



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-47/15  
Séline Affum v Préfet du Pas de Calais and Procureur général de la Cour  
d'appel de Douai

**According to Advocate General Szpunar, a foreign national who was not stopped when illegally crossing an external border of the Schengen Area cannot be imprisoned solely on the basis of his illegal entry into the territory of a Member State**

*This is also true, in particular, in the case where the foreign national is stopped when leaving the Schengen area, whether he is merely in transit or is the subject of a procedure for readmission to the Member State from which he has come*

French law provides that third-country nationals may be imprisoned for a year if they have entered French territory illegally.

On 22 March 2013, Ms Séline Affum, a Ghanaian national, was stopped by French police at the point of entry to the Channel Tunnel while on board a coach travelling from Ghent (Belgium) to London (United Kingdom). Having presented a Belgian passport containing the photograph and name of another person, and being unable to produce any other identity or travel document in her name, Ms Affum was first placed in police custody on the ground of illegal entry into French territory, before being placed in detention pending her readmission to Belgium.

As Ms Affum is challenging the lawfulness of her detention, the Cour de cassation (France) asks the Court of Justice whether, under the directive concerning the return of illegally staying third-country nationals,<sup>1</sup> the illegal entry of a third-country national into national territory can be punished by a term of imprisonment.

In today's Opinion, Advocate General Maciej Szpunar points out first of all that the directive applies to **third-country nationals who are illegally staying in the territory of a Member State** and that, according to the case-law of the Court, it does not preclude **the imprisonment of such nationals in two circumstances**: (1) when the return procedure established by the directive has been applied and the national continues to stay illegally in the territory of the Member State with no justified ground<sup>2</sup> and (2) when the return procedure has been applied and the third-country national re-enters the territory of the Member State in breach of an entry ban.<sup>3</sup>

The Advocate General takes the view that **the directive is indeed applicable to the situation of Ms Affum**. For the directive not to be applicable to her, it would have been necessary to stop her at the point of her entry into the Schengen area via an external border. Ms Affum, however, was not seeking to enter the Schengen area (where she was already located by virtue of her stay in Belgium and in France) but to leave it (the United Kingdom not being a part of the Schengen area).

Likewise, the fact that Ms Affum was the subject not of a return procedure but of a procedure for readmission to the Member State from which she had come (Belgium) does not render the directive inapplicable to her situation, since the case of readmission is expressly provided for in the directive.

<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).

<sup>2</sup>Case [C-329/11](#) Achughbabian, see Press Release No [133/11](#).

<sup>3</sup>Case [C-290/14](#) Celaj, see Press Release No [112/15](#).

Finally, Ms Affum's position of being merely in transit does not preclude application of the directive: a third-country national who finds herself on a coach without satisfying the conditions of entry is indeed present on the territory of the Member State at issue (in this case, France) and is thus 'staying illegally'.

Since the directive is applicable and the foreign national is not covered by either of the two situations in which her imprisonment is possible (which is the case here, since Ms Affum had not been the subject of a return procedure and did not re-enter French territory in breach of an entry ban), the Advocate General concludes that a **third-country national such as Ms Allum cannot be imprisoned solely on the basis that she is illegally in the territory of a Member State.**

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**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 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 Opinion is published on the CURIA website on the day of delivery.*

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