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Advocate General's Opinion in Case C-313/25 PPU | [Adrar] ¹

Advocate General Spielmann: the court reviewing the lawfulness of the detention of an illegally staying third-country national must verify that the principle of non-refoulement does not preclude his or her removal

That is the case where that principle has not previously been taken into account, particularly in the event of a change in circumstances that occurred after the adoption of the return decision that may have a significant bearing on the assessment of the situation of the national concerned

On 11 September 2024, GB, who states that he is of Algerian nationality, applied for asylum in the Netherlands. He did not appear at the oral hearing concerning the reasons for his request. On 7 October 2024, the Minister rejected his application and issued a return decision, which became final.

On 26 March 2025, GB was transferred to the Netherlands by the French authorities. On the same day, he lodged a subsequent application for international protection in the Netherlands, which had the effect of suspending the enforcement of the return decision, and he was placed in detention. On 10 April 2025, the detention measure imposed on 26 March was lifted. A new detention measure was, however, imposed on him in order to carry out his removal to Algeria pursuant to the return decision. At the hearing prior to that detention, GB stated that he feared being subjected to inhuman or degrading treatment or punishment if he returned to Algeria, and that he was the father of a child born in France on 18 September 2024, whom he wanted to be able to care for.

The Netherlands court hearing the case, which is responsible for reviewing the lawfulness of the detention, is uncertain as to the scope of its review at that late stage of the proceedings, where relevant circumstances and facts occurred or arose after the adoption of the return decision that has become final. It is in that context that it decided to refer questions to the Court of Justice.

In his Opinion today, Advocate General Spielmann proposes that the Court should rule that Directive 2008/115/EC, ² read together with the Charter of Fundamental Rights of the European Union (in particular the right to liberty and security, the principle of non-refoulement and the right to an effective remedy), requires effective review by the national court even at that stage of the proceedings.

The national court is required to ensure, if necessary of its own motion, that the principle of non-refoulement does not preclude the removal of the person concerned, where that principle has not been previously taken into account, particularly in the event of a change of circumstances that occurred after the adoption of the return decision that may have a significant bearing on the assessment of the situation of the national concerned, in the light of the principle of non-refoulement.

Furthermore, the Advocate General considers that the court is required to satisfy itself, if necessary of its own motion, that family life and the best interests of the child do not preclude the removal of the person concerned,

where that has not previously been taken into account, provided that the national concerned cannot be considered to have failed in its duty of sincere cooperation. It is for the referring court to ascertain that in the light of the circumstances of the case.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 EU law or the validity of an EU 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 Opinion is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² 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.