



Press and Information

Court of Justice of the European Union

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Judgment in Case C-146/14 PPU
Bashir Mohamed Ali Mahdi

A court's review of an extension of detention must permit it to substitute its own decision for that of the authority which ordered the initial detention of an illegally staying third-country national

In addition, any extension of detention must be in writing, with reasons being given in fact and in law, and be subject to a review of legality by a court

On 9 August 2013, Mr Bashir Mohamed Ali Mahdi, a Sudanese national without a valid identity document, was arrested in Bulgaria. Mr Mahdi was taken to a special detention facility pending implementation of the administrative measures ordering his removal from Bulgaria. On 12 August 2013 Mr Mahdi signed a statement that he would return voluntarily to Sudan.

Mr Mahdi subsequently went back on his statement. The Sudanese Embassy confirmed Mr Mahdi's identity but refused to issue him with travel documents because he was not willing to return to Sudan. Following an initial period of detention, the Bulgarian authorities brought proceedings before a Bulgarian administrative court seeking to have the detention extended: they relied, in particular, on the risk of Mr Mahdi absconding and on a lack of cooperation on his part.

Against that background the Bulgarian court has referred a number of questions to the Court of Justice for a preliminary ruling. The first two questions concern procedural matters, namely (i) whether, when it re-examines the situation of the person concerned at the end of an initial period of detention, the competent administrative authority must adopt a measure in writing with reasons being given in fact and in law and (ii) whether the review of the legality of such a measure requires that the court having jurisdiction be able to give a decision on the merits of the case.

So far as question (i) is concerned, the Court observes that under the Directive on the return of illegally staying third-country nationals,¹ the only requirement concerning adoption of a written measure is the requirement that detention be ordered in writing with reasons being given in fact and in law. That requirement must be understood as also covering decisions to extend detention, given that detention and extension are comparable and that a third-country national must be able to ascertain the reasons for a decision taken concerning him. Thus, if the Bulgarian authorities, before bringing the matter before the administrative court, had taken a decision on the continuation of the detention, there had to be a measure in writing with reasons being given in fact and in law. If, however, the Bulgarian authorities simply re-examined Mr Mahdi's situation without deciding on the application to extend the detention (a matter which it is for the referring court to determine), they were not obliged to adopt an express measure since the Directive makes no provision to that effect.

So far as question (ii) is concerned, the Court of Justice states that a court dealing with an application for an initial period of detention to be extended must be able to rule on all relevant matters of fact and of law in order to determine whether the extension is justified; that requires an in-depth examination of the facts specific to the individual case. The court must be able to replace the decision ordering the initial detention with its own decision and order (i) extension of the detention, (ii) an alternative, less coercive, measure or (iii) release of the third-country national

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).

where that is justified. The court must take into account all relevant matters in giving such a decision. Accordingly, the powers of the court in the context of such a review can under no circumstances be confined to the evidence adduced by the administrative authority.

The referring court also asks the Court of Justice whether an initial period of detention may be extended merely because the third-country national concerned is not in possession of identity papers and there is therefore a risk of him absconding. In that regard, the Court points out that the risk of the third-country national absconding is a matter to be taken into account in the context of the initial detention. However, the risk of absconding is not one of the two conditions for extending detention set out in the Directive. That risk is therefore relevant only in relation to the re-examination of the circumstances which initially gave rise to the detention. That thus requires the actual facts surrounding Mr Mahdi's situation to be assessed in order to consider whether a less coercive measure may be effectively applied in his case. It is only if there continues to be a risk of the third-country national absconding that the fact that there are no identity papers may be taken into account. Accordingly, the lack of such documentation may not, on its own, justify extending the detention.

The referring court also wishes to know whether the Sudanese Embassy's refusal to issue Mr Mahdi with identity papers may be attributed to Mr Mahdi and, if so, whether his conduct may amount to a lack of cooperation on his part, which would be a ground for extending his detention. In response, the Court states that Mr Mahdi may be regarded as having demonstrated a 'lack of cooperation' within the meaning of the Directive only if an examination of his conduct shows that he has not cooperated in the implementation of the removal and that it is likely that the latter will take longer than anticipated because of that conduct. It is for the referring court to determine that issue.

Finally, in response to the referring court's last question, the Court states that, whilst Bulgaria is not obliged to issue Mr Mahdi with an autonomous residence permit or authorisation to stay should he be released, it must none the less provide him, in accordance with the Directive, with written confirmation concerning his situation.

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

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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