



**Third-country nationals who have been duly heard on the illegality of their stay need not necessarily be heard again before the adoption of a return decision**

*The reason is that a return decision is closely linked to the decision determining that a stay is illegal*

The application for asylum of Ms Sophie Mukarubega, who is of Rwandan nationality, was rejected by the French authorities after a procedure of 33 months. In late 2012, the Police Commissioner in Paris refused to grant her a residence permit and adopted a decision obliging her to leave France, with a period for voluntary departure of 30 days, fixing Rwanda as the destination country. Ms Mukarubega nonetheless continued to stay illegally in France.

Some four months later, in 2013, Ms Mukarubega attempted to travel to Canada in the possession of a false Belgian passport and was apprehended by the French police. Detained in police custody for the fraudulent use of an administrative document, Ms Mukarubega was interviewed on her personal and family situation, on the events in her life, on her right to stay in France and on a possible return to Rwanda. The following day, the Prefect of Seine-Saint-Denis, holding that Ms Mukarubega was staying illegally, adopted a decision obliging her to leave France, and allowed her no period for voluntary departure because of the risk of absconding.

Ms Mukarubega brought an action in France for the annulment of the return decisions adopted in 2012 and 2013. She claims that the adoption of those decisions was contrary to the principle of good administration stated in the Charter of Fundamental Rights of the EU, since she was not given the opportunity to submit her observations before those decisions were adopted. The French court before which proceedings were brought seeks clarification from the Court of Justice on the scope of the right to be heard.

In today's judgment, the Court states first that EU law<sup>1</sup> provides a detailed framework for the safeguards granted to third-country nationals as regards return decisions, since it lays down the formal requirements for return decisions and requires Member States to put in place effective remedies against those decisions. On the other hand, EU law does not specify whether, and under what conditions, observance of the right to be heard (which is inherent in the general principle of respect for the rights of the defence) is to be ensured, nor does it specify the consequences of an infringement of that right.

The Court then states that, once the competent national authorities have determined that a third-country national is staying illegally in the national territory, they are, subject to exceptions laid down in EU law referring the matter back to national law, under an obligation to adopt a return decision with regard to the third-country national, within a fair and transparent procedure. The consequence of that obligation is that Member States must, first, explicitly make provision in their national law for the obligation to leave national territory in cases of illegal stay and, second, ensure that the person concerned is properly heard within the procedure relating to his/her residence application or, as the case may be, on the illegality of his/her stay. That being the case, given that the adoption of a return decision is a necessary consequence of the decision determining the stay

<sup>1</sup> 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).

of the person concerned to be illegal, **where the national authorities are contemplating the simultaneous adoption of a decision determining a stay to be illegal and a return decision, those authorities need not necessarily hear the person concerned specifically on the return decision, since that person had the opportunity effectively to present his/her point of view on the question of whether the stay was illegal and whether there were grounds which could, under national law, entitle those authorities to refrain from adopting a return decision.**

In the case of Ms Mukarubega, the Court finds that the first return decision (that of 2012) was adopted following the procedure which led to her being refused refugee status and establishing that she was staying illegally. It is, therefore, the logical and necessary consequence of that procedure. Since Ms Mukarubega had been able to present her point of view throughout that procedure, she was able effectively to submit her observations on the illegality of her stay, so that there was no need to hear her specifically on the first return decision before the adoption of that decision. The obligation to hear her specifically on the return decision would needlessly prolong the administrative procedure, without adding to her legal protection.

As regards the second return decision (that of 2013), the Court observes that Ms Mukarubega was heard on, inter alia, her right of residence in France during her detention in police custody and that she had the opportunity to be heard fully, taking into consideration matters other than the mere fact of her illegal stay. Given that the second return decision was adopted shortly after Ms Mukarubega had been heard on the illegality of her stay and that she was able effectively to submit her observations on that subject, the Court concludes that the adoption by the national authorities of the second return decision was not in breach of the right to be heard.

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**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.

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