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Judgment of the Court in Case C-143/22 | ADDE and Others

Reintroduction of border controls at internal borders: the ‘Returns’ Directive applies to any third-country national who has entered the territory of a Member State without fulfilling the conditions of entry, stay or residence.

That also applies when the person concerned has entered that territory even before crossing a border crossing point where such checks are carried out

Several associations, including the Association Avocats pour la défense des droits des étrangers (ADDE), are challenging the legality of an order amending the Code governing the entry and residence of foreign nationals and the right of asylum (Ceseda) before the French Council of State.

They argue that, by allowing the French authorities to refuse entry to third-country nationals at the borders with other Member States (‘the internal borders’), to which controls have been temporarily reintroduced under the Schengen Borders Code because of a serious threat to public policy or internal security in France, the Ceseda infringes the ‘Returns’ Directive.¹

Under that directive, any illegally staying third-country national must, as a general rule, be the subject of a return decision. However, the person concerned must, in principle, be given a certain amount of time to leave the country voluntarily. Forced removal is used only as a last resort.

The Council of State asks the Court of Justice whether, when a Member State decides to temporarily reintroduce internal border controls, it may adopt a decision to refuse entry solely on the basis of the Schengen Borders Code, without having to comply with the common standards and procedures laid down in the ‘Returns’ Directive, in respect of a **third-country national who is intercepted without a valid residence permit at an authorised border crossing point on its territory** where such controls are in force.

The Court held that, in such a situation, a decision to refuse entry may be adopted on the basis of the Schengen Borders Code, but that, **in order to remove the person concerned, the common standards and procedures laid down in the ‘Returns’ Directive must still be complied with**, which may deprive the adoption of such a decision to refuse entry of much of its usefulness.

In principle, **the ‘Returns’ Directive applies as soon as a third-country national is**, after entering the territory of

¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98, ‘the “Returns” directive’). The purpose of that directive is to lay down common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights and international law. Recital 4 of that directive states that 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.

a Member State illegally, **present on that territory** without fulfilling the conditions of entry, stay or residence, and is therefore **staying there illegally. That also applies where, as in the case in question, the person concerned has been apprehended at a border crossing point on the territory of the Member State concerned. Indeed, a person may have entered the territory of a Member State even before crossing a border crossing point.**

The Court notes that it is only in exceptional cases that the 'Returns' Directive allows Member States to exclude third-country nationals staying illegally on their territory from the scope of the directive. While this is notably the case when third-country nationals are refused entry at a Member State's *external* border, it is not the case when, as in the present case, they are refused entry at a Member State's internal border, even when controls have been reintroduced.

Finally, the Court recalls that Member States may detain a third-country national pending removal, in particular where that national poses a threat to public policy, and they may impose a prison sentence for offences other than those relating solely to illegal entry. Furthermore, the 'Returns' Directive does not preclude the arrest or placing in police custody of an illegally staying third-country national where that national is suspected of having committed an offence other than simply entering the national territory illegally, and in particular an offence likely to threaten public policy or internal security of the Member State concerned.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎(+352) 4303 3355.

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