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Judgment of the Court in Case C-69/21 | Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)

A third country national who is suffering from a serious illness may not be removed if, in the absence of appropriate medical treatment in the receiving country, that national risks being exposed to a real risk of a rapid, significant and permanent increase in the pain linked to that illness

A Russian national who at the age of 16 developed a rare form of blood cancer is currently receiving treatment in the Netherlands. His medical treatment consists, inter alia, of the administration of medicinal cannabis for analgesic purposes. The use of medicinal cannabis is, however, not permitted in Russia.

That Russian national made a number of requests for asylum in the Netherlands, the last of which was rejected in 2020, and brought an action before the rechtbank Den Haag (District Court of the Hague) against the decision that had been taken to return him. He takes the view that he should be issued with a residence permit or, at the very least, his removal should be postponed on the ground that the treatment based on medicinal cannabis in the Netherlands is so essential to him that he would no longer be able to lead to a decent life if that treatment was discontinued.

The District Court of the Hague decided to refer a question to the Court of Justice in order to understand, in essence, whether EU law ¹ precludes a return decision from being taken or a removal order from being made in such a situation.

In today's judgment, the Court rules, in the light of its own case law and that of the European Court of Human Rights, that **EU law precludes a Member State from adopting a return decision or removing a third-country national who is staying illegally and suffering from a serious illness**, where there are substantial grounds for believing that returning that national would expose him or her, on account of appropriate care not being available in the receiving country, to a real risk of a rapid, significant and permanent increase in the pain caused by his or her illness.

That condition presupposes that it is established that (i) in the receiving country, the only effective analgesic treatment cannot be lawfully administered to him or her and (ii) the absence of such treatment would expose him or her to pain of such intensity that it would be contrary to human dignity in that it could cause him or her serious

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), read in conjunction with Article 51 (human dignity), 4 (prohibition of torture and of inhuman or degrading treatment or punishment) as well as Article 19(2) (protection in the event of removal) of the Charter of Fundamental Rights of the European Union.

and irreversible psychological consequences, or even lead him or her to commit suicide.

As regards the criterion concerning a rapid increase, the Court clarifies that EU law precludes the increase in the pain of a third country national, if he or she is returned, having to be liable to occur within a period which is predetermined in the law of the Member State concerned in an absolute manner. If the Member States set a time limit, it must be purely indicative and it cannot exempt the competent national authority from an actual examination of the situation of the person concerned.

As regards respect for the private life of the person concerned ², which includes the medical treatment of a third-country national, even where that national is staying illegally, the Court rules that the competent national authority may adopt a return decision or remove a third-country national only if it has taken into account that person's state of health.

However, the fact that, if he or she were returned, the same treatment as administered to him or her in the Member State in whose territory he or she is staying illegally would no longer be available to that national and could, therefore, in particular, affect the development of his or her social relations in the receiving country, cannot, in itself, preclude the adoption of a return decision or a removal order in respect of that national, where the absence of such treatment in the receiving country does not expose him or her to a real risk of inhuman or degrading treatment.

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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² Within the meaning of Article 7 of the Charter of Fundamental Rights.