JUDGMENT OF THE COURT (Grand Chamber)

30 November 2009 (*)

(Visas, asylum, immigration and other policies related to free movement of persons – Directive 2008/115/EC – Return of illegally staying third-country nationals – Article 15(4) to (6) – Period of detention – Taking into account the period during which the execution of a removal decision was suspended – Concept of 'reasonable prospect of removal')

In Case C-357/09 PPU,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 10 August 2009, received at the Court on 7 September 2009, in the proceedings concerning

Said Shamilovich Kadzoev (Huchbarov),

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, C. Toader, Presidents of Chambers, C.W.A. Timmermans, P. Kūris, E. Juhász, G. Arestis, L. Bay Larsen (Rapporteur), T. von Danwitz and A. Arabadjiev, Judges,

Advocate General: J. Mazák,

Registrar: N. Nanchev, Administrator,

having regard to the request of the referring court of 10 August 2009, received at the Court on 7 September 2009 and supplemented on 10 September 2009, that the reference for a preliminary ruling be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure,

having regard to the decision of the Second Chamber of 22 September 2009 granting that request,

having regard to the written procedure and further to the hearing on 27 October 2009,

after considering the observations submitted on behalf of:

– Mr Kadzoev, by D. Daskalova and V. Ilareva, advokati,

– the Bulgarian Government, by T. Ivanov and E. Petranova, acting as Agents,

– the Lithuanian Government, by R. Mackevičienė, acting as Agent,

– the Commission of the European Communities, by S. Petrova and M. Condou-Durande, acting as Agents,

after hearing the Advocate General,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 15(4) to (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 reference was made in the course of administrative proceedings brought on the initiative of the director of the Direktsia 'Migratsia' pri Ministerstvo na vatreshnite raboti (Directorate for Migration at the Ministry of the Interior) requesting the Administrativen sad Sofia-grad (Sofia City Administrative Court) to rule of its own motion on the continued detention of Mr Kadzoev (Huchbarov) at that directorate's special detention facility for foreign nationals ('the detention centre') in Busmantsi in the district of Sofia.

Legal context

Community legislation

3 Directive 2008/115 was adopted on the basis in particular of Article 63(3)(b) EC. According to recital 9 in the preamble to the directive:

'In accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [OJ 2005 L 326, p. 13], a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.'

4 Article 15 of Directive 2008/115, which forms part of the chapter on detention for the purpose of removal, reads 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 12 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.'

5 Under Article 20 of Directive 2008/115, Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive, with the exception of Article 13(4), by 24 December 2010.

6 In accordance with Article 22 of the directive, it entered into force on 13 January 2009.

National legislation

7 Directive 2008/115 was transposed into Bulgarian law by the Law on foreign nationals in the Republic of Bulgaria (DV No 153 of 1998), as amended on 15 May 2009 (DV No 36 of 2009) ('the Law on foreign nationals').

8 According to the referring court, Article 15(4) of the directive has, however, not yet been transposed into Bulgarian law.

9 Under Article 44(6) of the Law on foreign nationals, where a coercive administrative measure cannot be applied to a foreign national because his identity has not been established or because he is likely to go into hiding, the body which adopted the measure may order the foreign national to be placed in a detention centre for foreign nationals in order to enable his deportation from the Republic of Bulgaria or expulsion to be arranged.

10 Before the transposition of Directive 2008/115, detention in such a centre was not subject to any time-limit.

11 Now, under Article 44(8) of the Law on foreign nationals, '[t]he detention shall last as long as the circumstances set out in paragraph 6 above pertain but may not exceed six months. Exceptionally, where the person refuses to cooperate with the competent authorities, where there is a delay in obtaining the documents essential for deportation or expulsion, or where the person constitutes a threat to national security or public order, the period of detention may be extended to 12 months'.

12 Article 46a(3) to (5) of the Law on foreign nationals provide:

'(3) Every six months the head of the detention centre for foreign nationals shall present a list of the foreign nationals who have been detained for more than six months owing to impediments to their removal from Bulgarian territory. The list is to be sent to the administrative court of the place where the detention centre is situated.

(4) At the end of each period of six months' detention in a detention centre, the court deliberating in private shall of its own motion determine whether the period of detention is to be extended, replaced, or terminated. No appeal shall lie against the court's decision.

(5) Where the court annuls the contested detention order or orders the foreign national to be released, the latter shall be immediately released from the detention centre.'

The main proceedings and the reference for a preliminary ruling

13 On 21 October 2006 a person was arrested by Bulgarian law enforcement officials near the border with Turkey. He had no identity documents and said that his name was Said Shamilovich Huchbarov, born on 11 February 1979 in Grozny (Chechnya). He stated that he did not wish the Russian consulate to be informed of his arrest.

14 By decree of 22 October 2006 of the competent police department, a coercive administrative measure of deportation was imposed on him.

15 He was placed in the detention centre on 3 November 2006, to be detained until it was possible to execute the decree, that is, until documents were obtained enabling him to travel abroad and sufficient funds guaranteed to purchase a ticket to Chechnya. The decree became enforceable on 17 April 2008, following judicial review proceedings.

16 On 14 December 2006 he declared to the authorities of the detention centre that his real name was not Huchbarov but Kadzoev.

17 In the course of two administrative proceedings before the Administrativen sad Sofia-grad, a birth certificate was produced showing that Mr Kadzoev was born on 11 February

1979 in Moscow (former Soviet Union) of a Chechen father, Shamil Kadzoev, and a Georgian mother, Loli Elihvari. However, a temporary identity card for a national of the Chechen Republic of Ichkeria, valid until 3 February 2001, issued in the name of Said Shamilovich Kadzoev, born on 11 February 1979 in Grozny, was also produced. The person concerned nevertheless continued to present himself to the authorities under the names of either Kadzoev or Huchbarov.

18 In the period from January 2007 to April 2008, there was an exchange of correspondence between the Bulgarian and Russian authorities. Contrary to the view of the Bulgarian authorities, the Russian authorities claimed that the temporary identity card in the name of Said Shamilovich Kadzoev came from persons and an authority unknown to the Russian Federation, and could not therefore be regarded as a document proving the person's Russian nationality.

19 On 31 May 2007, while he was detained in the detention centre, Mr Kadzoev applied for refugee status. The action he brought against the refusal of the Bulgarian administrative authorities to grant that application was dismissed by judgment of the Administrativen sad Sofia-grad of 9 October 2007. On 21 March 2008 he made a second application for asylum, but withdrew it on 2 April 2008. On 24 March 2009 he made a third application for asylum. By decision of 10 July 2009, the Administrativen sad Sofia-grad dismissed his action and refused him asylum. No appeal lies against that decision.

20 On 20 June 2008 Mr Kadzoev's lawyer applied for the detention to be replaced by a less severe measure, namely the obligation for Mr Kadzoev to sign periodically a register kept by the police authorities at his place of residence. As the competent authorities considered that he had no actual address in Bulgaria, they rejected the application on the ground that the necessary conditions were not satisfied.

21 On 22 October 2008 a similar application was made, which was likewise rejected.

22 Following an administrative procedure brought at the request of Mr Kadzoev before the Commission for Protection against Discrimination, which gave rise to proceedings in the Varhoven administrativen sad (Supreme Administrative Court), that court, in agreement with the commission, accepted in its judgment of 12 March 2009 that it was not possible to establish with certainty the identity and nationality of Mr Kadzoev, so that it considered him to be a stateless person.

23 According to the order for reference, the help centre for survivors of torture, the office of the United Nations High Commissioner for Refugees and Amnesty International find it credible that Mr Kadzoev was the victim of torture and inhuman and degrading treatment in his country of origin.

24 Despite the efforts of the Bulgarian authorities, several non-governmental organisations and Mr Kadzoev himself to find a safe third country which could receive him, no agreement was reached, and he has not as yet obtained any travel documents. Thus the Republic of Austria and Georgia, to which the Bulgarian authorities applied, refused to accept Mr Kadzoev. The Republic of Turkey, to which the Bulgarian authorities also applied, did not reply.

25 The Administrativen sad Sofia-grad states that Mr Kadzoev is still detained in the detention centre.

26 The main proceedings were commenced by an administrative document filed by the director of the Directorate for Migration at the Ministry of the Interior, asking the Administrativen sad Sofia-grad to rule of its own motion, pursuant to Article 46a(3) of the Law on foreign nationals, on the continued detention of Mr Kadzoev.

27 That court states that, before the Law on foreign nationals in the Republic of Bulgaria was amended for the purpose of transposing Directive 2008/115, the duration of detention in the detention centre was not limited to any period. It points out that there are no transitional provisions governing situations in which decisions were taken before that amendment. The applicability of the new rules deriving from the directive to periods and the grounds for extending them is therefore a matter on which interpretation should be sought, especially as, in the case at issue in the main proceedings, the maximum duration of detention laid down by the directive had already been exceeded before the directive was adopted.

28 Moreover, there is no express provision stating whether in a case such as the present one the periods referred to in Article 15(5) and (6) of Directive 2008/115 are to be understood as including the period during which the foreign national was detained when there was a legal prohibition on executing an administrative measure of 'deportation' on the ground that a procedure for recognition of humanitarian and refugee status had been initiated by Mr Kadzoev.

29 Finally, the referring court indicates that, if there is no 'reasonable prospect of removal' within the meaning of Article 15(4) of Directive 2008/115, the question arises whether the immediate release of Mr Kadzoev should be ordered in accordance with that provision.

30 In those circumstances, the Administrativen sad Sofia-grad decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must Article 15(5) and (6) of Directive 2008/115 … be interpreted as meaning that:

(a) where the national law of the Member State did not provide for a maximum period of detention or grounds for extending such detention before the transposition of the requirements of that directive and, on transposition of the directive, no provision was made for conferring retroactive effect on the new provisions, the requirements of the directive only apply and cause the period to start to run from their transposition into the national law of the Member State?

(b) within the periods laid down for detention in a specialised facility with a view to removal within the meaning of the directive, no account is to be taken of the period during which the execution of a decision of removal from the Member State under an express provision was suspended owing to a pending request for asylum by a third-country national, where during that procedure he continued to remain in that specialised detention facility, if the national law of the Member State so permits?

2. Must Article 15(5) and (6) of Directive 2008/115 … be interpreted as meaning that within the periods laid down for detention in a specialised facility with a view to removal

within the meaning of that directive no account is to be taken of the period during which execution of a decision of removal from the Member State was suspended under an express provision on the ground that an appeal against that decision is pending, even though during the period of that procedure the third-country national has continued to stay in that specialised detention facility, where he did not have valid identity documents and there is therefore some doubt as to his identity or where he does not have any means of supporting himself or where he has demonstrated aggressive conduct?

3. Must Article 15(4) of Directive 2008/115 … be interpreted as meaning that removal is not reasonably possible where:

(a) at the time when a judicial review of the detention is conducted, the State of which the person is a national has refused to issue him with a travel document for his return and until then there was no agreement with a third country in order to secure the person's entry there even though the administrative bodies of the Member State are continuing to make endeavours to that end?

(b) at the time when a judicial review of the detention is conducted there was an agreement for readmission between the European Union and the State of which the person is a national, but, owing to the existence of new evidence, namely the person's birth certificate, the Member State did not refer to the provisions of that agreement, if the person concerned does not wish to return?

(c) the possibilities of extending the detention periods provided for in Article 15(6) of the directive have been exhausted in the situation where no agreement for readmission has been reached with the third country at the time when a judicial review of his detention is conducted, regard being had to Article 15(6)(b) of the directive?

4. Must Article 15(4) and (6) of Directive 2008/115 … be interpreted as meaning that if at the time when the detention with a view to removal of the third-country national is reviewed there is found to be no reasonable ground for removing him and the grounds for extending his detention have been exhausted, in such a case:

(a) it is none the less not appropriate to order his immediate release if the following conditions are all met: the person concerned does not have valid identity documents, whatever the duration of their validity, with the result that there is a doubt as to his identity, he is aggressive in his conduct, he has no means of supporting himself and there is no third person who has undertaken to provide for his subsistence?

(b) with a view to the decision on release it must be assessed whether, under the provisions of the national law of the Member State, the third-country national has the resources necessary to stay in the Member State as well as an address at which he may reside?'

The urgent procedure

31 The Administrativen sad Sofia-grad asked for the reference for a preliminary ruling to be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure.

32 The referring court justified its request by stating that the case raises the question whether Mr Kadzoev should be kept in detention in the detention centre or released. In view of his situation, the court stated that the proceedings should not be suspended for a prolonged period.

33 The Second Chamber of the Court, after hearing the Advocate General, decided to grant the referring court's request for the reference for a preliminary ruling to be dealt with under an urgent procedure, and to remit the case to the Court for it to be assigned to the Grand Chamber.

The questions referred for a preliminary ruling

Question 1(a)

34 By Question 1(a) the referring court essentially asks whether Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include also the period of detention completed before the rules in the directive become applicable.

35 It must be observed that Article 15(5) and (6) of Directive 2008/115 fix the maximum period of detention for the purpose of removal.

36 If the period of detention for the purpose of removal completed before the rules in Directive 2008/115 become applicable were not taken into account for calculating the maximum period of detention, persons in a situation such as that of Mr Kadzoev could be detained for longer than the maximum periods mentioned in Article 15(5) and (6) of that directive.

37 Such a situation would not be consistent with the objective of those provisions of Directive 2008/115, namely to guarantee in any event that detention for the purpose of removal does not exceed 18 months.

38 Moreover, Article 15(5) and (6) of Directive 2008/115 apply immediately to the future consequences of a situation that arose when the previous rules were in force.

39 The answer to Question 1(a) is therefore that Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.

Question 1(b)

40 By Question 1(b) the referring court seeks to know whether, when calculating the period of detention for the purpose of removal under Article 15(5) and (6) of Directive 2008/115, the period must be included during which the execution of the removal decision was suspended because of the examination of an application for asylum by a third-country national, where, during the procedure relating to that application, he has remained in the detention centre.

41 It should be recalled that recital 9 in the preamble to Directive 2008/115 states that '[i]n accordance with … Directive 2005/85 … a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force'.

42 In accordance with Article 7(1) and (3) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18), asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State, but when it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.

43 Article 21 of Directive 2003/9 provides that Member States are to ensure that negative decisions relating to the granting of benefits under that directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance, the possibility of an appeal or a review before a judicial body must be granted.

44 Under Article 18(1) of Directive 2005/85, Member States must not hold a person in detention for the sole reason that he or she is an applicant for asylum and, under Article 18(2), where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

45 Detention for the purpose of removal governed by Directive 2008/115 and detention of an asylum seeker in particular under Directives 2003/9 and 2005/85 and the applicable national provisions thus fall under different legal rules.

46 It is for the national court to determine whether Mr Kadzoev's stay in the detention centre during the period in which he was an asylum seeker complied with the conditions laid down by the provisions of Community and national law concerning asylum seekers.

47 Should it prove to be the case that no decision was taken on Mr Kadzoev's placement in the detention centre in the context of the procedures opened following his applications for asylum, referred to in paragraph 19 above, so that his detention remained based on the previous national rules on detention for the purpose of removal or on the provisions of Directive 2008/115, Mr Kadzoev's period of detention corresponding to the period during which those asylum procedures were under way would have to be taken into account in calculating the period of detention for the purpose of removal mentioned in Article 15(5) and (6) of Directive 2008/115.

48 Consequently, the answer to Question 1(b) is that a period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115.

Question 2

49 By this question the referring court asks essentially whether Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of

the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

50 It must be observed that Article 13(1) and (2) of Directive 2008/115 provide in particular that the third-country national concerned is to be afforded an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. That authority or body must have the power to review decisions related to return, including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

51 Neither Article 15(5) and (6) of Directive 2008/115 nor any other provision of that directive permits the view that periods of detention for the purpose of removal should not be included in the maximum duration of detention defined in Article 15(5) and (6) because of the suspension of execution of the removal decision.

52 In particular, the suspension of execution of the removal decision because of a procedure for judicial review of that decision is not one of the grounds for extending the period of detention laid down in Article 15(6) of Directive 2008/115.

53 The period of detention completed by the person concerned during the procedure in which the lawfulness of the removal decision is the subject of judicial review must therefore be taken into account for calculating the maximum duration of detention laid down in Article 15(5) and (6) of Directive 2008/115.

54 If it were otherwise, the duration of detention for the purpose of removal could vary, sometimes considerably, from case to case within a Member State or from one Member State to another because of the particular features and circumstances peculiar to national judicial procedures, which 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.

55 This conclusion is not called into question by the judgment in Case C-19/08 *Petrosian* [2009] ECR I-0000 relied on by the Bulgarian Government. In that case, which concerned the interpretation of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1), the Court held that where, in the context of the procedure for transfer of an asylum seeker, the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer laid down in Article 20(1)(d) of that regulation begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.

56 That interpretation of Article 20(1)(d) of Regulation No 343/2003 cannot be transposed to the context of the interpretation of Article 15(5) and (6) of Directive 2008/115. While the period at issue in the *Petrosian* case determines the time available to the requesting Member

State for implementing the transfer of an asylum seeker to the Member State which is obliged to readmit him, the maximum periods laid down in Article 15(5) and (6) of Directive 2008/115 serve the purpose of limiting the deprivation of a person's liberty. Moreover, the latter periods set a limit to the duration of detention for the purpose of removal, not to the implementation of the removal procedure as such.

57 Consequently, the answer to Question 2 is that Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

Question 3

58 By this question the referring court seeks clarification, in the light of the facts of the case in the main proceedings, of the meaning of Article 15(4) of Directive 2008/115, in particular of the concept of a 'reasonable prospect of removal'.

Question 3(c)

59 By Question 3(c) the referring court asks whether Article 15(4) of Directive 2008/115 is to be interpreted as meaning that there is no reasonable prospect of removal where the possibilities of extending the periods of detention provided for in Article 15(6) have been exhausted, in the situation where no agreement for readmission has been reached with the third country at the time when a judicial review of the detention of the person concerned is conducted.

60 It is clear that, where the maximum duration of detention provided for in Article 15(6) of Directive 2008/115 has been reached, the question whether there is no longer a 'reasonable prospect of removal' within the meaning of Article 15(4) does not arise. In such a case the person concerned must in any event be released immediately.

61 Article 15(4) of Directive 2008/115 can thus only apply if the maximum periods of detention laid down in Article 15(5) and (6) of the directive have not expired.

62 Consequently, the answer to Question 3(c) is that Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

Questions 3(a) and (b)

63 As regards Questions 3(a) and (b), it should be pointed out that, under Article 15(4) of Directive 2008/115, detention ceases to be justified and the person concerned must be released immediately when it appears that, for legal or other considerations, a reasonable prospect of removal no longer exists.

64 As is apparent from Article 15(1) and (5) of Directive 2008/115, the detention of a person for the purpose of removal may only be maintained as long as the removal

arrangements are in progress and must be executed with due diligence, provided that it is necessary to ensure successful removal.

65 It must therefore be apparent, at the time of the national court's review of the lawfulness of detention, that a real prospect exists that the removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6) of Directive 2008/115, for it to be possible to consider that there is a 'reasonable prospect of removal' within the meaning of Article 15(4) of that directive.

66 Thus a reasonable prospect of removal does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

67 Consequently, the answer to Questions 3(a) and (b) is that Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

Question 4

68 By this question the referring court asks essentially whether Article 15(4) and (6) of Directive 2008/115 allow the person concerned not to be released immediately, even though the maximum period of detention provided for by that directive has expired, on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

69 It must be pointed out that, as is apparent in particular from paragraphs 37, 54 and 61 above, Article 15(6) of Directive 2008/115 in no case authorises the maximum period defined in that provision to be exceeded.

70 The possibility of detaining a person on grounds of public order and public safety cannot be based on Directive 2008/115. None of the circumstances mentioned by the referring court can therefore constitute in itself a ground for detention under the provisions of that directive.

71 Consequently, the answer to Question 4 is that Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

Costs

72 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 (Grand 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 the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.**

2. **A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115.**

3. **Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.**

4. **Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.**

5. **Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.**

6. **Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.**

[Signatures]

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* Language of the case: Bulgarian.