



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 160/12
Luxembourg, 6 December 2012

Judgment in Case C-430/11
Md Sagor

The directive on the return of illegal immigrants does not preclude a Member State from punishing an irregular stay with a fine which may, under certain conditions, be replaced by an expulsion order

By contrast, that directive does preclude a Member State from punishing an irregular stay with a home detention order if it is not guaranteed that that order will come to an end as soon as the physical transportation of the individual concerned out of that Member State is possible

The directive on the return of illegally staying third-country nationals¹ ('the return directive') establishes the common standards and procedures applicable in the Member States for the removal from their territory of illegally staying third-country nationals.

Under Italian legislation, irregular stays can be punished by a fine which may, under certain conditions, be replaced by an order for expulsion or home detention.

Md Sagor, who claims to have been born in Bangladesh, is a street vendor of no fixed abode in Italy. As he did not possess a residence permit, in 2010 he was summoned before the Tribunale di Rovigo (District Court, Rovigo, Italy) for the offence of illegal stay.

Having some doubts as to the compatibility of the Italian legislation with EU law, the Italian court asked the Court of Justice whether the return directive precludes such national legislation.

In its judgment delivered today, the Court observes as a preliminary point that the return directive is not designed to harmonise in their entirety the rules of the Member States on the stay of foreign nationals and thus does not preclude the law of a Member State from classifying an illegal stay as an offence and laying down criminal sanctions to deter and penalise such an infringement². However, national law must not undermine the application of the common standards and procedures established by that directive and thus deprive it of its effectiveness.

The Court, first, upholds its case-law pursuant to which the return directive would be undermined if, after establishing that a third-country national is staying illegally, the Member State in question were to preface the adoption or implementation of the return decision with a criminal prosecution which could lead to a term of imprisonment during the course of the return procedure, a step which would risk delaying the removal³.

Next, the Court observes that the return measures are not delayed or impeded by a criminal prosecution such as that brought against Mr Sagor, since the national legislation in question allows the return to be achieved regardless of that criminal prosecution, without that prosecution having come to an end. Nor is the imposition of a **fine** liable to impede the implementation of the return procedure.

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 Case [C-329/11 Achughbabian](#); see also Press Release [No 133/11](#).

³ Case [C-61/11 PPU El Dridi](#); see also Press Release [No 40/11](#).

Also, the possibility given to the criminal court of replacing the fine with an **expulsion order accompanied by an entry ban as regards Italy**, in situations where it is possible immediately to effect the return of the individual concerned, is not contrary to that directive.

Indeed, the directive allows the Member States – on the basis of an individual examination of the situation of the individual concerned – to impose **expulsion without granting a period for voluntary departure** where there is a risk that that individual may abscond in order to avoid the return procedure.

Lastly, the Court observes that the Member States are required, under their duty of loyalty and the requirements of effectiveness referred to in the directive, to carry out the removal as soon as possible. Where a fine is replaced by a **home detention order**, the Court finds that that order, imposed in the course of the return procedure, does not help to achieve the physical transportation of an illegally staying third-country national out of the Member State concerned. On the contrary, **that home detention order may delay and impede measures such as deportation and forced return by air**.

Therefore, the Court finds that **the return directive precludes national legislation which allows illegal stays by third-country nationals to be penalised by means of a home detention order without guaranteeing that that order must come to an end as soon as the physical transportation of the individual concerned out of that Member State is possible**.

It is for the Italian court to assess whether there exists in the national legislation a provision by virtue of which removal overrides enforcement of the home detention order.

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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