



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 88/18**

Luxembourg, 19 June 2018

Judgment in Case C-181/16  
Sadikou Gnandi v État belge

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**Member States are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection**

In 2011, Mr Sadikou Gnandi, a Togolese citizen, applied for international protection in Belgium. In 2014, that request was rejected by the authority responsible and Mr Gnandi was ordered to leave the territory. Mr Gnandi lodged an appeal against the decision rejecting his application for international protection and also sought annulment of the order requiring him to leave the territory. The appeal against the order to leave the territory is currently pending before the Belgian Conseil d'État (Council of State).

That court decided to refer a question to the Court of Justice for a preliminary ruling. The Conseil d'État asks, in essence, whether the EU directive on returning illegally staying non-EU nationals,<sup>1</sup> read in conjunction with the EU directive on refugee status,<sup>2</sup> in the light of the principle of non-refoulement and the right to an effective remedy (which are both enshrined in the EU Charter of Fundamental Rights),<sup>3</sup> precludes the adoption of a return decision in respect of an applicant for international protection as soon as his application has been rejected by the authority responsible, at first instance, and before the legal remedies available to him against that rejection have been exhausted.

In today's judgment, the Court of Justice finds that an applicant for international protection falls within the scope of the directive on returning illegally staying non-EU nationals as soon as his application for international protection has been rejected by the responsible authority. In that regard, the Court notes that the authorisation to remain in the territory of the Member State concerned for the purposes of exercising the right to an effective remedy against that rejection decision does not preclude the conclusion that, **as soon as that rejection decision is adopted, the stay of the person concerned becomes, in principle, illegal.**

The Court points out that the directive is not based on the notion that the illegality of the stay and, accordingly, the applicability of the directive, presupposes that there is no lawful possibility for the non-EU national to remain in the territory of the Member State concerned. The Court also recalls that the main objective of the directive is the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned. That objective finds specific expression in a provision of the directive which explicitly allows Member States to adopt a decision on the ending of a legal stay together with a return decision, in a single administrative act.

The Court notes, however, that **in relation to a return decision and a possible removal decision, the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by according the applicant for international protection**

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<sup>1</sup> 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).

<sup>2</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

<sup>3</sup> Articles 18, 19(2) and 47.

**the right to an effective remedy with automatic suspensory effect at least before one judicial body.** Subject to strict compliance with that requirement, the mere fact that the stay of the person concerned is categorised as being illegal as soon as his application for international protection has been rejected at first instance by the responsible authority and that a return decision may, therefore, be adopted following that rejection decision or together in a single administrative act, does not infringe the principle of non-refoulement or the right to an effective remedy.

The Court also notes that **Member States are required to provide an effective remedy against the decision rejecting the application for international protection, in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if such an appeal is lodged, until resolution of the appeal.** In that regard, it is not sufficient for the Member State concerned to refrain from enforcing the return decision. On the contrary, it is necessary, in particular, that the period for voluntary departure does not start running as long as the person concerned is allowed to stay and that, during that period, he is not placed in pre-deportation detention. In addition, the person concerned is to retain his status as an applicant for international protection until a final decision is adopted in relation to that application. Furthermore, Member States must allow applicants to rely on any change in circumstances occurred after the adoption of the return decision which may have a significant bearing on the assessment of their situation. Lastly, Member States are required to ensure that the applicant is informed in a transparent way of the observance of those guarantees.

In the present instance, the Conseil d'État states that, even though the return decision cannot be enforced before resolution of the appeal filed by Mr Ghandi, it still adversely affects him in so far as it forces him to leave Belgian territory. Subject to verification by the referring court, it is thus apparent that the requirement that the return procedure be suspended pending the outcome of such an appeal is not met.

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**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 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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