



Court of Justice of the European Union

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Judgments in Joined Cases C-473/13 and C-514/13 and in Case C-474/13
Adala Bero v Regierungspräsidium Kassel, Ettayebi Bouzalmate v
Kreisverwaltung Kleve and Thi Ly Pham v Stadt Schweinfurt

Press and Information

A Member State cannot rely on the fact that there are no specialised facilities in a part of its territory to justify detaining third-country nationals in prison pending their removal

The same applies even if the third-country national concerned has given his consent to being accommodated in prison

The Return Directive¹ provides that any detention of third-country nationals pending their removal must, as a rule, take place in a specialised facility and can take place only on an exceptional basis in prison accommodation, the Member State then having to ensure that the third-country national is kept separated from ordinary prisoners.

In Germany, each federated state (*Land*) is responsible for carrying out the detention of illegally staying third-country nationals. Since the *Land* of Hesse had no specialised detention facility which could accommodate women, Ms Adala Bero, who is probably a Syrian national, was detained from 6 January to 2 February 2011 in Frankfurt prison. Mr Ettayebi Bouzalmate, a Moroccan national, was detained in a separate section of the prison of the city of Munich, due to the absence of specialised detention facilities in the *Land* of Bavaria. Lastly, Ms Thi Ly Pham, a Vietnamese national, was also detained, from 29 March to 10 July 2012, in a prison in Bavaria. Unlike Ms Bero and Mr Bouzalmate, she consented to being detained together with ordinary prisoners.

Two German courts, the Bundesgerichtshof (Federal Court of Justice) and Landgericht München I (Regional Court Munich I), requested the Court of Justice to determine whether a Member State is required to detain illegally staying third-country nationals in a specialised detention facility when the federated state competent to decide upon and carry out such detention does not have such a detention facility. In the case of *Pham*, the question of consent given by the person concerned has also arisen.

As regards the conditions for carrying out detention, the Court of Justice points out, in today's judgments, that, according to the very wording of the Return Directive, detention for the purpose of removal of illegally staying third country nationals must take place, as a rule, in specialised detention facilities. It follows that the national authorities responsible for applying that requirement must be able to detain the third-country nationals in specialised detention facilities, regardless of the administrative or constitutional structure of the Member State under which those authorities fall. Thus, the fact that, in certain federated states of a Member State, the competent authorities have the possibility of such detention cannot amount to sufficient transposition of the Return Directive if the competent authorities of other federated states of that Member State lack that possibility.

While the Court acknowledges that a Member State which has a federal structure is not obliged to set up specialised detention facilities in each federated state, that Member State must nevertheless ensure that the competent authorities of the federated states without such facilities can provide accommodation for third-country nationals in specialised detention facilities located in other federated states.

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).

In the case of *Pham*, the Court adds that a Member State cannot take account of the wish of the third-country national concerned to be detained in prison accommodation. The Court observes that under the Return Directive the obligation requiring illegally staying third-country nationals to be kept separated from ordinary prisoners is not coupled with any exception and thereby guarantees observance of the foreign nationals' rights in relation to detention. More specifically, the separation requirement is more than just a specific procedural rule for carrying out the detention in prison accommodation and constitutes a substantive condition for that detention, without observance of which the latter would, in principle, not be consistent with the directive.

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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