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ECLI:EU:C:2020:759

Provisional text

JUDGMENT OF THE COURT (First Chamber)

30 September 2020 (\*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Directive 2008/115/CE – Return of illegally staying third-country nationals – Parent of an adult child suffering from a serious illness – Return decision – Judicial remedy – Automatic suspensory effect – Safeguards pending return – Basic needs – Articles 7, 19 and 47 of the Charter of Fundamental Rights of the European Union)

In Case C-402/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour du travail de Liège (Higher Labour Court, Liège, Belgium), made by decision of 17 May 2019, received at the Court on 24 May 2019, in the proceedings

**LM**

v

**Centre public d'action sociale de Seraing,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen (Rapporteur), C. Toader and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Belgian Government, by P. Cottin, M. Jacobs and C. Pochet, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and by J.M. Hoogveld, acting as Agents,
- the European Commission, by C. Cattabriga and A. Azema, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2020,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Articles 5 and 13 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 LM, a third-country national, and the Centre public d'action sociale de Seraing (Public Centre for Social Welfare, Seraing, Belgium) ('the CPAS') concerning the CPAS's decisions withdrawing LM's entitlement to social assistance.

### **Legal context**

#### ***EU law***

3 Article 3 of Directive 2008/115 provides:

'For the purpose of this Directive:

...

3. "return" means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

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. "removal" means the enforcement of the obligation to return, namely the physical transportation out of the Member State'.

4 Article 5 of that directive states:

'When implementing this Directive, Member States shall take due account of:

...

(c) the state of health of the third-country national concerned,  
and respect the principle of *non-refoulement*.'

5 Article 8(3) of the directive provides:

‘Member States may adopt a separate administrative or judicial decision or act ordering the removal.’

6 Article 9 of Directive 2008/115, entitled ‘Postponement of removal’, provides in paragraph 1 thereof:

‘Member States shall postpone removal:

- (a) when it would violate the principle of *non-refoulement*, or
- (b) for as long as a suspensory effect is granted in accordance with Article 13(2).’

7 Article 13(1) and (2) of Directive 2008/115 states:

1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.’

8 Article 14(1) of that directive is worded as follows:

‘Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nations during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

- (a) family unity with family members present in their territory is maintained;
- (b) emergency health care and essential treatment of illness are provided;
- (c) minors are granted access to the basic education system subject to the length of their stay;
- (d) special needs of vulnerable persons are taken into account.’

### **Belgian law**

9 Article 57(2) of the loi organique du 8 juillet 1976 des centres publics d’action sociale (Basic Law of 8 July 1976 on public social welfare centres), in the version applicable to the dispute in the main proceedings, 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 residing illegally in the Kingdom;

...’

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

10 On 20 August 2012, LM submitted applications for leave to remain on medical grounds for himself and his daughter R, who was then a minor, on the ground that R was suffering from several serious illnesses.

11 As those applications were declared admissible on 6 March 2013, LM received social assistance, the cost being borne by the CPAS.

12 Three decisions rejecting LM's applications for leave to remain were in turn adopted and then withdrawn by the competent authority. On 8 February 2016, a fourth decision rejecting those applications was adopted. That decision was accompanied by an order to leave Belgian territory.

13 On 25 March 2016, LM brought an action for annulment and suspension of that decision rejecting his applications and ordering him to leave the territory before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium).

14 The CPAS withdrew social assistance from LM with effect from 26 March 2016, the date of expiry of the period for voluntary departure granted to him in the order to leave Belgian territory. The CPAS, on the other hand, granted LM urgent medical assistance from 22 March 2016.

15 Following interlocutory proceedings brought by LM before the tribunal du travail de Liège (Labour Court, Liège, Belgium), his rights to social assistance were restored.

16 By two decisions of 16 May 2017, the CPAS withdrew that entitlement to social assistance with effect from 11 April 2017, the date on which LM's daughter became an adult.

17 LM brought an action against those decisions before the tribunal du travail de Liège (Labour Court, Liège). By judgment of 16 April 2018, that court held that the withdrawal of entitlement to social assistance was legally justified from the date on which R became an adult.

18 On 22 May 2018, LM lodged an appeal against that judgment before the cour du travail de Liège (Higher Labour Court, Liège, Belgium).

19 That court states that the foreseeable deterioration in R's state of health if returned to her country of origin appears to correspond in every respect to the threshold of seriousness required for it to be held that her removal would expose her to inhuman or degrading treatment. In addition, it points out that, having regard to R's state of health, the presence of her father at her side remains as essential as when she was a minor.

20 It was in those circumstances that the Cour du travail de Liège (Higher Labour Court, Liège) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does point 1 of the first subparagraph of Article 57(2) of the Organic Law of 8 July 1976 on public social welfare centres infringe Articles 5 and 13 of Directive 2008/115/EC, read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, and Article 14(1)(b) of that directive and Articles 7 and 12 of the Charter of Fundamental Rights of the European Union as interpreted by ... the judgment [of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453)]:

- first, in so far as it results in depriving a third-country national, staying illegally on the territory of a Member State, of provision, in so far as possible, for his basic needs pending resolution of the action for suspension and annulment that he has brought in his own name as the representative of his child, who was at that time a minor, against a decision ordering them to leave the territory of a Member State;
- where, second, on the one hand, that child who has now come of age suffers from a serious illness and the enforcement of that decision may expose that child to a serious risk of grave and irreversible deterioration in her state of health and, on the other, the presence of that parent alongside his daughter who has now come of age is considered to be imperative by the medical professional given that she is particularly vulnerable as a result of her state of health (recurrent sickle cell crises and the need for surgery in order to prevent paralysis)?'

### **Consideration of the question referred**

#### ***Admissibility***

21 The Belgian Government submits that the request for a preliminary ruling is inadmissible as it concerns the compatibility of a rule of Belgian law with various provisions of Directive 2008/115 and the Charter of Fundamental Rights of the European Union ('the Charter'), where there is, according to that government, no connection between LM's situation and EU law.

22 Accordingly, the Belgian Government considers that LM cannot claim entitlement to social assistance. He has not been the subject of a removal and is not in one of the situations referred to in Article 14 of that directive, since, first, the period for voluntary departure granted to him has expired and, secondly, he is not in a period during which removal has been postponed.

23 Moreover, since LM is not suffering from a serious illness, his possible removal could not constitute a breach of Article 5 of that directive, read in the light of Article 19(2) of the Charter. Thus, his situation is not comparable to that at issue in the case which gave rise to the judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453).

24 In that connection, it should be borne in mind that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (see, to that effect, judgments of 17 December 1981, *Frans-Nederlandse Maatschappij voor Biologische Producten*, 272/80, EU:C:1981:312, paragraph 9, and of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 28).

25 Therefore, although the wording of the question referred for a preliminary ruling by the referring court asks the Court to rule on the compatibility of a provision of national law with EU law, there is nothing to prevent the Court from giving an answer that will be of use to the national court, by providing the latter with guidance as to the interpretation of EU law that will enable that court to rule itself on the compatibility of national law with EU law. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see to that effect order of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 29 and the case-law cited).

26 Furthermore, it should be noted that the question referred seeks, inter alia, to determine whether Article 14 of Directive 2008/115 is applicable to a third-country national such as the appellant in the main proceedings, even if he or she is not suffering from a serious illness. Therefore, the assessment of the arguments put forward by the Belgian Government that LM's situation has no connection with EU law, is inextricably linked to the answer to be given to the question referred for a preliminary ruling and does not, accordingly, render that question inadmissible (see, by analogy, judgments of 17 January 2019, *KPMG Baltics*, C-639/17, EU:C:2019:31, paragraph 11, and of 3 December 2019, *Iccrea Banca*, C-414/18, EU:C:2019:1036, paragraph 30).

27 It follows that the question referred is admissible.

### **Substance**

28 By its question, the referring court asks, in essence, whether Articles 5, 13 and 14 of Directive 2008/115, read in the light of Article 7, Article 19(2) and Articles 21 and 47 of the Charter, must be interpreted as precluding national legislation which does not provide, in so far as possible, for the basic needs of a third-country national where:

- that third-country national has brought an action against a return decision made in respect of him or her;
- the adult child of that third-country national is suffering from a serious illness;
- the presence of that third-country national with that adult child is essential to that child, and
- that an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health.

29 Article 14 of Directive 2008/115 provides for certain safeguards pending return, in particular during periods for which removal has been postponed in accordance with Article 9 of that directive (judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 55).

30 Although it is apparent from the order for reference that the Belgian authorities have not formally decided to postpone the removal of the appellant in the main proceedings, it is apparent from the case-law of the Court that the obligation to postpone removal laid down in Article 9(1)(b) of that directive applies in all situations in which a Member State is required to suspend enforcement of a return decision following the lodging of an appeal against that decision (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 57).

31 It follows that the safeguards pending return referred to in Article 14 of Directive 2008/115 must be ensured in situations in which the Member State concerned is required to offer a third-country national an appeal with automatic suspensive effect against a return decision taken in respect of him or her (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 53 and 58).

32 It is therefore necessary to determine, in order to answer the question referred, whether the father of an adult child who is seriously ill, whose presence with that adult child is essential for that child, must, in a situation such as that at issue in the main proceedings, be entitled to such an appeal with suspensive effect.

33 In that regard, it should be recalled that, under Article 13(1) and (2) of Directive 2008/115, a third-country national must be afforded an effective remedy to appeal against or seek review of a decision ordering his or her return, but that that appeal does not necessarily have suspensive effect (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 43 and 44).

34 However, the characteristics of that remedy must be determined in accordance with Article 47 of the Charter, under which everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article and with the principle of *non-refoulement*, guaranteed, inter alia, in Article 19(2) of the Charter and in Article 5 of Directive 2008/115 (see, to that effect, judgments of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 45 and 46, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 52 and 53).

35 From the foregoing considerations, the Court has concluded that, in order to ensure that the requirements arising from Article 47 of the Charter and the principle of *non-refoulement* are complied with in respect of the third-country national concerned, an appeal against a return decision must have automatic suspensive effect, since the enforcement of that decision may, inter alia, expose that national to a real risk of being subjected to treatment contrary to Article 19(2) of the Charter (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 56).

36 That is so, in particular, where the enforcement of a return decision may expose a third-country national suffering from a serious illness to a serious risk of grave and irreversible deterioration in his or her

state of health (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 53).

37 By contrast, it is clear that the parent of such a third-country national is not, by virtue of that status alone, directly exposed to a risk of being subjected to treatment contrary to Article 19(2) of the Charter in the event of enforcement of a return decision.

38 However, it must be pointed out that the obligation to ensure, in certain cases, that a third-country national suffering from a serious illness has the benefit of a remedy with automatic suspensive effect against a return decision concerning that national seeks, ultimately, to ensure that that decision will not be enforced before the arguments relied on in support of that appeal are examined by a competent authority, since that enforcement entails a return to a third country in which that national is likely to suffer inhuman or degrading treatment (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraphs 49 and 50).

39 The purpose of that obligation is, therefore, to enable the person concerned to remain temporarily in the territory of the Member State that has adopted a return decision in respect of him or her.

40 Where that person is, because of his or her state of health, entirely dependent on a parent whose presence at that person's side is essential, the enforcement of a return decision adopted in respect of that parent, as it would entail the immediate departure of that parent to a third country, would, in practice, risk preventing that person from staying temporarily in the territory of that Member State.

41 Therefore, to allow the enforcement of such a return decision before the arguments based on the situation of that child have been examined by a competent authority would risk depriving that child, in practice, of the protection that that child must enjoy under Articles 5 and 13 of Directive 2008/115, read in the light of Article 19(2) and Article 47 of the Charter. Therefore, in order to ensure the effectiveness of that protection, the parent of that child must, under those provisions, be entitled to an appeal with automatic suspensive effect against a return decision taken in respect of him or her.

42 The fact that the child concerned was an adult on the date of the adoption of the return decision concerning his or her parent or that that child has become an adult in the course of the proceedings is immaterial in that regard, in so far as it is established that, notwithstanding the fact that that child is an adult, his or her dependence on the parent continues to exist.

43 Furthermore, since the Belgian Government submits that an appeal with automatic suspensive effect should, in any event, be guaranteed only against a removal decision and not against a return decision, it should be pointed out that the judicial protection afforded to a third-country national who is the subject of a return decision, the enforcement of which may expose him to a real risk of being subjected to treatment contrary to Article 19(2) of the Charter, is insufficient if that third-country national did not have available to him or her such an appeal with suspensive effect against that decision.

44 First, it follows from Article 3(3) to (5) of Directive 2008/115 that, by definition, a return decision imposes or lays down an obligation, on the third-country national to whom it applies, to return to a third country, whereas the concept of 'removal' means the physical transportation of that third-country national out of the Member State concerned.

45 Therefore, even in a Member State in which, pursuant to Article 8(3) of that directive, a separate measure ordering removal is adopted after the return decision, that decision has, in itself, the effect of precluding the third-country national concerned from being allowed to remain temporarily in the territory of that Member State pending examination of the arguments put forward in support of the appeal against that decision. Consequently, the attainment of the objective set out in paragraph 39 above requires that

the suspension of the return decision be ensured, which cannot validly be superseded by a suspension of the removal decision which may be adopted subsequently.

46 Secondly, the connection expressly established by the EU legislature between Article 9(1)(b), Article 13(2) and Article 14(1) of Directive 2008/115 shows that the purpose of Article 14(1) is, inter alia, to provide minimum safeguards to third-country nationals during any period during which it is mandatory to postpone the obligation to return imposed on them.

47 The approach suggested by the Belgian Government would, on the contrary, allow Member States to offer such safeguards only where, in addition to the return decision, a removal decision has been adopted. Thus, the competent authorities could defer, at their discretion, the provision of those safeguards by refraining from adopting a removal decision.

48 Moreover, the Court stated, in paragraph 56 of the judgment of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465), that the obligation to provide, in certain cases, an appeal with automatic suspensive effect against a return decision was necessary, a fortiori, with regard to a possible removal decision, holding, consequently, that that obligation was not limited to a removal decision.

49 Furthermore, as regards the Belgian Government's argument that the Belgian legislation governing appeals brought against return decisions complies with EU law, it should be recalled that it is apparent from the case-law of the Court referred to in paragraph 24 of the present judgment that, in proceedings brought under Article 267 TFEU, it is not for the Court to rule on the compatibility of rules of national law with EU law.

50 It follows from the foregoing that a third-country national who is a parent of a seriously ill adult child who is dependent on that parent and who is the subject of a return decision the enforcement of which may expose that child to a serious risk of grave and irreversible deterioration in his or her state of health must benefit from the safeguards pending return provided for in Article 14 of Directive 2008/115.

51 In accordance with those guarantees, the Member States must, pursuant to Article 14(1)(a), (b) and (d) of that directive, ensure that, as far as possible, family unity with family members present in their territory is maintained, emergency health care and essential treatment of illness are provided and the special needs of vulnerable persons are taken into account.

52 Compliance with those principles presupposes that the basic needs of a third-country national such as the appellant in the main proceedings are provided for, failing which, as the referring court points out and as the Advocate General has observed in point 93 of his Opinion, the appellant will not be able to remain with his adult child and provide her with the support she needs during the period in which she is permitted to remain temporarily in the territory of the Member State concerned (see, by analogy, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 60).

53 That obligation applies, however, only where that third-country national lacks the means to make such provision for himself or herself (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 59).

54 Furthermore, it is for the Member States to determine the form in which such provision for the basic needs of the third-country national concerned is to be made (see, to that effect, judgment of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 61). Consequently, it cannot be ruled out that that provision may take the form of social assistance granted directly to an adult child, in so far as that assistance is adequate and sufficient to ensure that provision and to enable the parent of that adult child to provide him or her with the support that he or she needs, which it is, where appropriate, for the referring court to determine.

55 In the light of all the foregoing considerations, the answer to the question referred is that Articles 5, 13 and 14 of Directive 2008/115, read in the light of Article 7, Article 19(2) and Articles 21 and 47 of the Charter, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a third-country national to be met where:

- that national has appealed against a return decision made in respect of him or her;
- the adult child of that third-country national is suffering from a serious illness;
- the presence of that third-country national with that adult child is essential;
- an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and
- that third-country national does not have the means to meet his or her needs himself or herself.

#### **Costs**

56 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 (First Chamber) hereby rules:

**Articles 5, 13 and 14 of Directive 2008/115 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, read in the light of Article 7, Article 19(2) and Articles 21 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a third-country national to be met where:**

- **that national has appealed against a return decision made in respect of him or her;**
- **the adult child of that third-country national is suffering from a serious illness;**
- **the presence of that third-country national with that adult child is essential;**
- **an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and**
- **that third-country national does not have the means to meet his or her needs himself or herself.**

[Signatures]

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\* Language of the case: French.

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