



Press and Information

Court of Justice of the European Union

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Judgment in Case C-329/11

Alexandre Achughbabian v Préfet du Val-de-Marne

The 'return directive' precludes national legislation imposing a prison sentence on an illegally staying third-country national during the return procedure

That directive does not preclude criminal penalties being imposed in accordance with national rules and in compliance with fundamental rights on third-country nationals to whom the said procedure has been applied and who are staying illegally with no justified ground for non-return

The directive for returning illegally staying third-country nationals ('the return directive')¹ establishes common standards and procedures applicable in Member States for removing illegally staying third-country nationals from their territory.

The directive provides for the adoption, in respect of any illegally staying third-country national, of a return decision which, in principle, opens a period for voluntary return, followed, if necessary, by forced removal measures.

If there is no voluntary departure, the directive requires Member States to carry out forced removal using the least coercive measures possible. It is only if there is a risk of the removal being compromised that the Member State may place the person concerned in detention, the duration of which may in any case not exceed 18 months.

In this case, Mr Achughbabian, an Armenian national, entered France in 2008. He was the subject of a prefectoral decision, in 2009, requiring him to leave French territory and setting a one-month deadline for voluntary departure. Following his refusal to leave France, a new return decision was adopted in June 2011, in the form of a deportation order not accompanied by a time-limit for voluntary departure. In addition, the French authorities ordered his placing in police custody and then detention for illegal staying, measures which he challenged before the French courts.

The Cour d'appel de Paris (France), which is currently hearing the dispute, asks the Court of Justice whether the return directive precludes French legislation² which punishes a third-country national who stays illegally in France, beyond three months, without the required documents and visas, particularly a residence permit, by a one-year sentence of imprisonment and a fine of €3 750.

Mr Achughbabian was no longer in detention at the time the matter came before the Court of Justice. The latter has, however, decided to examine the case under the accelerated procedure, since other similar cases are also pending before the French courts. The Court of Justice has emphasised the need to rule on the case as soon as possible, in order to prevent any unlawful deprivations of liberty or reduce their duration.

In its judgment delivered today, the Court finds, first, that the directive – the objective of which is not to harmonise national rules on stays by foreign nationals in their entirety – concerns only return decisions and their implementation. Consequently, **the directive does not preclude national legislation which makes it an offence for a third-country national to stay illegally and provides for penal sanctions, including a sentence of imprisonment.**

¹ 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 Article L 621-1 of the code de l'entrée et du séjour des étrangers et du droit d'asile français ('Ceseda'),

Nor does the directive preclude a placing in detention in order to determine whether or not a third-country national's stay is lawful. However, the Court states that the national authorities are required to act with diligence and to take a position as soon as possible. Once the illegality of the stay has been established, those authorities must, in principle, adopt a return decision.

Secondly, the Court examines the conformity of French legislation with the directive in so far as it is capable of leading to imprisonment **during the return procedure.**

The Court refers, first, to its case-law in *El Dridi*³, according to which Member States must arrange their criminal legislation in the area of clandestine immigration and unlawful staying in such a way as to ensure compliance with EU law. Those States cannot therefore apply criminal legislation capable of jeopardising the achievement of the objectives pursued by the 'return directive' and thus deprive it of its effectiveness.

The Court then interprets the terms '*measures*' and '*coercive measures*' contained in the directive and considers that they refer to any intervention which leads, in an effective and proportionate manner, to the return of the person concerned. According to the Court, **the imposition and implementation of a sentence of imprisonment during the return procedure do not contribute to the realisation of the removal which that procedure pursues.** Such a sentence does not therefore constitute a 'measure' or a 'coercive measure' within the meaning of the directive.

The Court concludes that **EU law precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not been subject to the coercive measures provided for in the directive and has not, in the event of his having been placed in detention with a view to application of the removal procedure, reached the expiry of the maximum duration of that detention**⁴.

Finally, the Court states that Member States may adopt or maintain criminal provisions governing, in compliance with the 'return directive' and its objective, the situation in which coercive measures have not enabled the removal of an illegally staying third-country national to take place.

The Court infers that **the directive does not preclude penal sanctions being imposed, following national rules and in compliance with fundamental rights, on third-country nationals to whom the return procedure established by that directive has been applied and who are illegally staying in the territory of a Member State without there being any justified ground for non-return.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

³ *Hassen El Dridi alias Soufi Karim (C-61/11 PPU)*, see also Press Release [40/11](#).

⁴ The 'return directive' provides for a maximum detention period of 18 months. The latter varies between Member States, French legislation providing for a maximum duration of 45 days.