ECLI:EU:C:2022:810

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

20 October 2022 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Directive 2008/115/EC – Return of illegally staying third-country nationals – Asylum application – Rejection – Order to leave the territory – Article 6(4) – Application for leave to remain for the purpose of medical treatment – Admissible application – Issuance of temporary leave to remain while the application is being examined – Dismissal of application – Social assistance – Refusal – Condition relating to the legality of the stay – No return decision – Effect of temporary leave to remain on the order to leave the territory)

In Case C-825/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, Belgium), made by decision of 13 December 2021, received at the Court on 23 December 2021, in the proceedings

UP

v

Centre public d'action sociale de Liège,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– UP, by D. Andrien, avocat,

– the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by C. Piront, avocate,

– the European Commission, by A. Azéma and A. Katsimerou, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2008 L 348, p. 98).

2 The request has been made in proceedings between a third-country national and the centre public d'action sociale de Liège (Liège public social welfare centre, Belgium) ('the CPAS') concerning the decision taken by the CPAS to withdraw her entitlement to social assistance.

Legal context

European Union law

3 Recital 4 of Directive 2008/115 states:

'Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.'

4 Article 3 of that directive, entitled 'Definitions', states:

'For the purpose of this Directive the following definitions shall apply:

…

4. "return decision" means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

…'

5 Article 6 of Directive 2008/115, entitled 'Return decision', provides:

'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.

…'

6 Article 8 of Directive 2008/115, entitled 'Removal', provides in paragraph 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.'

Belgian law

Social assistance legislation

7 Article 57(2) of the loi organique des centres publics d'action sociale, du 8 juillet 1976 (Basic Law of 8 July 1976 on public social welfare centres) (*Moniteur belge* of 5 August 1976, p. 9876), in the version applicable to the dispute in the main proceedings ('the CPAS law'), provides:

'By derogation from the other provisions of this Law, the functions of the public social welfare centre shall be limited to:

1. the grant of urgent medical assistance, in respect of a foreign national staying illegally in the Kingdom;

2. …

A foreign national who has declared himself or herself a refugee and has asked to be recognised as such will be deemed to be staying in the Kingdom illegally where his or her application for asylum has been rejected and an order to leave the territory has been served on him or her.

…'

Legislation on foreign nationals

8 Article 9*ter* of the 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) (*Moniteur belge* of 31 December 1980, p. 14584), in the version applicable to the dispute in the main proceedings ('the Law on foreign nationals'), provides in paragraph 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 the Kingdom.'

9 Article 7 of the arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la [loi sur les étrangers], du 17 mai 2007 (Royal Decree of 17 May 2007 laying down detailed rules for the implementation of the Law of 15 September 2006 amending the [Law on foreign nationals]) (*Moniteur belge* of 31 May 2007, p. 29535), in the version applicable to the dispute in the main proceedings ('the Royal Decree of 17 May 2007'), provides:

'Except in the cases referred to in Article 9*ter*(3) of the Law, the 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. …'

10 Article 8 of that royal decree provides:

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

The dispute in the main proceedings and the question referred for a preliminary ruling

11 On 19 August 2014, the applicant in the main proceedings, a national of the Democratic Republic of the Congo, submitted in Belgium an application for international protection.

12 By decision of 24 September 2014, the Commissaire général aux réfugiés et aux apatrides (CGRA) (Commissioner General for Refugees and Stateless Persons (CGRA), Belgium) rejected that application, refusing her refugee status and subsidiary protection status ('the CGRA's decision').

13 On 13 October 2014, the Belgian State, acting through the Office des étrangers (Immigration Office, Belgium), served the applicant in the main proceedings with an order to leave the territory.

14 On 16 October 2014, the applicant in the main proceedings brought an action against the CGRA's decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium). No action was brought against the order to leave the territory.

15 On 19 January 2015, the applicant in the main proceedings submitted to the Immigration Office an application for leave to remain for the purpose of medical treatment pursuant to Article 9*ter* of the Law on foreign nationals.

16 The Immigration Office having declared that application admissible on 8 June 2015, a residence registration certificate was granted to the applicant in the main proceedings pursuant to Article 7 of the Royal Decree of 17 May 2007. The CPAS therefore granted her social financial assistance.

17 On 22 July 2015, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) dismissed the action brought by the applicant in the main proceedings against the CGRA's decision.

18 By decision of 20 April 2016, the Immigration Office rejected the application for leave to remain for the purpose of medical treatment, so that the residence registration certificates stopped being granted to the applicant in the main proceedings. That decision was served on her on 29 April 2016.

19 The applicant in the main proceedings brought an action against that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings), an action which does not have suspensory effect.

20 By decisions of 31 May, 28 June and 19 July 2016, the CPAS withdrew her social assistance from 1 May 2016 and decided to recover the sum of EUR 56.69 paid since 29 April 2016.

21 By judgment of 7 November 2016, the tribunal du travail de Liège (Labour Court, Liège, Belgium) dismissed the action brought by the applicant in the main proceedings against those three decisions.

22 By judgment of 15 March 2017, the cour du travail de Liège (Higher Labour Court, Liège, Belgium) dismissed the appeal brought by the applicant in the main proceedings against the judgment of 7 November 2016 on the ground, in essence, that the effects of the order to leave the territory adopted before the application for leave to remain for the purpose of medical treatment had been suspended, but that that order still stood, and that that suspension ended when the residence registration certificates stopped being granted. According to that court, the stay of the applicant in the main proceedings during the period from 1 May to 2 November 2016 is therefore illegal. Consequently, she could not, pursuant to Article 57(2) of the CPAS Law, receive social assistance other than urgent medical assistance.

23 The applicant in the main proceedings brought an appeal against the judgment of 15 March 2017 before the Cour de cassation (Court of Cassation, Belgium), the referring court. She submits, in essence, that that judgment wrongly gives effect to the order to leave the territory served on her on 13 October 2014. The consequence of granting residence registration certificates to a third-country national who applies for a right to stay for the purpose of medical treatment on the basis of Article 9*ter* of the Law on foreign nationals is that he or she is entitled to stay, even temporarily and irregularly, and that, therefore, the order to leave the territory previously served is implicitly withdrawn. The judgment under appeal could not therefore rely on that order to leave the territory in order to rule that the applicant in the main proceedings was staying illegally during the period from 1 May to 2 November 2016 and that, consequently, she was not entitled to the social assistance in question.

24 The Cour de cassation (Court of Cassation) notes that, under Belgian law, Article 57(2)(1) of the CPAS law limits the functions of public social welfare centres in respect of a foreign national staying illegally to the grant of urgent medical assistance. In accordance with the fourth subparagraph of that provision, a foreign national who has declared himself or herself a refugee and has asked to be recognised as such will be deemed to be staying in Belgium illegally where his or her application for asylum has been rejected and an order to leave the territory has been served on him or her.

25 The referring court observes, first, that, under Article 6(1) of Directive 2008/115, Member States are, in principle, required to issue a return decision to any third-country national staying illegally on their territory and, secondly, that, in accordance with Article 8(1) of that directive, they must take all necessary measures to enforce the return decision. However, 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 such a case, 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.

26 In that regard, the Cour de cassation (Court of Cassation) observes that, in paragraph 36 of the judgment of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465), the Court stated that the order to leave the territory issued by the Immigration Office to a third-country national after the rejection of his application for international protection constitutes a 'return decision' within the meaning of Article 3(4) of Directive 2008/115.

27 The referring court notes that the Court stated, in paragraph 75 of the judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84), that the principle that Directive 2008/115 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, the Member States being required not to 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.

28 The referring court observes that, in that regard, the Court stated, in paragraph 76 of that judgment, 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 that the obligation imposed on the Member States in Article 8 of that directive to carry out the removal must be fulfilled as soon as possible and 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 at issue could not be resumed at the stage at which it was interrupted but had to start afresh.

29 It follows, according to the referring court, that the examination of the appeal in the case in the main proceedings calls for an interpretation of Articles 6 and 8 of Directive 2008/115.

30 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Do Articles 6 and 8 of Directive [2008/115] 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?'

The question referred

Admissibility

31 The Belgian Government maintains that there is no need to reply to the question referred for a preliminary ruling, since it is irrelevant to the outcome of the dispute in the main proceedings. The rule of national law referred to by the referring court in that question does not exist in Belgian law. The Belgian Government argues that that court proceeds, in that regard, from an incorrect premiss for two reasons.

32 First, a residence registration certificate issued in accordance with Article 7 of the Royal Decree of 17 May 2007 and Article 9*ter* of the Law on foreign nationals to a person whose application for leave to remain for the purpose of medical treatment has been declared admissible

does not constitute an authorisation conferring a right to stay, but only grants that person a right to remain temporarily in the territory.

33 Secondly, under Belgian law, the right to remain in the territory does not entail the implicit withdrawal of the return decision previously taken in respect of the person concerned. The Belgian Government argues that the Conseil d'État (Council of State, Belgium), by judgment of 23 May 2017, rejected such an interpretation by referring to the judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84). In addition and above all, that judgment was referred to by the Belgian legislature when, by the Law of 24 February 2017, which entered into force on 29 April 2017 and is applicable to all ongoing procedures, it inserted Article 1/3 into the Law on foreign nationals. That provision now states clearly that a return decision is not affected by the submission by a foreign national of an application to stay or of an application for international protection and that, if the person concerned may temporarily remain in the territory pending a decision on that application, the enforceability of the return decision is only suspended.

34 In that regard, it should be borne in mind that, according to the settled case-law of the Court, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions referred concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling. It follows that questions referred by national courts enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it appears that the interpretation sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraph 41 and the case-law cited).

35 In particular, it should be stated in that regard that the Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling. Consequently, a reference for a preliminary ruling must be examined in the light of the interpretation of national law provided by the referring court and not that relied on by the government of a Member State (see, to that effect, inter alia, judgments of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 25, and of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 26).

36 In the present case, as is apparent from the express terms of the request for a preliminary ruling, and in particular from the very wording of the question referred to the Court, the referring court considers that, in order to resolve the dispute in the main proceedings, it is necessary to examine, first, whether the provisions of Directive 2008/115 preclude a rule of national law which provides that, where a right to stay is granted to a third-country national who has made an application for leave to remain for one of the reasons covered by Article 6(4) of that directive, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of the return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

37 Since, by such a question, that court presupposes that Belgian law contains such a rule, the Court cannot accept, for the purposes of the present preliminary ruling proceedings, the interpretation of that right put forward by the Belgian Government, according to which the

authorisation granted to a third-country national in such a situation, first, does not confer on him or her a right to stay and, secondly, entails only the suspension of the effects of the return decision previously adopted in respect of that national.

38 It is therefore for the referring court alone to interpret the national law applicable to the dispute in the main proceedings by determining, in particular, whether Article 1/3 of the Law on foreign nationals, as inserted by the Law of 24 February 2017, which entered into force in the course of a procedure on 29 April 2017, is applicable to that dispute.

39 It follows that the present reference for a preliminary ruling is admissible.

Substance

40 By its question, the referring court asks, in essence, whether Article 6(4) of Directive 2008/115 must be interpreted as precluding legislation of a Member State under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

41 In that regard, it should be borne in mind that, in accordance with the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider its wording, the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, inter alia, judgment of 20 June 2022, *London Steam-Ship Owners' Mutual Insurance Association*, C-700/20, EU:C:2022:488, paragraph 55).

42 It should be noted that, according to the first sentence of Article 6(4) of Directive 2008/115, Member States may 'at any moment' grant to a third-country national staying illegally on their territory an 'autonomous residence permit' or 'other authorisation offering a right to stay' for 'compassionate, humanitarian or other reasons'.

43 It is thus apparent from the very wording of that provision, in particular from the reference to 'other' reasons, that it allows Member States to issue to such nationals, at any stage, a right to stay not only for the reasons expressly referred to, namely compassionate or humanitarian reasons, but also for any reason of a different nature which they deem appropriate.

44 It follows that the Member States have a very broad discretion to grant, in compliance with EU law, a right to stay to third-country nationals staying illegally on their territory.

45 Therefore, there is nothing to prevent a Member State from granting a right to stay to such a national who has submitted an application for leave to remain for one of the reasons covered by Article 6(4) of Directive 2008/115 on account of the admissibility of that application, pending the outcome of the processing of that application on its merits.

46 It is apparent from the unambiguous wording of the third and last sentence of Article 6(4) of Directive 2008/115, in particular from the word 'or', that although it is true that the Member States, when granting a right to stay for compassionate, humanitarian or other reasons, may provide that that right to stay is to have the effect of suspending, for the duration of validity of the authorisation in question, any return decision previously adopted in respect of the person concerned, they may equally provide that that right to stay is to entail the withdrawal of such a previous return decision.

47 Accordingly, a Member State which grants a right to stay to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by Article 6(4) of Directive 2008/115, on account of the admissibility of such an application, may, in accordance with the very wording of that provision, provide that the grant of such a right to stay entails the implicit withdrawal of a return decision previously adopted in respect of that same national.

48 That interpretation of Article 6(4) of Directive 2008/115 cannot be called into question, contrary to the Belgian Government's submissions, by the context in which that provision occurs and objectives pursued by the rules of which it forms part.

49 It is true that Directive 2008/115 aims, with due regard for the fundamental rights and dignity of the persons concerned, to establish an effective removal and repatriation policy for illegally staying third-country nationals (judgment of 10 March 2022, *Landkreis Gifhorn*, C-519/20, EU:C:2022:178, paragraph 39 and the case-law cited).

50 It follows both from the duty of loyalty of the Member States, following from Article 4(3) TEU, and from the requirements of effectiveness laid down, for example, in recital 4 of Directive 2008/115, that the obligation imposed on the Member States by Article 8 of that directive, in the cases referred to in Article 8(1), to carry out the removal, must be fulfilled as soon as possible (see, to that effect, judgment of 6 December 2011, *Achughbabian*, C-329/11, EU:C:2011:807, paragraph 45).

51 Thus, the Court has held, in essence, in paragraphs 74 to 76 and 80 of the judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84), that the effectiveness of Directive 2008/115 requires that a procedure opened under that directive, in the context of which a return decision has been adopted, should not start afresh, but 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 being required not to jeopardise the attainment of the objective which that directive pursues, namely to carry out the removal as soon as possible.

52 Nevertheless, as the applicant in the main proceedings and the Commission have rightly submitted, the interpretation of Directive 2008/115 adopted in the preceding paragraph cannot be applied to the present case.

53 That interpretation was adopted by the Court in the context of a dispute which resulted from the submission, by an illegally staying third-country national, of multiple applications for international protection and which raised the question of the effects that must attach to the submission of a new application of that nature, since EU law does not contain a provision expressly determining the consequences of the granting of an authorisation to remain in the territory for the purpose of the procedure on a previous return decision.

54 By contrast, the question referred arises in the context of a dispute concerning the submission by an illegally staying third-country national, after the rejection of her application for international protection, of an application for leave to remain for compassionate, humanitarian or other reasons within the meaning of Article 6(4) of Directive 2008/115.

55 In such a case, as has been noted in paragraphs 46 and 47 above, the third and last sentence of that provision expressly allows Member States, when deciding to grant an autonomous residence permit or other authorisation offering a right to stay to such a national, to provide that the grant of

that permit or authorisation entails the withdrawal of a return decision previously adopted in respect of him or her.

56 Consequently, the answer to the question referred is that Article 6(4) of Directive 2008/115 must be interpreted as not precluding legislation of a Member State under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 6(4) 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 legislation of a Member State under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

[Signatures]

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* Language of the case: French.