



Press and Information

Court of Justice of the European Union
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Judgment in Case C-601/15 PPU
J.N. v Staatssecretaris van Veiligheid en Justitie

EU law allows an asylum seeker to be detained when the protection of national security or public order so requires

The introduction of a fresh asylum application by a person who is subject to a return decision does not render that decision inoperative

J.N. first applied for asylum in the Netherlands in 1995. That application was rejected in 1996. In 2012 and 2013 J.N. made further applications for asylum. In 2014 the State Secretary for Security and Justice rejected the last of those applications, ordered J.N. to leave the EU immediately and imposed a ten-year entry ban on him. The appeal against that decision was dismissed by final judgment.

Between 1999 and 2015 J.N. was convicted on 21 charges and was sentenced to fines and terms of imprisonment for various offences (mostly theft). More recently, in 2015, J.N. was arrested for theft and failure to comply with the entry ban imposed on him. He was sentenced to a further term of imprisonment and was subsequently held in detention as an asylum seeker: the reason for that was that J.N., while serving his prison sentence, had made a fourth application for asylum.

Against that background the Raad van State (Council of State), hearing an appeal brought by J.N., has referred a question to the Court of Justice for a preliminary ruling. It has made particular mention of the case-law of the European Court of Human Rights concerning the situations in which an asylum seeker may be detained. The Raad van State is uncertain in these circumstances about the validity of the Reception Conditions Directive, under which an asylum seeker may be detained when the protection of national security or public order so requires.¹

The Court has today given judgment in the case, which has been dealt with under the urgent preliminary ruling procedure. It finds, first, that the detention measure, for which the Reception Conditions Directive provides, genuinely meets an objective of general interest recognised by the EU. The Court points out that the protection of national security and public order also contributes to the protection of the rights and freedoms of others. The Charter of Fundamental Rights of the EU states in that regard that everyone has the right, not only to liberty, but also to security of person.

The Court goes on to consider whether the EU legislature remained within the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued and whether it struck a fair balance between an asylum seeker's right to liberty and the requirements relating to the protection of national security and public order.

Given the importance of the right to liberty and the gravity of the interference with that right which detention represents, the Court stresses that limitations on the exercise of that right must apply only in so far as is strictly necessary.

It notes that the power to detain an asylum seeker is subject to compliance with a series of conditions which concern, in particular, the period of detention (which must be as short as possible).

¹ Point (e) of the first subparagraph of Article 8(3) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180. P. 96).

It adds that the strict circumscription of the competent national authorities' power in this context is also ensured by the interpretation given to the concepts of "national security" and "public order".

Thus, the Court has held that the concept of "public order" presupposes, in any event, the existence – in addition to the disturbance of the social order which any infringement of the law involves – of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

As regards "public security", it is apparent from the Court's case-law that this concept covers both the internal security of a Member State and its external security. Consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security.

The Raad van State has explained that, according to its own case-law, the introduction of an asylum application by a person who is subject to a return procedure has the effect of rendering an earlier return decision inoperative. Addressing that point, the Court states that, in any event, the principle that the Return Directive² must be effective requires that a procedure opened under that Directive which has given rise to a return decision, accompanied where appropriate by an entry ban, can be resumed, at the stage at which it was interrupted, as soon as the application for international protection which interrupted it has been rejected at first instance. The Member States must not jeopardise the attainment of the objective pursued by the Return Directive, namely the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals.

The Court further observes that it follows from the duty of sincere cooperation of the Member States and the requirements of effectiveness that the obligation imposed on the Member States, in the cases set out in the Return Directive, to carry out the removal must be fulfilled as soon as possible. That obligation would not be fulfilled if the enforcement of a return decision was delayed because, following the rejection at first instance of the application for international protection, the procedure could not be resumed at the stage at which it was interrupted, but had to start afresh.

Lastly, the Court states that in enabling the Member States to adopt detention measures on grounds of national security or public order, the Reception Conditions Directive does not disregard the level of protection afforded by the European Convention on Human Rights (ECHR),³ which permits the detention of a person against whom action "is being taken" with a view to deportation.

In conclusion, the Court finds that there is no ground for calling in question the validity of the Reception Conditions Directive, in so far as it authorises detention measures of that kind, whose scope is strictly circumscribed so as to meet the requirements of proportionality.

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 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).

³ Article 5(1), second part of point (f), ECHR.