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Judgment of the Court in Case C-150/24 | [Aroja] ¹

Return of illegally staying persons: in order to calculate the maximum period of detention, it is necessary to aggregate all periods of detention completed on the basis of one and the same return decision

A Moroccan national who entered Finland illegally in September 2022, despite being subject to a ban on entry to the Schengen area, was detained on four occasions by the authorities of that Member State with a view to his removal to his country of origin.

The legality of one of these periods of detention, from 11 September 2023 to 18 January 2024, is being examined by the Finnish courts, since, at that stage, the initial maximum period of six months provided for in the Return Directive ² may have been exceeded, taking into account previous periods of detention.

The Supreme Court of Finland, hearing the case at final instance, asked the Court of Justice about the calculation of the maximum period of detention and the judicial review of whether that period has been exceeded.

The Court considers that, in order to determine whether the maximum period of detention has been reached, **it is necessary to aggregate all periods of detention completed in a Member State for the purpose of enforcing one and the same return decision**. It states that neither the fact that those periods are interspersed with periods of liberty, nor a change in the factual circumstances pertaining to the person concerned gives rise to a new period of detention.

However, the Court points out that Member States may decide not to apply the Return Directive to third-country nationals who are subject to a criminal law sanction providing for their return. Nor does the directive prevent Member States from imposing penalties, including criminal penalties, on persons whose return procedure has been completed and who nevertheless continue to stay illegally without any justified reason.

With regard to exceeding the initial maximum detention period of six months, the Court points out that any decision to extend detention must be subject to review by a judicial authority. Since that review is mandatory, **it cannot be dependent on a request by the detained person**. Furthermore, it does not necessarily have to be carried out before that maximum period has been reached, but **it must take place as soon as possible after the decision to extend detention has been taken**.

The absence of such judicial review does not automatically entail the immediate release of the national concerned. Indeed, as long as the substantive conditions for detention, as provided for in the Return Directive, are met, **exceeding the initial maximum period of six months does not require the annulment of the extension decision or the lifting of the detention**. ³

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 EU law or the validity of an EU 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. That decision is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² According to Article 15(5) 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, each Member State is to set a limited period of detention, which may not exceed six months. Article 15(6) of that directive states that Member States may not extend that maximum detention period, except for a fixed period not exceeding a further twelve months, where, despite all their reasonable efforts, the removal operation is likely to last longer due to the lack of cooperation of the third-country national concerned or delays in obtaining the necessary documentation from third countries. Thus in any event, detention for the purpose of removal may not exceed 18 months.

³ Immediate release would be necessary only if the maximum period of detention provided for in Article 15(6) of Directive 2008/115 had been reached.