Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

5 March 2026 (*)

(Reference for a preliminary ruling – Immigration policy – Common standards and procedures for returning illegally staying third-country nationals – Directive 2008/115/EC – Detention for the purpose of removal – Article 15(5) and (6) – Calculation of the length of the detention already completed – Aggregation of all of the previous periods of detention – Conditions – Enforcement of one and the same return decision – Second sentence of Article 15(3) – Prolonged detention beyond the initial maximum period laid down under Article 15(5) – Review by a judicial authority – National legislation making the implementation of that review contingent on an application by the detained person – Point in time when such a review must be carried out – Consequence where a review is not carried out in good time)

In Case C150/24 [Aroja], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 27 February 2024, received at the Court on 27 February 2024, in the proceedings

A

v

Rikoskomisario B,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Chamber, M. Condinanzi, F. Schalin, N. Jääskinen and R. Frendo, Judges,

Advocate General: L. Medina,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 30 April 2025,

after considering the observations submitted on behalf of:

– A, by M. Rautakorpi, asianajaja,

– Rikoskomisario B, by J. Honkanen and M. Nyyssönen,

– the Finnish Government, by H. Leppo and M. Pere, acting as Agents,

– the Czech Government, by M. Smolek and J. Vláčíl, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

– the European Commission, by F. Blanc, A. Katsimerou and I. Söderlund, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 September 2025,

makes the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(3), second sentence, (5) and (6) 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, a third-country national staying illegally in Finland, and Rikoskomisario B (Detective Inspector B) concerning the lawfulness of A's third period of detention for the purpose of his removal to his country of origin.

Legal context

European Union law

Directive 2008/115

3 Recitals 2, 4 and 16 of Directive 2008/115 state:

'(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

…

(4) 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.

…

(16) The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.'

4 Article 2 of the Directive, entitled 'Scope', provides:

'1. This Directive applies to third-country nationals staying illegally on the territory of a Member State.

2. Member States may decide not to apply this Directive to third-country nationals who:

…

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.

…'

5 Article 3 of that directive is worded as follows:

‘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. “removal” means the enforcement of the obligation to return, namely the physical transportation out of the Member State’;

…’

6 Chapter II of that directive, entitled ‘Termination of illegal stay’, contains Articles 6 to 11.

7 Article 6 of Directive 2008/115, entitled ‘Return decision’, provides, in paragraph 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.’

8 Article 8 of that directive, entitled ‘Removal’, provides:

‘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.

…

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

…’

9 Article 15 of that directive appears under Chapter IV relating to ‘Detention for the purpose of removal’. Entitled ‘Detention”, that article provides as follows:

‘1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible

after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or *ex officio*. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.'

Regulation (EU) No 604/2013

10 Article 17 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31), entitled 'Discretionary clauses', provides, in the first subparagraph of paragraph 1:

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.'

Finnish law

11 The ulkomaalaislaki (301/2004) (Law on Foreign Nationals (301/2004)) of 30 April 2004, in the version applicable to the dispute in the main proceedings ('the Law on Foreign Nationals), provides, in Paragraph 117a:

'General conditions for the adoption of precautionary measures

A foreign national may be subject to a precautionary measure under Paragraphs 118 to 122 and 122a of this law if it is necessary and proportionate in order to:

(1) clarify the conditions of entry or stay in the country; or

(2) prepare or ensure the enforcement of a removal decision concerning him or her or to control his or her departure from the country in any other way.

…

Unless otherwise provided for below, a precautionary measure shall remain in force until the conditions for entry or stay have been established, until the decision to leave the country has been enforced or until the

file is otherwise disposed of. However, the precautionary measure must be lifted as soon as it is no longer necessary to ensure that the decision is adopted or enforced.'

12 Paragraph 121 of that law provides:

'Conditions for detention

If the precautionary measures referred to in Paragraphs 118 to 120 are not sufficient, the foreign national may be detained on the basis of an individual assessment if:

(1) having regard to the foreign national's personal or other circumstances, there are reasonable grounds to believe that he or she is likely to go into hiding, abscond or otherwise significantly hinder the adoption of a decision concerning him or her or the enforcement of a removal decision;

(2) detention is necessary in order to establish the identity of the foreign national;

(3) the foreign national has committed or is suspected of having committed a criminal offence and the detention is necessary to ensure the preparation or enforcement of the removal decision;

(4) during his or her detention, the foreign national has submitted a new application for international protection mainly with the aim of delaying or hampering enforcement of a removal decision;

…'

13 Paragraph 123 of that law defines the administrative authorities competent to decide on detention. Paragraph 124(1) and (2) of that law lays down the obligation for the competent administrative authority to notify the käräjäoikeus (District Court, Finland) of the detention without delay and the obligation for that court to hear the case concerning detention within four days of the detention. Under Paragraph 126(1) of that law, the käräjäoikeus (District Court) must order the immediate release of a foreign national who has been detained if the conditions governing detention are not fulfilled.

14 Paragraph 127 of the Law on Foreign Nationals states:

'Release of the detained person

The authority dealing with the case shall order the release of the detained person as soon as the conditions governing detention are no longer fulfilled. The detained person must be released no later than six months after the detention decision was adopted. However, the period of detention may be longer, without exceeding 12 months, if the detained person does not cooperate in implementing the return or if the necessary return documents have not been obtained from the third country and implementation of the removal is delayed for those reasons.

…'

15 Paragraph 128 of that law states:

'Review of the case by the käräjäoikeus [(District Court)]

If the release of the detained foreign national has not been ordered, the käräjäoikeus [(District Court)] in whose territorial jurisdiction the place of detention of the detained person is situated must, on application by that person, review the case concerning the detention … The case must be heard without delay and at the latest within four days of the application being made. However, it shall not be necessary to review a case concerning detention before the expiry of a period of two weeks starting from the decision of the käräjäoikeus [(District Court)] ordering the extension of the detention of the person concerned at the place of detention concerned. …

On application by the detained person, the käräjäoikeus [(District Court)] shall review the case even before the deadline referred to in subparagraph 1 if it is necessary to do so on account of a fact that has come to light after the previous examination. The authority dealing with the case must immediately inform the detained person and his or her representative of any significant change in the circumstances giving rise to a review, unless the detained person has been the subject of a release decision pursuant to Paragraph 127(1).

…'

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

16 A, a Moroccan national, arrived illegally in Finland on 10 September 2022, while he was subject to an entry ban covering the Schengen area, which had been issued by the Kingdom of the Netherlands after his disappearance during the asylum procedure he had initiated there. Before arriving in Finland, A had also applied for international protection in Sweden and Switzerland.

17 On the day of his arrival, A was detained in Finland on the basis of the grounds set out in points 1 to 3 of the first subparagraph of Paragraph 121 of the Law on Foreign Nationals, which corresponds, in essence, to Article 15(1) of Directive 2008/115. That detention continued until 23 November 2022.

18 By decision of 25 October 2022, the Maahanmuuttovirasto (Immigration Office, Finland) ordered A's return to Morocco.

19 On 29 October 2022, A lodged an application for international protection in Finland. On 24 November 2022, the Immigration Office rejected that application as manifestly unfounded, ordered A's return to Morocco and imposed a ban on his entry to the Schengen Area for a period of two years.

20 On 5 December 2022, A was placed in detention a second time. That detention continued until 15 March 2023.

21 By order of 5 January 2023, the Turun hallinto-oikeus (Administrative Court, Turku, Finland) dismissed A's application for a prohibition on the enforcement of the decision ordering his removal and, by decision of 19 December 2023, it dismissed A's action concerning his application for international protection. In that respect, that court held inter alia that, since take back requests submitted by the Immigration Office to other Member States had not been successful, that court was, under Article 17 of Regulation No 604/2013, justified in considering itself to be the competent authority to examine that application for international protection.

22 On 11 September 2023, A was detained for a third time, pursuant to a police decision of the same date. According to that decision, at that date and taking into account previous periods of detention, A had already been detained for a total of 5 months and 23 days, but the conditions for exceeding the initial maximum period of 6 months were satisfied, given that implementation of the removal had been delayed due, on the one hand, to A's lack of cooperation and, on the other, to the fact that the necessary documents had not yet been obtained from the Kingdom of Morocco. The police then brought an action before the Helsingin käräjäoikeus (District Court, Helsinki, Finland) seeking an examination of the conditions of detention. It also submitted to that court the decision of 11 September 2023, which, according to the information contained therein, was also notified to A. A hearing was held before that court on 15 September 2023, at the end of which A was kept in detention.

23 That third detention period was examined again on 7 December 2023 by the Etelä-Karjalan käräjäoikeus (District Court, South Carellia, Finland), which organised a hearing of its own motion when it became apparent that the initial maximum period of six months of detention may have been exceeded. In the decision which it delivered on the same date, that court held, first, that the lengths of the various

periods of detention had to be aggregated, since the matter concerned ensuring the enforcement of that removal decision, second, that the conditions for exceeding the initial six-month period and all the other substantive conditions for extending the detention had been met and, third, that A was not to be released solely on the ground that a hearing had been organised *ex officio* only once the total period of detention had exceeded six months. It therefore ordered that A be kept in detention.

24 On the same day, A brought an appeal against that decision before the Itä-Suomen hovioikeus (Court of Appeal, Eastern Finland). That appeal was dismissed by decision of 19 December 2023, inter alia, on the ground that, in accordance with Paragraph 128 of the Law on Foreign Nationals, the review of a detention case by the käräjäoikeus (District Court) is subject to an application by the detained person and that A had not applied for such a review even though the police decision of 11 September 2023 mentioned the conditions for exceeding the initial maximum period of six months' detention. The Itä-Suomen hovioikeus (Court of Appeal, Eastern Finland) therefore held that A was not to be released on the sole ground that the käräjäoikeus (District Court) had not ruled of its own motion on those conditions before the expiry of that period.

25 A applied for that decision to be set aside before the Korkein oikeus (Supreme Court, Finland), which is the referring court. In support of his application, he claims that his detention is unlawful on the ground that the issue of exceeding the maximum period of six months was not dealt with in accordance with the applicable procedural rules. Detective Inspector B contends that that application should be dismissed. He submits that, first, in view of the changes in circumstances that took place, the third detention period is new, with the result that the initial maximum period of six months was not exceeded, and, second, in any event, A should not have been released on the basis of the ground on which he relies, since the conditions for justifying detention have been satisfied.

26 The referring court states that that third period of detention continued until 18 January 2024, the date on which A fled to Denmark. After having been sent back from Denmark to Finland, A was detained by the police a fourth time, on 7 February 2024. He was released on 13 March 2024 by a police decision of the same date.

27 The referring court states, first of all, that the sole subject matter of the dispute before it is the lawfulness of A's third period of detention. Next, it states that A's periods of detention were all based on the need to ensure the preparation for removal or the enforcement of the decision concerning that removal, in accordance with points 1 and 3 of the first subparagraph of Paragraph 121 of the Law on Foreign Nationals, and, initially, also on the need to establish A's identity, in accordance with point 2 of that provision. It adds that, for the periods of detention between 29 October 2022, the date A lodged his application for international protection, and 5 January 2023, the date of the order of the Turun hallinto-oikeus (Administrative Court, Turku) rejecting A's application for a prohibition on the enforcement of the decision ordering his removal, the detention was also based on the need to ensure that his application for international protection was processed, in accordance with point 1 of the first subparagraph of Paragraph 121 of the Law on Foreign Nationals.

28 Lastly, the referring court states that the factors relied on by the police in order to justify A's detention included his disappearance in a number of Member States, including Finland, during the procedure for examining his application for international protection, his opposition to the prospect of a return to Morocco, the criminal offences he had committed during his stay in Finland, his false statement concerning his age and identity at the time of his arrival in Finland and the failure to comply with the obligation to report to the authorities in the summer of 2023 as an alternative measure to detention. That court emphasises that some of those grounds arose only after the end of the second detention period and therefore constituted new grounds to justify the third detention period, which began on 11 September 2023. However, in its view, the conditions relied on to justify exceeding the maximum period of six months'

detention were not examined at the hearing held on 15 September 2023 before the Helsingin käräjäoikeus (District Court, Helsinki), nor were those conditions mentioned in the decision handed down by that court.

29 In that context, the referring court is unsure, in the first place, how to assess whether the maximum periods of detention referred to in Article 15(5) and (6) of Directive 2008/115 have been reached in a given case and, more specifically, whether consecutive periods of detention, interrupted by periods of liberty, must be aggregated without exception, or whether and, if so, on what grounds, earlier periods of detention may be excluded from the calculation.

30 It states, in that regard, that, in the light of the circumstances of the case before it, there is no need for the Court of Justice to rule on the treatment of A's periods of detention when he had lodged an application for international protection and the examination of that application was pending, or the periods during which A's detention appears to have been founded both on Directive 2008/115 and on another legal basis. It explains, in that regard, that the provision relating to the maximum period of detention of six months laid down in Paragraph 127(1) of the Law on Foreign Nationals applies to any detention of a foreign national, whatever its legal basis, be it national or European Union, and that, in any event, A's detention was based, all or most of the time and at least primarily, on Directive 2008/115. Thus, it considers that the question whether A's detention was based on reasons other than those provided for in Directive 2008/115 has no bearing on the dispute before it.

31 As to the substance, the referring court takes the view that an interpretation to the effect that all periods of detention completed must be taken into account in order to assess whether the maximum period of detention is or has been reached may be justified by the fact that, during those periods, A's detention was founded, despite certain changes in the grounds specifically relied on in support of the detention, on the same legal basis, namely that of ensuring his removal. However, the fact that, before the third detention period, A was released for almost six months, during which time he did not comply with the less severe coercive measure imposed on him and left Finland for Sweden, the latter Member State having then returned him to Finland, may support a contrary interpretation.

32 In the second place, the referring court considers that, in the light of the case-law of the Court of Justice, the view may be taken that a Member State is under an obligation to ensure that the judicial review referred to in the second sentence of Article 15(3) of Directive 2008/115 is carried out in any event where the maximum period of six months' detention laid down in Article 15(5) of that directive is exceeded. It nevertheless wishes, for the sake of clarity and in order to assess the lawfulness of A's detention, to ascertain whether the second sentence of Article 15(3) of Directive 2008/115 precludes the implementation of a judicial review of the issue of whether the maximum period of six months, referred to in Article 15(5) of that directive, has been exceeded from being made contingent on an application to that effect by the detained person.

33 It is also uncertain about the time limit requirements to which the judicial review referred to in that second sentence is subject, since that provision does not specify whether the review must be carried out before that maximum period is exceeded or whether it may also be conducted a posteriori, and, if so, within what period. In that regard, it considers that the temporal requirement arising from Article 15(2) of Directive 2008/115 should, at the very least, be applied by analogy to that judicial review, having regard in particular to the fact that the detention and the extension thereof are of the same nature for the person held in detention.

34 The determination of those requirements is, in its view, of practical importance for the assessment of the nature and seriousness of any unlawful act committed in the case before it and, accordingly, the legal consequences to be attached thereto. If the judicial review were to take place before the maximum period of six months had been exceeded, A's detention would have been deprived of any legal basis as of 18 September 2023, in the event that all the previous periods of detention had to be aggregated in order to

calculate whether the initial maximum period has been reached. On the other hand, if the judicial review may be carried out a posteriori, any irregularity in the deprivation of liberty might have arisen only subsequently and might possibly constitute a less serious unlawful act.

35 In the third place, if in the light of the answers given by the Court of Justice, the referring court were to establish the unlawfulness of the judicial review of whether the initial maximum period of detention of six months had been exceeded, it is uncertain as to the specific consequences which EU law requires to be drawn from such a finding, and, more specifically, whether the Etelä-Karjalan käräjäoikeus (District Court, South Carellia) should have released A on 7 December 2023, even though the substantive conditions for detention were held to be fully satisfied at that time.

36 In that regard, it notes that Article 15(2) and (4) of Directive 2008/115 lays down the obligation to release a person whose detention is unlawful, but that those provisions do not exclude the possibility that a defect affecting the conditions of detention may, following a judicial review, be remedied for the future, so that immediate release is not necessarily justified. The statements made by the Court of Justice in the judgment of 10 September 2013, *G. and R.* (C383/13 PPU, EU:C:2013:533), concerning the consequences of a breach of the rights of defence of a detained person, suggest that the national court has a discretion when assessing the need for an immediate release in the event of a procedural defect established in the course of a judicial review properly conducted a posteriori.

37 Furthermore, the referring court explains that a person who has been deprived of his or her liberty is entitled to obtain an opinion on the lawfulness of that measure, even if that person obtains his or her release during the appeal proceedings. Accordingly, the questions which it asks remain relevant in any event. Furthermore, in order to determine whether A's detention was lawful at any time, an answer from the Court of Justice to all the questions referred is, in principle, necessary.

38 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Must Article 15(5) and (6) of [Directive 2008/115] be interpreted as meaning that all previous periods of detention must be taken into account when calculating the maximum [periods] of detention referred to therein? If such an obligation does not exist in all cases, what aspects are to be taken into consideration to determine whether the duration of the previous period of detention must be taken into account when calculating the maximum [periods]?

(b) In particular, how is the situation to be assessed in circumstances such as those in the case in the main proceedings, where, on the one hand, the principal legal basis for detention, namely to secure the removal of an illegally staying third-country national, has remained essentially the same, but where, on the other hand, partly new factual and legal grounds have been put forward in support of the re-detention, the person concerned went, between the periods of detention, to another Member State from where he was returned to Finland, and several months also elapsed between the end of the previous period of detention and the re-detention?

(2) (a) Does the second sentence of Article 15(3) of Directive [2008/115] preclude national legislation which makes the initiation of a judicial review of [whether the initial maximum period of detention] of six months [had been exceeded] subject to a request by the person detained?

(b) Must the judicial review referred to in the second sentence of Article 15(3) of Directive [2008/115], which concerns the decision of an administrative authority to exceed the initial maximum duration of detention of six months, be carried out before that maximum duration is reached and, if not, must it in any event be carried out without delay after the decision of that administrative authority?

(3) Does the absence of a judicial review as referred to in the second sentence of Article 15(3) of Directive [2008/115], where the maximum duration of detention of six months referred to in Article 15(5) is exceeded, entail an obligation to release the detained person, even if, at the time that belated judicial review is carried out, it is found that all the substantive conditions governing detention have been fulfilled and the case is then being dealt with properly from a procedural point of view? If there is no obligation relating to automatic release in such a situation, what aspects are to be taken into consideration from the point of view of EU law in order to determine the consequences of a judicial review carried out late, in particular in circumstances such as those in the main proceedings?'

Procedure before the Court

39 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice, paragraph 1 of which provides that a reference for a preliminary ruling which raises one or more questions concerning the area of freedom, security and justice may, at the request of the referring court or tribunal or, exceptionally, of its own motion, be dealt with under that procedure.

40 On 13 March 2024, the Fifth Chamber of the Court, as the chamber designated in accordance with Article 11(2) of the Rules of Procedure, decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant that request and to send, pursuant to Article 101(1) of those rules, a request for clarification to the referring court.

41 By letter of 19 March 2024, that court informed the Court of Justice that A had been released on 13 March 2024.

42 In the light of that information, on 21 March 2024, the Fifth Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, found that the conditions laid down for the application of the urgent preliminary ruling procedure were no longer satisfied and decided that the present case should be dealt with under the ordinary procedure.

The questions referred for a preliminary ruling

Preliminary observations

43 In the first place, it should be noted that it is apparent from the order for reference that the two periods of A's detention which preceded the third, the lawfulness of which is at issue in the main proceedings, as well as that third period, were all aimed at enforcing the same return decision within the meaning of Article 3(4) of Directive 2008/115. That being said, it is also apparent that the dispute in the main proceedings concerns in addition the enforcement of a decision ordering A's removal, without it being possible to determine whether that is a separate act.

44 In that regard, Article 8(1) of that directive provides that Member States are to take all necessary measures to enforce the return decision if no period for voluntary departure has been granted or if the obligation to return has not been complied with within the period granted for voluntary departure. Article 8(3) of that directive stipulates, however, that Member States may adopt a separate administrative or judicial decision or act ordering the removal. It follows that the fact that a return decision within the meaning of Article 3(4) of that directive is, as the case may be, accompanied by a separate decision or act ordering the removal of the person concerned has no bearing on the fact that that person is actually the subject of such a return decision. It is therefore not necessary, for the purposes of the present case, to take account of that possibility for the purposes of the interpretation sought.

45 In the second place, it must be borne in mind that, according to settled case-law, in the context of the allocation of jurisdiction between the Courts of the European Union and the national courts, it is for the Court of Justice to take account of the factual and regulatory context in which the questions referred for a preliminary ruling arise, as defined in the order for reference. Therefore, since the referring court has defined the factual and legislative context of the questions it is asking, it is not for the Court of Justice to verify the accuracy of those questions (judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)*, C756/21, EU:C:2023:523, paragraphs 37 and 38 and the case-law cited). Consequently, in the light of the information provided by the referring court in paragraphs 27 and 30 above, it must be held, for the purposes of the present case, that the two periods of A's detention which preceded the third, the only period at issue in the main proceedings, as well as that third period, were all periods of detention for the purpose of removal, within the meaning of Article 15 of Directive 2008/115, based exclusively on that provision and implemented with a view to enforcing one and the same return decision.

46 It is in the light of those preliminary explanations that the questions referred will be examined.

Question 1(a) and (b)

47 By Question 1(a) and (b), which it is appropriate to examine together, the referring court asks, in essence, whether Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that, in order to determine whether the maximum period of detention laid down by a Member State under one of those provisions has been reached, it is necessary to aggregate all the periods of detention completed in that Member State by an illegally staying third-country national under Article 15 of that directive, with a view to the enforcement of one and the same return decision, and whether it is relevant, in that respect, that a new detention was, in each case, based on different factual circumstances.

48 In accordance with points (a) and (b) of the first subparagraph of Article 15(1) of Directive 2008/115, unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of a return procedure in order to prepare the return and/or carry out the removal process, in particular where there is a risk of absconding or where the third-country national concerned avoids or hampers the preparation of return or the removal process. The second subparagraph of paragraph 1 stipulates that any detention must be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

49 Article 15(5) of that directive provides, in its first sentence, that detention is to be maintained for as long a period as the conditions laid down in Article 15(1) are fulfilled and it is necessary to ensure successful removal. In accordance with the second sentence of that paragraph, each Member State must set a limited period of detention, which may not exceed six months.

50 Article 15(6) of that directive states that Member States may not extend the period referred to in Article 15(5), except for a fixed period not exceeding a further 12 months, in accordance with national law, where, regardless of all their reasonable efforts, the removal operation is likely to last longer owing to the lack of cooperation by the third-country national concerned or delays in obtaining the necessary documentation from third countries.

51 As the Court has already held, it follows from those terms that Article 15(5) and (6) of Directive 2008/115 fixes the maximum period of detention for the purpose of removal (judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraph 35).

52 However, those terms alone do not indicate whether, in order to determine that the maximum period laid down pursuant to paragraph 5 or 6 has or has not been reached in a given case, the various

periods of detention which may have been completed by the person concerned with a view to implementing one and the same return decision should or should not be aggregated.

53 That being said, it is important to bear in mind, in the first place, that any detention of a third-country national, in particular under Directive 2008/115 in the context of a return procedure as a result of an illegal stay, constitutes a serious interference with the right to liberty, enshrined in Article 6 of the Charter of Fundamental Rights of the European Union ('the Charter') (judgments of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 72 and the case-law cited, and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 48).

54 A detention measure consists in the confinement of a person within a particular place, requiring him or her to remain permanently within a restricted and closed perimeter, isolating him or her from the rest of the population and depriving him or her of his or her freedom of movement (judgment of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 49 and the case-law cited).

55 The aim of detention measures, for the purposes of Directive 2008/115, is not the prosecution or punishment of criminal offences, but the achievement of the objectives pursued by that directive with regard to return (judgments of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 74, and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 50). Thus, the detention of an illegally staying third-country national, when ordered for the purpose of removal under Directive 2008/115, is intended only to ensure the effectiveness of the return procedure and does not pursue any punitive purpose (judgments of 10 March 2022, *Landkreis Gifhorn*, C519/20, EU:C:2022:178, paragraph 38, and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 50).

56 In the light of those factors, it cannot be accepted that each new detention for the purpose of removal, under Article 15(5) or (6) of Directive 2008/115, of an illegally staying third-country national, with a view to the enforcement of one and the same return decision, causes a new period of detention to begin, with the result that the previous periods of detention, carried out with a view to implementing that decision, do not have to be taken into account in order to assess whether the maximum period of detention for the purpose of removal laid down by the Member State concerned under one of those provisions has been reached in a given case. In view of the seriousness of that interference with the right to liberty enshrined in Article 6 of the Charter and the importance of that right, that conclusion is not called into question by the fact that those periods of detention are interspersed with periods of liberty.

57 In the second place, it should be recalled that the objective of Article 15(5) and (6) of Directive 2008/115 is to ensure that, in any event, detention for the purpose of removal does not exceed 18 months or, as the case may be, the shorter maximum duration provided for by the Member State concerned pursuant to those provisions (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraph 37).

58 In that regard, the Court has held, inter alia, that, in the calculation of the period of detention for the purpose of removal provided for under Article 15(5) and (6) of that directive, the period during which the enforcement of the removal decision was suspended on account of the examination of an application for international protection lodged by a third-country national must be included where, during the procedure relating to that application, the person concerned was, even wrongly, kept in detention under those provisions (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraphs 40, 47 and 48).

59 For the purposes of calculating the maximum period of detention provided for under Article 15(5) and (6) of Directive 2008/115, account must also be taken of the period of detention completed during the

procedure for judicial review of the lawfulness of the removal decision, even though the enforcement of that decision is suspended (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraphs 51 and 53).

60 In the latter regard, the Court pointed out that, if it were otherwise, the duration of detention for the purpose of removal could vary considerably, from case to case in the same Member State, or from one Member State to another, on account of the particular features and circumstances peculiar to national judicial procedures. That would run counter to the objective pursued by Article 15(5) and (6) of Directive 2008/115, namely to ensure a maximum duration of detention common to the Member States (judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraph 54).

61 That objective could be undermined by not taking into account all the periods of detention for the purpose of removal already completed in that Member State by the illegally staying third-country national concerned, with a view to the enforcement of one and the same return decision, instead making any such aggregation contingent on the presence of factual circumstances characterising the situation of that third-country national. Those circumstances are liable to be assessed subjectively.

62 In addition, not taking into account all those previous periods of detention in order to assess whether the maximum period of detention provided for under Article 15(5) or (6) of Directive 2008/115 has been reached in a given case would make it possible to circumvent those provisions, even though the maximum periods of detention permitted by those provisions serve the objective of limiting the deprivation of liberty of an individual (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraph 56). Those provisions thus reflect the balance sought by the EU legislature between the right to freedom enshrined in the Charter and the main objective of that directive, which, as is apparent from recitals 2 and 4 thereof, is the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned (see, to that effect, judgments of 19 June 2018, *Gnandi*, C181/16, EU:C:2018:465, paragraph 48; of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C69/21, EU:C:2022:913, paragraph 88; and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 46).

63 Such a failure to take account of this would, moreover, depending on the circumstances, be likely to result in a breach of the principle of proportionality, which requires that any detention prior to removal be as brief as possible (see, to that effect, judgment of 28 April 2011, *El Dridi*, C61/11 PPU, EU:C:2011:268, paragraph 43), as indeed is provided for in the second subparagraph of Article 15(1) of that directive. The use of detention for the purpose of removal should be limited and subject to compliance with that principle, as is confirmed by recital 16 of that directive (see, to that effect, judgment of 6 October 2022, *Politsei- ja Piirivalveamet (Detention – Risk of committing a criminal offence)*, C241/21, EU:C:2022:753, paragraph 40).

64 It should also be borne in mind that the maximum periods of detention for the purpose of removal which must be provided by the Member States in accordance with Article 15(5) and (6) of Directive 2008/115 set a limit to the duration of detention for the purpose of removal, without prejudice to the right of a Member State to implement the removal procedure as such (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraph 56).

65 In the third place, the circumstances described by the referring court cannot justify a different interpretation either.

66 In that regard, first, it is true that the existence of a risk of absconding and the fact that the third-country national concerned avoids or hampers the preparation of return or the removal process constitute, according to Article 15(1) of Directive 2008/115, grounds for detention in order to prepare the return

and/or carry out the removal, in the absence of the possibility of applying other sufficient but less coercive measures effectively.

67 However, if taking those circumstances into account justified the view that each new detention of an illegally staying third-country national causes a new period of detention to begin to run, when the enforcement of one and the same return decision is at issue, the maximum period of detention provided for under Article 15(5) of Directive 2008/115 could be deprived of its effectiveness. Since those circumstances essentially determine whether such a national may be detained, the detention period would then restart from zero each time that person is placed in detention, with the result that, as stated in paragraph 62 above, that provision could be circumvented.

68 Second, it should be recalled that, since the detention of a third-country national who is subject to a return procedure constitutes a serious interference with his or her right to liberty, that detention is subject to compliance with strict safeguards, namely the presence of a legal basis, clarity, predictability, accessibility and protection against arbitrariness (judgments of 15 March 2017, *Al Chodor*, C528/15, EU:C:2017:213, paragraph 40, and of 6 October 2022, *Politsei- ja Piirivalveamet (Detention – Risk of committing a criminal offence)*, C241/21, EU:C:2022:753, paragraph 50).

69 The possibility of taking into account other factual circumstances characterising the situation of the illegally staying third-country national concerned, which are not specified and are by nature variable and subjective, when the enforcement of one and the same return decision is at issue, given the resulting legal uncertainty, would expose the persons concerned to a risk of arbitrariness, in breach of the case-law referred to in the preceding paragraph of the present judgment.

70 However, it should be borne in mind, first, that, under Article 2(2)(b) of Directive 2008/115, Member States may decide to exclude from the scope of that directive inter alia third-country nationals who are subject to a criminal law sanction providing for or resulting in their return, in accordance with national law.

71 Second, that directive does not preclude sanctions, if necessary criminal sanctions, from being imposed following national rules, on third-country nationals to whom the return procedure established by that directive has been completed and who are illegally staying in the territory of a Member State without there being any justified ground for nonreturn (see, to that effect, judgments of 6 December 2011, *Achughbabian*, C329/11, EU:C:2011:807, paragraphs 46 and 48, and of 17 September 2020, *JZ (Custodial sentence in the case of an entry ban)*, C806/18, EU:C:2020:724, paragraphs 28 and 29).

72 Furthermore, it must be stated that, as detention and an extension of detention are similar in nature, since both deprive the third-country national concerned of his or her liberty in order to prepare his or her return and/or to carry out his or her removal (judgment of 10 March 2022, *Landkreis Gifhorn*, C519/20, EU:C:2022:178, paragraph 59 and the case-law cited), there is no need, for the purposes of calculating the length of detention, to distinguish between periods of detention completed under Article 15(5) and those completed under Article 15(6) of Directive 2008/115.

73 In the light of all the foregoing considerations, the answer to Question 1(a) and (b) is that Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that, in order to determine whether the maximum period of detention laid down by a Member State under one of those provisions has been reached, it is necessary to aggregate all the periods of detention completed in that Member State by an illegally staying third-country national under Article 15 of that directive, with a view to the enforcement of one and the same return decision.

Question 2(a)

74 By Question 2(a), the referring court asks, in essence, whether the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as precluding legislation of a Member State under which the

implementation of the review, by a judicial authority, of whether the initial maximum period of detention of six months, laid down by that Member State pursuant to Article 15(5) of that directive, was exceeded is made contingent on an application by the detained person.

75 Under the first sentence of Article 15(3) of Directive 2008/115, in every case, detention is to be reviewed at reasonable intervals of time either on application by the third-country national concerned or *ex officio*. The second sentence of that paragraph stipulates that, in the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

76 Any detention that exceeds six months must be regarded, in accordance with Article 15(5) of that directive, as prolonged detention for the purposes of Article 15(3) thereof (judgment of 5 June 2014, *Mahdi*, C146/14 PPU, EU:C:2014:1320, paragraph 42).

77 In addition, it is clear from the wording of the second sentence of Article 15(3) of Directive 2008/115 that a review of any prolonged detention of a third-country national must be subject to the supervision of a judicial authority. Therefore, a judicial authority ruling on the possibility of extending the detention beyond the initial maximum period laid down by the Member State concerned must necessarily, in all cases, carry out a review of that detention, even if that review has not been expressly requested by the authority before which it has been brought and even if the detention of the national concerned has already been reviewed by the authority that ordered the initial detention (see, to that effect, judgment of 5 June 2014, *Mahdi*, C146/14 PPU, EU:C:2014:1320, paragraphs 48, 49 and 56).

78 It follows that, since a review by a judicial authority of the decision to extend the initial detention period beyond six months must necessarily be carried out, the implementation of the review, by a judicial authority, of whether the initial maximum period of detention of six months has been exceeded cannot be made contingent on an application by the detained person.

79 Consequently, the answer to Question 2(a) is that the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as precluding legislation of a Member State under which the implementation of the review, by a judicial authority, of whether the initial maximum period of detention of six months, laid down by that Member State pursuant to Article 15(5) of that directive, was exceeded is made contingent on an application by the detained person.

Question 2(b)

80 By Question 2(b), the referring court asks, in essence, whether the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as meaning that the review, by a judicial authority, of the decision of the administrative authority to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) thereof must be carried out before that maximum period has been reached or, if that is not the case, whether it must in any event be carried out without delay after the adoption of that decision.

81 It must be recalled that, in view of the seriousness of the interference with the right to liberty enshrined in Article 6 of the Charter resulting from a detention decision under Directive 2008/115 and given the importance of that right, the power of the competent national authorities to detain third-country nationals is strictly circumscribed. A detention measure may thus be ordered or extended only in compliance with the general and abstract rules laying down the conditions and procedures governing such a measure (judgments of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 75 and the case-law cited, and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraph 51).

82 The obligation for a review by a judicial authority of decisions of administrative authorities extending the detention beyond the initial maximum period of six months laid down under Article 15(5) of Directive

2008/115, which follows from the second sentence of Article 15(3) thereof, is intended to ensure the right to effective judicial protection of third-country nationals detained for the purpose of removal. Under Article 47 of the Charter, Member States are required to ensure effective judicial protection of the rights which individuals derive from EU law. Consequently, they must, inter alia, as required by the second sentence of Article 15(3) of that directive, make provision for a review, by a judicial authority, of the detention reviews carried out by the administrative authority in the event of prolonged periods of detention in order to ascertain whether the conditions governing the lawfulness of the detention continue to be met, and that judicial authority must be able to rule, including of its own motion, on all relevant matters of fact and of law for the purpose of verifying that lawfulness (see, to that effect, judgments of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraphs 81, 84 and 87 to 89 and the case-law cited, and of 4 September 2025, *Adrar*, C313/25 PPU, EU:C:2025:647, paragraphs 67, 69, 71 and 72). That judicial authority must also be empowered to release the person concerned immediately if it considers that the conditions which justified the detention are no longer satisfied or where it appears that there is no longer a reasonable prospect of removal (see, to that effect, judgment of 5 June 2014, *Mahdi*, C146/14 PPU, EU:C:2014:1320, paragraphs 59 to 62).

83 As regards the point at which such a review must be carried out, the detention is, according to the first subparagraph of Article 15(2) of Directive 2008/115, to be ordered by administrative or judicial authorities. In addition, the third subparagraph of Article 15(2) of that directive stipulates that, if the detention was ordered by administrative authorities, the Member States must either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention, or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of the detention is subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case, Member States must immediately inform that national about the possibility of taking such proceedings.

84 By contrast, as regards the extension of the detention beyond the initial maximum period provided for under Article 15(5) of Directive 2008/115, as the Advocate General observed, in essence, in point 78 of her Opinion, neither Article 15(6), which governs that possibility for an extension, nor any other provision of Directive 2008/115 specifies the point at which the judicial authority must review the detention reviews in the event of prolonged detention periods, as provided for in the second sentence of Article 15(3) of that directive.

85 Consequently, according to settled case-law, in the absence of EU rules concerning the procedural requirements relating to judicial review under the second sentence of Article 15(3) of that directive, the Member States remain competent, in accordance with the principle of procedural autonomy and subject to compliance with the principles of equivalence and effectiveness, to determine those requirements, whilst at the same time ensuring that fundamental rights are respected and that the provisions of EU law are fully effective (see, to that effect, judgment of 5 June 2014, *Mahdi*, C146/14 PPU, EU:C:2014:1320, paragraph 50 and the case-law cited, and, by analogy, judgment of 3 July 2025, *Al Nasiria*, C610/23, EU:C:2025:514, paragraph 51 and the case-law cited).

86 It follows that Member States, subject to compliance with those principles, are not required to provide that the review, by a judicial authority, of the decision of the administrative authority to extend the detention beyond the initial maximum period of detention provided for under Article 15(5) of that directive is to take place before that period has been reached.

87 In that regard, it is true that an administrative or, depending on the Member States, a judicial decision ordering that extension must necessarily be adopted before that period has been reached. In accordance with Article 15(6) of Directive 2008/115, the initial period of detention referred to in

Article 15(5) may not be extended, unless the conditions set out in Article 15(6) are satisfied and the substantive conditions justifying the initial detention of the national concerned remain satisfied (see, to that effect, judgment of 5 June 2014, *Mahdi*, C146/14 PPU, EU:C:2014:1320, paragraphs 58 to 61 and 67 to 69). That means that that assessment must necessarily be carried out before the initial maximum period of detention has been reached, given that, where those conditions are not met, detention cannot be extended beyond that period.

88 By contrast, the principle of equivalence requires that the review by a judicial authority of the decision of the administrative authority to extend the detention beyond the initial maximum period must take place no later than the review provided for in Article 15(2) of Directive 2008/115 in the case of detention ordered by an administrative authority. That is because the detention and the extension of the detention are similar in nature and the third subparagraph of Article 15(2) of that directive requires that the judicial review of the lawfulness of the detention ordered by the administrative authorities be carried out as speedily as possible. It must therefore take place as soon as possible after the adoption, by the administrative authority, of the decision to extend the detention beyond the initial maximum period of six months provided for under Article 15(5).

89 In the light of the foregoing considerations, the answer to Question 2(b) is that the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as meaning that the review, by a judicial authority, of the decision of the administrative authority to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) thereof does not have to be carried out before that maximum period is reached, but must, in any event, be carried out, like the judicial review provided for in the third subparagraph of Article 15(2), as speedily as possible after the adoption of that decision.

Question 3

90 By Question 3, the referring court asks, in essence, whether the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as meaning that the absence of a review, by a judicial authority in good time, of the administrative decision to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) of that directive automatically entails the obligation to bring an immediate end to the detention where, at the time that judicial review is carried out, all the substantive conditions justifying continued detention are satisfied. If that is not the case, that court is uncertain as to the relevant factors for assessing whether, in the case of such a late judicial review, the detention should be brought to an immediate end.

91 It should be recalled that the general and abstract rules laying down, as common EU standards, the conditions pertaining to detention for the purpose of removal are set out in Article 15(1), (2), second subparagraph, (4), (5) and (6) of Directive 2008/115, which are without prejudice to those set out in other provisions of that directive, which lay down the conditions pertaining to detention in certain situations that are not relevant in the case in the main proceedings, such as those relating to the detention of minors (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 76).

92 Those rules provided for in Directive 2008/115, on the one hand, and in the provisions of national law implementing them, on the other, are the rules, arising from EU law, which lay down the conditions governing the lawfulness of detention, including in the light of Article 6 of the Charter (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 77).

93 Where it is apparent that the conditions governing the lawfulness of detention for the purpose of removal identified in the preceding paragraph have not been or are no longer satisfied, the person

concerned must, as the EU legislature indeed expressly states in the fourth subparagraph of Article 15(2) and in Article 15(4) of Directive 2008/115, be released immediately (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 79).

94 As has been recalled, in essence, in paragraph 82 above, the obligation for a review, by a judicial authority, of decisions of administrative authorities extending the detention beyond the initial maximum period of six months laid down in Article 15(5) of Directive 2008/115, which follows from the second sentence of Article 15(3) of that directive, is not one of those conditions governing the lawfulness of detention under that directive, but one of the conditions intended to ensure the right of third-country nationals detained by a Member State to effective judicial protection.

95 The EU legislature has thus laid down common standards for the judicial protection of illegally staying third-country nationals held in detention for the purpose of removal, which are set out in the third subparagraph of Article 15(2) of Directive 2008/115 as regards detention and in Article 15(3) of that directive as regards the continuation of a detention measure (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (*Ex officio *review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraphs 82 to 84). It did not, however, specify the consequences to be drawn from exceeding the time limit within which the review, by a judicial authority, of an administrative decision extending the detention beyond the initial maximum period of six months must be carried out. Moreover, as is apparent from the answer to Question 2(b), the determination of that period comes under the competence of the Member States, within the limits set out in paragraph 89 above.

96 It follows, first, that the view cannot be taken that, in the event of a late judicial review, Directive 2008/115 requires, on that ground alone, the immediate release of the person concerned.

97 Second, exceeding that time limit does not render the decision to extend detention unlawful and therefore does not automatically require the release of the third-country national concerned. Immediate release is necessary only if the maximum period of detention provided for under Article 15(6) of Directive 2008/115 has been reached (see, to that effect, judgments of 30 November 2009, *Kadzoev*, C357/09 PPU, EU:C:2009:741, paragraphs 60 and 62, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C924/19 PPU and C925/19 PPU, EU:C:2020:367, paragraph 279), in particular because, as is apparent from paragraph 53 above, detention constitutes a serious interference with the right to liberty enshrined in Article 6 of the Charter.

98 Therefore, to require, on the ground that the detention time limit has been exceeded, the annulment of the decision extending that detention and, consequently, the lifting of the detention, even though the fact that that detention was exceeded has no impact on that decision and the detention continues to fulfil the substantive conditions laid down in Article 15 of Directive 2008/115, would be liable to undermine the effectiveness of that directive (see, to that effect, judgment of 10 September 2013, *G. and R.*, C383/13 PPU, EU:C:2013:533, paragraph 41).

99 In that regard, as has been pointed out in paragraph 62 above and as is apparent from recital 2 of Directive 2008/115, first, that directive is intended to establish an effective removal and repatriation policy, based on common standards, for the persons concerned to be repatriated in a humane manner and with full respect for their fundamental rights and dignity. Second, the removal of any illegally staying third-country national is a matter of priority for the Member States, in accordance with the scheme of Directive 2008/115 (judgment of 10 September 2013, *G. and R.*, C383/13 PPU, EU:C:2013:533, paragraph 43 and the case-law cited).

100 In the light of the foregoing considerations, the answer to Question 3 is that the second sentence of Article 15(3) of Directive 2008/115 must be interpreted as meaning that the absence of a review, by a

judicial authority in good time, of the administrative decision to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) of that directive does not automatically entail the obligation to bring an immediate end to the detention where, at the time that judicial review is carried out, all the substantive conditions justifying continued detention are satisfied and the maximum period of detention provided for under Article 15(6) of that directive has not been reached.

Costs

101 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

1. **Article 15(5) and (6) 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 meaning that, in order to determine whether the maximum period of detention laid down by a Member State under one of those provisions has been reached, it is necessary to aggregate all the periods of detention completed in that Member State by an illegally staying third-country national under Article 15 of that directive, with a view to the enforcement of one and the same return decision.

2. **The second sentence of Article 15(3) of Directive 2008/115**

must be interpreted as precluding legislation of a Member State under which the implementation of the review, by a judicial authority, of whether the initial maximum period of detention of six months, laid down by that Member State pursuant to Article 15(5) of that directive, was exceeded is made contingent on an application by the detained person.

3. **The second sentence of Article 15(3) of Directive 2008/115**

must be interpreted as meaning that the review, by a judicial authority, of the decision of the administrative authority to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) thereof does not have to be carried out before that maximum period is reached, but must, in any event, be carried out, like the judicial review provided for in the third subparagraph of Article 15(2), as speedily as possible after the adoption of that decision.

4. **The second sentence of Article 15(3) of Directive 2008/115**

must be interpreted as meaning that the absence of a review, by a judicial authority in good time, of the administrative decision to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) of that directive does not automatically entail the obligation to bring an immediate end to the detention where, at the time that judicial review is carried out, all the substantive conditions justifying continued detention are satisfied and the maximum period of detention provided for under Article 15(6) of that directive has not been reached.

[Signatures]

* Language of the case: Finnish.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.