

Case C-825/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

23 December 2021

Referring court:

Cour de cassation (Belgium)

Date of the decision to refer:

13 December 2021

Applicant:

UP

Defendant:

Centre public d'action sociale de Liège

1. Subject matter of the main proceedings

- 1 On 24 September 2014 the applicant's request for asylum was refused and on 13 October 2014 she was served with an order to leave the territory.
- 2 On 16 October 2014 the applicant brought an action against that refusal before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings).
- 3 On 19 January 2015 the applicant submitted an application for leave to remain for the purpose of medical treatment.
- 4 On 8 June 2015 that application was declared admissible, resulting in the applicant being issued with a residence registration certificate (temporary leave to remain). The Centre public d'action sociale de Liège (Liège public social welfare centre) then granted her social financial assistance.
- 5 On 22 July 2015 the Council for asylum and immigration proceedings dismissed the action brought against the refusal of 24 September 2014.

- 6 On 20 April 2016 the Office des étrangers (Immigration Office) declared the application for leave to remain for the purpose of medical treatment to be unfounded. Residence registration certificates (temporary leave to remain) ceased to be issued to the applicant.
- 7 The applicant brought an action against that decision before the Council for asylum and immigration proceedings, an action which does not have suspensory effect.
- 8 The Liège public social welfare centre withdrew her social assistance with effect from 1 May 2016.
- 9 By judgment of 7 November 2016, the tribunal du travail de Liège (Labour Court, Liège) dismissed the action brought by the applicant against the withdrawal of her social assistance.
- 10 On 15 March 2017 the cour du travail de Liège (Higher Labour Court, Liège) dismissed the applicant's appeal against that judgment.
- 11 The Higher Labour Court, Liège, essentially took the view that the effects of the order to leave the territory served prior to the application for leave to remain for the purpose of medical treatment had indeed been suspended but that that order still stood and resumed its full force when the residence registration certificates ceased to be granted. The applicant, who is no longer lawfully resident in Belgium, is therefore no longer entitled to the social assistance in issue.
- 12 The Cour de cassation (Court of Cassation), hearing an appeal against the judgment of the Higher Labour Court, Liège, now makes a reference to the Court of Justice.

2. Legal provisions relied on

European Union law

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

- 13 Chapter II, entitled 'Termination of illegal stay', provides in Article 6:

'Return decision

1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

...

4. Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.

...'

14 Article 8, entitled 'Removal', provides:

'1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

...

6. Member States shall provide for an effective forced-return monitoring system.'

National law

Loi du 8 juillet 1976 organique des centres publics d'action sociale (Basic Law of 8 July 1976 on public social welfare centres)

15 Article 1 provides:

'Everyone has the right to social assistance. The purpose of such assistance is to enable each person to lead a life consistent with human dignity.

Public social welfare centres shall be established which, under the conditions laid down by this Law, shall have the task of providing such assistance.'

16 Article 57 provides:

'1. Without prejudice to Article 57ter, public social welfare centres shall have the task of providing individuals and families with the assistance that the community is due to provide.

...

That assistance may be material, social, medical, medico-social or psychological.

2. By derogation from the other provisions of this Law, the tasks of public social welfare centres shall be limited to:

1. the grant of urgent medical assistance to foreign nationals staying illegally in Belgium;

...

A foreign national who has declared himself or herself a refugee and has requested recognition as such shall be deemed to be staying illegally in Belgium where his or her request for asylum has been refused and an order to leave the territory has been served on him or her. ...’

Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law of 15 December 1980 on entry to Belgian territory, residence, establishment and removal of foreign nationals)

17 Article 9ter provides:

‘1. A foreign national residing in Belgium ... who suffers from an illness occasioning a real risk to his or her life or physical integrity or a real risk of inhuman or degrading treatment where there is no appropriate treatment in his or her country of origin or in the country in which he or she resides may apply ... for leave to remain in Belgium.’

Arrêté royal du 17 mai 2007 fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Royal Decree of 17 May 2007 laying down detailed rules for the implementation of the Law of 15 September 2006 amending the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and removal of foreign nationals)

18 Article 7 provides:

‘ ...

Except in the cases referred to in Article 9ter(3) of the Law, the authorised representative of the Minister shall instruct the commune to enter the person concerned on the register of foreign nationals and to provide him or her with a model A residence registration certificate. ...’

19 Article 8 provides:

‘Temporary leave to remain and the certificate of entry on the register of foreign nationals which are issued on the basis of Article 9ter of the Law shall be valid for at least one year.’

3. The essential arguments of the applicant

20 The applicant submits, in essence, that a residence registration certificate entitles a person seeking to remain for the purpose of medical treatment to stay, even temporarily and irregularly, and thus entails the implied withdrawal of the order to leave the territory previously served on him or her. The contested judgment could

not therefore rely on that order to leave the territory to rule that the applicant was staying illegally during the period at issue from 1 May to 2 November 2016 and was not entitled, pursuant to Article 57(2) of the Law of 8 July 1976, to receive social assistance other than urgent medical assistance.

4. Assessment of the Court of Cassation

- 21 Article 6(1) of Directive 2008/115 provides that Member States are to issue a return decision to any third-country national staying illegally on their territory.
- 22 Under Article 6(4) of Directive 2008/115, Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory and, in that event, where a return decision has already been issued, it is to be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.
- 23 Article 8(1) of that directive provides that Member States are to take all necessary measures to enforce the return decision.
- 24 In the judgment of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465), the Court held that the order to leave the territory issued by the Belgian Immigration Office to a third-country national after the rejection of his application for international protection constituted a return decision within the meaning of Article 3(4) of Directive 2008/115/EC.
- 25 In the case which gave rise to the judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84), the referring court – the Council of State of the Netherlands – had stated that, in accordance with its own case-law, the introduction of an asylum application by a person who is subject to a return decision automatically causes all return decisions that may previously have been adopted in the context of that procedure to lapse. The Court stressed in that regard that, in any event, the principle that Directive 2008/115/EC must be effective requires that a procedure opened under that directive, in the context of which a return decision has been adopted, 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. It stated that, indeed, the Member States must not jeopardise the attainment of the objective which that directive pursues, namely the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals. The Court added that it follows both from the duty of sincere cooperation of the Member States, deriving from Article 4(3) TEU, and from the requirements for effectiveness referred to, for example, in recital 4 of Directive 2008/115/EC, that the obligation imposed on the Member States by Article 8 of that directive, in the cases set out in Article 8(1), to carry out the removal must be fulfilled as soon as possible. It made clear that that obligation would not be met if the removal were delayed because,

following the rejection at first instance of the application for international protection, a procedure such as that described in the preceding paragraph could not be resumed at the stage at which it was interrupted but had to start afresh.

- 26 In the present case, the Court of Cassation considers that the plea raised calls for an interpretation of Articles 6 and 8 of Directive 2008/115/EC.
- 27 Before giving a ruling, it therefore decides to refer the following question to the Court of Justice.

5. Question referred for a preliminary ruling

- 28 The Court of Cassation stays the proceedings pending a preliminary ruling from the Court of Justice on the following question:

Do Articles 6 and 8 of 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 preclude a rule of national law under which the consequence of granting authorisation conferring a right to stay in the context of the examination of an application for leave to remain for the purpose of medical treatment, considered to be admissible in the light of the criteria set out above, is that the third-country national is entitled to stay, even temporarily and irregularly, during the examination of that application and that the return decision previously adopted in an asylum procedure, with which the grant of such authorisation is incompatible, is impliedly withdrawn?