



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 156/18**

Luxembourg, 17 October 2018

Advocate General's Opinion in Case C-444/17  
Préfet des Pyrénées-Orientales v Abdelaziz Arib, Procureur de la  
République, Procureur général près la cour d'appel de Montpellier

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**Advocate General Szpunar proposes that the Court should rule that the 'Returns Directive' must be applied to third-country national where internal border controls have been reinstated**

Mr Abdelaziz Arib, of Moroccan nationality, was checked, in French territory near to the land border between France and Spain, aboard a coach coming from Morocco. He had previously been subject to an expulsion order removing him from French territory. Suspected of having entered French territory illegally, he was arrested and held in police custody and the préfet des Pyrénées-Orientales (Prefect of the Département of Pyrénées-Orientales, France; 'the préfet') adopted an order requiring him to leave French territory and ordered his administrative detention. His detention in police custody was rescinded by the tribunal de grande instance de Montpellier (Regional Court, Montpellier, France) and, as a consequence, the subsequent proceedings, including the administrative detention, since it was not possible to place him in custody. The cour d'appel de Montpellier (Court of Appeal, Montpellier, France) confirmed the decision and the préfet appealed to the Cour de cassation (Court of Cassation, France).

The principle of freedom of movement within the Schengen Area entails an absence of border control of persons crossing the internal borders between the Member States. The check at issue was made in June 2016 during the period of temporary reinstatement in France of internal border controls. Since France had declared a state of emergency, checks at the internal borders, in accordance with the provisions of the Schengen Border Code,<sup>1</sup> had been reinstated in the fact of a serious threat to public policy or internal security.

The Cour de cassation (Court of Cassation) asks the Court of Justice whether border controls reintroduced at an internal border of a Member State may be equated with border controls at an external border, when that border is crossed by a third-country national and whether, in consequence, France may decide not to apply the return procedure laid down in Directive 2008/115<sup>2</sup> known as the 'Returns Directive'. That directive in fact authorises the Member States not to apply to third-country nationals stopped or intercepted by the competent authorities when making an irregular crossing of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

In today's Opinion, Advocate General Maciej Szpunar states that the question which arises is whether the provisions of the 'Returns Directive' apply mandatorily in a situation where a Member State has temporarily reinstated internal border controls.

The Advocate General takes the view that there has indeed been a border crossing, within the meaning of the case-law of the Court of Justice,<sup>3</sup> where there is a direct temporal and spatial link with that crossing of the Franco-Spanish border. He notes, next, that the Franco-Spanish border

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<sup>1</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

<sup>3</sup> Case: [C-47/15](#) Affum, see Press Release [58/16](#).

cannot be classified as an external border within the meaning of the 'Returns Directive', but rather is an internal border.

The Advocate General adds that the different legal interests are protected according to whether the borders are external or internal. While a Member State responsible for controlling the external borders acts in the interests of all Member States, a Member State which decides to reinstate border controls at the internal borders does so in its own interest.

**The Advocate General therefore concludes therefrom that a Member State must apply the stages of the return procedure laid down in the 'Returns Directive' to the situation of a third-country national stopped or intercepted in connection with the irregular crossing of an internal border at which border controls have been reinstated by application of the Schengen Borders Code.**

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.

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