



Press and Information

Court of Justice of the European Union

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Judgment in Case C-444/17

Préfet des Pyrénées-Orientales v Abdelaziz Arib

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**An internal border of a Member State at which border control has been reintroduced cannot be equated with an external border within the meaning of the ‘Returns Directive’**

Mr Abdelaziz Arib, a Moroccan national, was checked, on French territory near the land border between France and Spain, on board a coach travelling from Morocco. He had previously been subject to an expulsion measure removing him from French territory. Mr Arib was apprehended and held in police custody because he was suspected of entering France illegally and the préfet des Pyrénées-Orientales (Prefect of the Pyrénées-Orientales, France) made an order requiring Mr Arib to leave France and ordered his administrative detention. His detention in police custody was annulled by the tribunal de grande instance de Perpignan (Regional Court, Montpellier, France). The cour d’appel de Montpellier (Court of Appeal, Montpellier, France) upheld the decision taken at first instance and the Prefect lodged an appeal before the Cour de cassation (Court of Cassation, France).

The principle of freedom of movement within the Schengen Area entails an absence of border control of persons crossing the internal borders between the Member States. The check at issue was carried out in June 2016 during the period of temporary reintroduction in France of internal border control. France had declared a state of emergency and reintroduced checks at its internal borders, in accordance with the provisions of the Schengen Border Code,<sup>1</sup> on account of a serious threat to its public policy and internal security.

In that context, the Cour de cassation (Court of Cassation) notes that the Returns Directive<sup>2</sup> authorises, *inter alia*, the Member States not to apply the return procedure laid down in the directive to third-country nationals who are subject to a refusal of entry or who are apprehended or intercepted in connection with the irregular crossing of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

The Cour de cassation (Court of Cassation) asks the Court of Justice whether an internal border at which border control has been reintroduced can be equated, for the purpose of the Returns Directive, with an external border and whether, consequently, France may decide not to apply to Mr Arib the return procedure laid down in the Returns Directive.

In today’s judgment, the Court recalls, first, that Mr Arib, a Moroccan national, is not subject to a refusal of entry into French territory, but that he was checked by French authorities in the immediate vicinity of the border between France and Spain after border control at that border had been reintroduced in accordance with Article 25 of the Schengen Borders Code, and was held in custody following that check on suspicion of having committed the offence of illegal entry into French territory.

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<sup>1</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p.1).

<sup>2</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).

Thus, according to the Court, it should be determined whether a third-country national who is staying illegally on the territory of a Member State and was apprehended in the immediate vicinity of an internal border of that Member State falls within the prescribed exception to the application of the Returns Directive, where the Member State concerned has reintroduced border control at that border pursuant to Article 25 of the Schengen Borders Code.

The Court notes that according to its case-law, the Returns Directive must be interpreted as not permitting Member States to exclude certain illegally staying third-country nationals from the directive's scope on the sole ground of illegal entry across an internal border. It considers moreover that the reintroduction of border control by a Member State at its internal borders is not such as to alter that conclusion. In that regard, the Court considers, *inter alia*, that there is no need to treat differently, in the light of the objective pursued by the Returns Directive, the situation of an illegally staying third-country national, apprehended in the immediate vicinity of an internal border, depending on whether or not border control has been reintroduced at that border.

The Court then notes, that it follows from the Schengen Borders Code that an internal border at which border control has been reintroduced by a Member State is not tantamount to an external border for the purpose of that code. Under the Schengen Borders Code, the concepts of 'internal borders' and 'external borders' are mutually exclusive. The code merely provides that, where border control at internal borders is reintroduced by a Member State, only the relevant provisions of the code relating to external borders are to apply *mutatis mutandis*. **The Court therefore takes the view that the very wording of the code precludes an internal border at which border control has been reintroduced from being equated with an external border.**

**The Court concludes that the exception to the application of the return procedure laid down in the Returns Directive does not cover the situation of an illegally staying third-country national who was apprehended in the immediate vicinity of an internal border of a Member State, even where that Member State has reintroduced border control at that border on account of a serious threat to public policy or internal security in that Member State.**

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**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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