

CJEU - C-673/19 M and Others (Transfert vers un État membre), 24 February 2021

Country of Applicant:

Unknown

Date of Decision:

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CJEU, C-673/19 M and Others (Transfert vers un État membre), 24 February 2021

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Court Name:

Court of Justice of the EU

Keywords:[Detention](#) [1][Inadmissible application](#) [2][Residence document](#) [3][Return](#) [4]**Relevant Legislative Provisions:**European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 4](#) [6]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 18](#) [7]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 19](#) [8] > [Art 19.2](#) [9]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10] > [Recital \(2\)](#) [11]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10] > [Recital \(4\)](#) [12]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10] > [Recital \(5\)](#) [13]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10] > [Article 1](#) [14]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10] > [Article 2](#) [15]

European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10]
> [Article 3](#) [16]
European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10]
> [Article 4](#) [17]
European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10]
> [Article 5](#) [18]
European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10]
> [Article 6](#) [19]
European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [10]
> [Article 15](#) [20]

Headnote:

The Return Directive does not prevent a Member State from placing in administrative detention a third-country national residing illegally on its territory, in order to carry out the forced transfer of that national to another Member State in which that national has refugee status, where that national has refused to comply with the order to go to that other Member State and it is not possible to issue a return decision to him or her.

Facts:

Three third-country nationals applied for international protection in the Netherlands but their applications were rejected as inadmissible as they had previously been granted refugee status in another Member State. In the same inadmissibility decisions, they were also ordered to immediately return to the countries that had granted them status but they did not comply. All three were then placed in detention and subsequently returned to the countries that had granted them refugee status.

They brought a challenge against their detention claiming that they should have not been detained without first receiving a return order within the meaning of Article 6 (2) of Directive 2008/115 (the Return Directive ? RD). Following further appeals, the case reached the Council of State which stayed the proceedings and referred a question to the CJEU on whether the Return Directive precludes the detention pending return of third-country nationals who have been granted status in another Member State without a return decision having first been issued to them, where those nationals have refused to comply with the order issued to them to go to that other Member State.

Decision & Reasoning:

The Court started its assessment by referring to the aim of the Return Directive to establish effective and rights-compliant return procedures [27-29] and the definition of illegal stay under Article 3 (2), which concerns third-country nationals who are present in a Member State without fulfilling the conditions for that stay, including where they have a valid residence permit in another Member State on account of their refugee status. As far as their stay has not been regularised, the third-country national falls under the RD and the procedures of that Directive should apply. [30-31]

According to Article 6 (2), third-country national with a right of residence in another Member State should be allowed to return to that Member State rather than be issued a return decision from the beginning, unless security reasons apply. This derogation does not mean that illegally staying third-country nationals can be exempted from the scope of the Directive when they refuse to return to the Member State of residence; they will simply be the subject of a return decision in accordance

with Article 6 (2) to any of the countries listed in Article 3 (3). [32-37] However, the applicants in the present case could not be returned to any of the countries found in Article 3 (3) RD due to, *inter alia*, *non-refoulement* considerations. The Netherlands was therefore legally unable to fulfil the obligation to issue a return decision under Article 6 (2) and there were no procedures in the RD for such a situation. [38-42]

The Court continued stating that the RD does not intend to harmonise in its entirety the national legislation of the Member States on the stay of third-country nationals but is concerned only with the issuing of return decisions and the implementation of those decisions. Therefore, it is also not intended to determine the consequences of an illegal stay in a situation where no return decision can be issued, including where this is partly the result of *non-refoulement* considerations. [42-44] Consequently, when a Member State decides to carry out a forced transfer of a third-country national to the Member State that granted them right of residence, that decision is a matter of national competence on migration and is not governed by the RD. Moreover, the RD does not prevent the Member State from placing that third-country national in detention, since such a decision cannot be issued in the circumstances of this case and, in any case, fundamental rights are observed. [45-47]

Outcome:

Articles 3, 4, 6 and 15 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 must be interpreted as not precluding a Member State from placing in administrative detention a third-country national residing illegally on its territory, in order to carry out the forced transfer of that national to another Member State in which that national has refugee status, where that national has refused to comply with the order to go to that other Member State and it is not possible to issue a return decision to him or her.

Case Law Cited:

[CJEU - C-806/18 JZ \(Peine de prison en cas d'interdiction d'entrée\)](#), 17 September 2020 [21]

[CJEU ? C 444/17, Abdelaziz Arib v. France](#), 19 March 2019 [22]

CJEU - C-82/16 K. A. e.a. (Regroupement familial en Belgique), 8 May 2018

[CJEU ? Case C-181/16 Ghandi](#), 19 June 2018 [23]

[CJEU - Case C-290/14, Skerdhan Celaj](#) [24]

[CJEU - Case C?47/15, Sélima Affum v Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai](#) [25]

C-146/14 Bashir Mohamed Ali Mahdi

[CJEU - C-329/11 Achughbabian Alexandre Achughbabian v Préfet du Val-de-Marne](#) [26]

Attachment(s):



Authentic Language:

English

Country of preliminary reference:

Netherlands

National / Other Legislative Provisions:

Article 59(2) of the Vreemdelingenwet 2000 (2000 Law on Foreign Nationals) of 23 November 2000 (Stb. 2000

No 495)

Article 62a of the Vreemdelingenwet 2000 (2000 Law on Foreign Nationals) of 23 November 2000 (Stb. 2000

Article 106 of the Vreemdelingenwet 2000 (2000 Law on Foreign Nationals) of 23 November 2000 (Stb. 2000

Article A3/2 of the Vreemdelingencirculaire 2000 (2000 Circular on foreign nationals)

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A194

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2489

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490

[5] <https://www.asylumlawdatabase.eu/node/453>

[6] https://www.asylumlawdatabase.eu/node/453#toc_29

[7] https://www.asylumlawdatabase.eu/node/453#toc_85

[8] https://www.asylumlawdatabase.eu/node/453#toc_88

[9] https://www.asylumlawdatabase.eu/node/453#toc_91

[10] <https://www.asylumlawdatabase.eu/node/1306>

[11] https://www.asylumlawdatabase.eu/node/1306#toc_10

[12] https://www.asylumlawdatabase.eu/node/1306#toc_12

[13] https://www.asylumlawdatabase.eu/node/1306#toc_13

[14] https://www.asylumlawdatabase.eu/node/1306#toc_42

[15] https://www.asylumlawdatabase.eu/node/1306#toc_45

[16] https://www.asylumlawdatabase.eu/node/1306#toc_52

[17] https://www.asylumlawdatabase.eu/node/1306#toc_67

[18] https://www.asylumlawdatabase.eu/node/1306#toc_77

[19] https://www.asylumlawdatabase.eu/node/1306#toc_86

[20] https://www.asylumlawdatabase.eu/node/1306#toc_161

[21] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-80618-jz-peine-de-prison-en-cas-d%E2%80%99interdiction-d%E2%80%98entr%C3%A9e-17-septembre-2020>

[22] <https://www.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-c-44417-abdelaziz-arib-v-france-19-march-2019>

[23] <https://www.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-case-c-18116-gnandi-19-june-2018>

[24] <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c-29014-skerdhan-celaj>

[25] <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c%E2%80%9114715-s%C3%A9lina-affum-v-pr%C3%A9fet-du-pas-de-calais-procureur-g%C3%A9n%C3%A9ral-de-la-cour-d%E2%80%99appel>

[26] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-32911-achughbaban-alexandre->

achughbaban-v-pr%C3%A9fet-du-val-de-marne

[27]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Curia%20M%20A%20and%20T.pdf>