

Judgment of the Court (Grand Chamber) of 30 November 2009 (Reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Said Shamilovich Kadzoev (Huchbarov)

(Case C-357/09 PPU) ⁽¹⁾

(Visas, asylum, immigration and other policies related to free movement of persons — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 15(4) to (6) — Period of detention — Taking into account the period during which the execution of a removal decision was suspended — Concept of ‘reasonable prospect of removal’)

(2010/C 24/28)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad — Bulgaria

Party to the main proceedings

Applicant: Said Shamilovich Kadzoev (Huchbarov)

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Article 15(4), (5) and (6) 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) — Exceeding of the maximum period of detention, laid down by Article 15 of that directive, in relation to a third-country national in an irregular situation — Exceeding of that maximum duration at the date of entry into force of the directive, but before its transposition into national law, which places no time-limits on detention — Application of the rules of the directive after their transposition into national law and absence of retroactive effect for pending cases — Calculation of maximum period of detention not taking account of time elapsing during proceedings challenging the national authorities’ removal decision — Whether exceeding of that duration permissible if based on lack of identification documents and means of subsistence and on the aggressive conduct of the person concerned — Meaning of “reasonable prospect of removal”

Operative part of the judgment

1. Article 15(5) and (6) 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 must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in

connection with a removal procedure commenced before the rules in that directive become applicable.

2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Decision 2008/115.

3. Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

4. Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

5. Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

6. Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

⁽¹⁾ OJ C 267, 7.11.2009.