



Press and Information

Court of Justice of the European Union
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Judgment in Case C-249/13
Khaled Boudjlida v Préfet des Pyrénées-Atlantiques

The Court clarifies the extent of the right of illegally staying third-country nationals to be heard

Directive 2008/115 sets out common standards and procedures in Member States for returning illegally staying third-country nationals.¹

After having stayed legally in France for the duration of his studies, at the end of 2012 Mr Khaled Boudjlida became a person who was staying illegally, since he had not applied for the renewal of his last residence permit. In early 2013, after he made an application for registration as a self-employed businessman, Mr Boudjlida was invited by the police to discuss that application, the circumstances of his arrival in France, the conditions of his residence as a student, details of his family and the possibility of his departure from France. On the same date, the Prefect of Pyrénées-Atlantiques issued a decision imposing on Mr Boudjlida the obligation to leave France, granting him a period of 30 days for his voluntary return to Algeria. Mr Boudjlida challenged that decision before the French courts.

Mr Boudjlida claims that he did not, before the adoption of the return decision, have the right to be heard effectively. He claims that he was not in a position to analyse all the information relied on against him, since the French authorities did not disclose that information to him beforehand and did not allow him an adequate period for reflection before the hearing. Further, the length of his interview by the police (30 minutes) was much too short, the more so when he did not have the benefit of legal assistance. The administrative court of Pau before which his case was brought has asked the Court of Justice to clarify the extent of the right to be heard.

By today's judgment, the Court states, first, that the directive does not specify whether, and under what conditions, observance of the right of third-country nationals to be heard must be ensured before the adoption of a return decision concerning them. That right is however inherent in observance of the rights of defence, which is a fundamental principle of EU law. Next, the Court recalls the principles set out in the recent judgment of *Mukarubega*², in particular, the general rule, to which there are exceptions, that a return decision must be issued with respect to a third-country national as soon as it has been determined that his stay is illegal. The purpose therefore of the right to be heard before the adoption of a return decision is to enable **the person concerned to express his point of view on the legality of his stay and on whether any of the exceptions to the general rule³ are applicable**. Similarly, under EU law, **national authorities must take due account of the best interests of the child, family life and the state of health of the third-country national concerned and respect the principle of non-refoulement⁴**, so that the person concerned must be heard on that subject. Last, the right to be heard implies that the competent

¹ 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 Case [C-166/13](#) *Mukarubega* see Press Release No. [142/14](#).

³ Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if he has a right of residence in another Member State (the third-country national then being obliged to travel to that other Member State), if he is taken back by another Member State, if his stay is accepted for compassionate, humanitarian or other reasons or if there is a pending procedure for the renewal of his residence permit.

⁴ Article 5 of Directive 2008/115.

national authorities are under an obligation to enable the person concerned **to express his point of view on the detailed arrangements for his return** (such as the period allowed for departure and whether return is to be voluntary or coerced), with the possibility that the period for voluntary departure may be extended according to the specific circumstances of the individual case (such as the length of stay, the existence of children attending school and other family and social links).

Further, the Court declares that **a competent national authority is not required to warn a third-country national that it is contemplating adopting a return decision with respect to him, or to disclose to him the information which it intends to rely on to justify that decision, or to allow him a period of reflection before seeking his observations.** EU law⁵ does not establish any such detailed arrangements for an adversarial procedure. It is therefore sufficient if the person concerned has the opportunity effectively to submit his point of view on the subject of the illegality of his stay and reasons which might justify the non-adoption of a return decision. An exception must however be admitted where a third-country national could not reasonably suspect what evidence might be relied on against him or would objectively only be able to respond to it after certain checks or steps were taken with a view, in particular, to obtaining supporting documents. Further, the Court states that return decisions may always be challenged by legal action, so that the protection and defence of the person concerned against a decision which adversely affects him is ensured.

In this case, Mr Boudjlida knew that his residence permit had expired and that he was staying illegally in France. Further, the police informed Mr Boudjlida, explicitly, that he might be the subject of a return decision and questioned him as to whether he agreed to leave France if a decision to that effect concerning him was taken. Accordingly, Mr Boudjlida was informed of the reasons why he was being interviewed and was aware of the subject-matter of the interview and the possible consequences. Further, that interview clearly concerned the information which was relevant to and necessary for the adoption of a return decision with respect to him.

As regards whether the right to be heard includes the right to have legal assistance when being heard, the Court stated that a right to legal assistance is provided for by the directive only when an appeal has been brought in order to challenge a return decision. The Court adds however that **an illegally staying third-country national may always have recourse, at his own expense, to the services of a legal adviser** in order to have the benefit of the latter's assistance when being heard, **provided that the exercise of that right does not affect the due progress of the return procedure and does not undermine the effective implementation of the directive.** Member States are not required to bear the costs of that assistance by providing free legal aid. In this case, the Court finds that, when he was interviewed, Mr Boudjlida did not request the assistance of a legal adviser.

Lastly, the Court considers that the length of the interview of an illegally staying third-country national (only 30 minutes in the case of Mr Boudjlida) has no decisive bearing on respect for the right to be heard, provided that the third-country national had the opportunity to be heard sufficiently on the legality of his stay and on his personal situation (as applies in this case).

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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⁵ Directive 2008/115.