



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 65/13

Luxembourg, 30 May 2013

Judgment in Case C-534/11

Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje,
odbor cizinecké policie

An asylum seeker may, on the basis of national law, be detained for the purposes of removal on the ground of illegal stay where the application for asylum has been made with the sole aim of delaying or jeopardising enforcement of the return decision

The national authorities must, however, examine on a case-by-case basis whether that is the case and whether it is objectively necessary and proportionate to keep the asylum seeker in detention in order to prevent him from definitively evading return

The 'Return Directive'¹ lays down common standards and procedures in Member States for the removal of third-country nationals staying illegally in their territory. Those nationals may, under certain conditions, be detained for a period generally not exceeding six months, for the purpose of ensuring that their removal takes place correctly.

Mr Arslan, a Turkish national, was arrested by the Czech police on the ground of illegal stay and detained. On the following day the Czech authorities took a decision for his removal and, by a second decision taken a few days later, extended his detention to 60 days on the ground that it might be presumed that he would frustrate the removal decision. It was stated in the second decision that he had entered the Schengen area concealed so as to evade border controls and that he had stayed in Austria and the Czech Republic without a travel document or visa. The decision also stated that Mr Arslan had already been stopped in 2009 for questioning in Greece in possession of a false passport, and had then been returned to his country of origin and registered in the Schengen Information System as a person to be refused entry into States in the Schengen area from 26 January 2010 to 26 January 2013. On the same day as that decision was adopted, Mr Arslan made an application for asylum. While that application was being examined, his detention was extended by 120 days.

Mr Arslan is contesting before the Czech courts the lawfulness of the latter decision to extend his detention. His detention has in the meantime been terminated, as the maximum period of six months had expired, and his application for asylum has moreover been rejected.

The Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), which is hearing the case, asks the Court of Justice whether an asylum seeker can lawfully be kept in detention for the purpose of his removal from EU territory on the ground of illegal stay.

In today's judgment the Court of Justice finds, first, that **an asylum seeker has the right to remain in the territory of the Member State responsible for examining his application at least until his application has been rejected at first instance. Consequently, he cannot be considered to be illegally staying in that State during that period.** The Court points out in this respect that Member States may even extend that right by allowing asylum seekers to remain in their territory until a final decision has been given on their application.

The Court then states that for the time being it is for Member States to establish, in full compliance with their obligations arising from both international law and EU law, the grounds on which an

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).

asylum seeker may be detained or kept in detention. In this connection, the Court notes that in the present case Mr Arslan was detained on the ground that his conduct gave rise to the concern that he would abscond, and that his application for asylum seems to have been made with the sole intention of delaying or even jeopardising enforcement of the return decision taken against him. Such circumstances can indeed justify keeping him in detention even after the making of an application for asylum. The detention does not result from the making of the application for asylum but from circumstances characterising the individual behaviour of the applicant before and during the making of that application. Furthermore, the detention is necessary to prevent him from permanently evading removal from EU territory, and thus to ensure the effectiveness of the rules on the return of persons staying illegally.

Finally, the Court states that the mere fact that an asylum seeker, at the time of the making of his application, is the subject of a return decision and is being detained does not allow it to be presumed that he has made that application solely to delay or jeopardise the enforcement of the return decision. Whether the application for asylum is an abuse must therefore be assessed on a case-by-case basis. The national authorities must also assess whether it is objectively necessary and proportionate to keep the asylum seeker in detention.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

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