entail the suspension of such a decision.**

[Signatures]