



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 September 2025 *

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Immigration policy – Return of third-country nationals staying illegally in a Member State – Directive 2008/115/EC – Enforcement of a return decision that has become final – Article 5 – Principle of non-refoulement – Best interests of the child – Family life – Article 15 – Detention for the purpose of removal – Review of compliance with the conditions governing lawfulness – Obligation for the national court to review compliance with the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115 – Considered of court's own motion – Articles 6 and 7, Article 19(2), Article 24(2) and Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-313/25 PPU [Adrar],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag, zittingsplaats Roermond (District Court, The Hague, sitting in Roermond, Netherlands), made by decision of 6 May 2025, received at the Court on 6 May 2025, in the proceedings

GB

v

Minister van Asiel en Migratie

THE COURT (Second Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, M. Gavalec, Z. Csehi and F. Schalin, Judges,

Advocate General: D. Spielmann,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 1 July 2025,

after considering the observations submitted on behalf of:

– GB, by N. den Ouden and A. Hol, advocaten,

* Language of the case: Dutch.

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

- the Netherlands Government, by M.H.S. Gijzen and J. Langer, acting as Agents,
- the European Commission, by A. Baeckelmans, A. Katsimerou and F. van Schaik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 August 2025,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5, Article 13(1) and (2) and Article 15 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), read in conjunction with Articles 6 and 7, Article 19(2), Article 24(2) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between GB, an Algerian national, and the Minister van Asiel en Migratie (Minister for Asylum and Migration, Netherlands) ('the Minister') concerning the Minister's decision to detain GB with a view to his removal to Algeria.

Legal context

International law

- 3 Under Article 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as amended by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967:

'1. 'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

European Union law

- 4 Recitals 2, 4, 8, 16, 22 and 24 of Directive 2008/115 state as follows:

'(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.

...

- (8) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement.

...

- (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.

...

- (22) In line with the [International Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989], the “best interests of the child” should be a primary consideration of Member States when implementing this Directive. In line with the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950,] respect for family life should be a primary consideration of Member States when implementing this Directive.

...

- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter].’

5 Article 3 of that directive, entitled ‘Definitions’, provides, in paragraphs 4 and 5 thereof:

‘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 Article 5 of Directive 2008/115, entitled ‘Non-refoulement, best interests of the child, family life and state of health’, provides:

‘When implementing this directive, Member States shall take due account of:

- (a) the best interests of the child;

(b) family life;

(c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.’

7 Article 9 of that directive, entitled ‘Postponement of removal’, provides, in paragraph 1(a) thereof:
‘Member States shall postpone removal:

(a) when it would violate the principle of non-refoulement ...’

8 Article 12 of Directive 2008/115, entitled ‘Form’, states, in the first subparagraph of paragraph 1 thereof:

‘Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.’

9 Article 13 of that directive, entitled ‘Remedies’, provides, in paragraphs 1 and 2 thereof:

‘1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.’

10 Article 15 of that directive, entitled ‘Detention’, is worded 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.'

Netherlands law

- 11 Article 59(1)(a) of the Wet tot algehele herziening van de Vreemdelingenwet (Law providing for a comprehensive review of the Law on Foreign Nationals) of 23 November 2000 (Stb. 2000, No 495), in the version applicable to the dispute in the main proceedings, states:

'If required in the interests of public policy or national security, [the Minister] may detain, with a view to his or her removal, a foreign national who ... is not lawfully resident.'

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

- 12 On 11 September 2024, GB, an Algerian national, lodged an application for international protection in the Netherlands. He did not appear at the hearing relating to the examination of the grounds of that application.
- 13 By decision of 7 October 2024, the Minister therefore rejected that application without examining its merits. That decision also constitutes a return decision ('the return decision'). In the absence of an appeal by GB, that decision became final.

- 14 On 26 March 2025, GB was transferred to the Netherlands by the French authorities pursuant to 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).
- 15 On the same day, GB lodged a further application for international protection in the Netherlands, which had the effect of suspending the enforcement of the return decision. After hearing GB on the grounds of that application, the Minister informed GB, on 7 April 2025, of her intention to reject that application as manifestly unfounded. On 9 April 2025, GB withdrew that application. The suspension of the return decision therefore ended by operation of law.
- 16 On 10 April 2025, the Minister detained GB on the basis of Article 15 of Directive 2008/115 in order to prepare his return or carry out his removal to Algeria, pursuant to the return decision. Before being detained, GB stated, first, that he feared being subjected to inhuman or degrading treatment or punishment if he were returned to Algeria and, second, that he was the father of a child born in France on 18 September 2024 whom he wished to be able to care for, even though he no longer had any relationship with the child's mother, an Algerian national holding a residence permit in France.
- 17 On 16 April 2025, GB lodged an action against his detention before the rechtbank Den Haag, zittingsplaats Roermond (District Court, The Hague, sitting in Roermond, Netherlands), which is the referring court.
- 18 That court wonders whether, under EU law, it must, when reviewing compliance with the conditions governing the lawfulness of detention, assess whether the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115, in particular family life and the best interests of the child, preclude GB's removal to Algeria pursuant to the return decision. Under Netherlands law, the rechtbank Den Haag, zittingsplaats Roermond (District Court, The Hague, sitting in Roermond) would not be empowered to carry out such an assessment.
- 19 In the first place, that court considers itself the only judicial authority able to assess whether the removal of GB to Algeria is compatible with the principle of non-refoulement and with the other interests referred to in Article 5 of Directive 2008/115.
- 20 At no point in the procedure had it been assessed whether that principle and those interests would have precluded the removal of GB.
- 21 First of all, no such assessment had taken place at the time of the adoption of the return decision, as GB had not appeared at the hearing relating to the examination of the grounds of his application for international protection. In the absence of an appeal brought by GB against that decision, it became final without any examination of the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115.
- 22 Next, nor was such an assessment carried out at the time of GB's detention with a view to his removal, even though he had, in essence, relied on a significant change in circumstances by referring, first, to the risks of treatment prohibited by Article 4 of the Charter in the event of his return to Algeria and, second, to the birth of his child in France whom he claims he wishes to care for.

- 23 Lastly, an assessment of the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115 could not be carried out at a later stage of the procedure either. First, in national legal practice, the enforcement of a return decision does not require the adoption of a new measure, whether administrative or judicial, at which time such an assessment could be carried out. Second, Netherlands law does not provide for an independent remedy against the enforcement of a return decision. GB could only lodge a complaint against an envisaged and planned actual removal once the date and time of that removal have been communicated to him. Such a complaint would, however, only concern the practical arrangements for enforcing the return decision and would not give rise to an assessment of the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115.
- 24 In the second place, the referring court considers that EU law requires it to carry out an up-to-date assessment of the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115, in order to guarantee GB an effective judicial remedy, the right to liberty and observance of that principle and of those interests.
- 25 In that regard, that court points out, first, that Article 5 of Directive 2008/115 requires the competent national authority to observe, at all stages of the return procedure, the principle of non-refoulement. The detention of a third-country national with a view to his or her removal would implement that directive and would therefore constitute one such stage.
- 26 Second, the EU legislature provided, in Article 9(1)(a) of Directive 2008/115, that removal must be postponed where it is contrary to the principle of non-refoulement. Thus, an earlier return decision and a postponement of removal could coexist, such that the existence of a return decision, even if final, should not prevent a review of the compatibility of removal, pursuant to that decision, with the principle of non-refoulement. Moreover, the prohibition on refoulement is absolute in nature.
- 27 By contrast, the fundamental rights enshrined in Article 7 and Article 24(2) of the Charter are not absolute rights. However, it is apparent from the case-law of the Court that those rights could also preclude the adoption of a return decision. Similarly, they could, in the opinion of the referring court, preclude removal of a third-country national pursuant to such a decision.
- 28 Third, the right of the third-country national concerned to an effective remedy also requires that the court called upon to review compliance with the conditions governing the lawfulness of detention with a view to removal, pursuant to a return decision, must be able to determine whether the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115 preclude removal.
- 29 Fourth, detention with a view to removal would not be justified and would no longer serve its purpose if removal could not take place because of the principle of non-refoulement or the other interests referred to in Article 5 of that directive. In such a case, the person concerned would have to be released immediately in accordance with Article 15(4) of that directive. Therefore, before detaining the third-country national concerned with a view to his or her removal, it would be necessary to determine whether removal is permitted.

30 In those circumstances, the rechtbank Den Haag, zittingsplaats Roermond (District Court, The Hague, sitting in Roermond) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Are Articles 5, 13(1) and (2), and 15 of Directive 2008/115, read in conjunction with Articles 6, 19(2) and 47 of the [Charter], to be interpreted as meaning that a judicial authority, when reviewing compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law, is required to satisfy itself, if necessary of its own motion, that the principle of non-refoulement does not preclude the enforcement of the return decision previously adopted and for the purposes of its enforcement the third-country national was detained?
- (2) Are Articles 5, 13(1) and (2), and 15 of Directive 2008/115, read in conjunction with Articles 6, 7, 24(2) and 47 of the [Charter], to be interpreted as meaning that a judicial authority, when reviewing compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law, is required to satisfy itself, if necessary of its own motion, that the interests referred to in Article 5 of Directive 2008/115 do not preclude the enforcement of the return decision previously adopted and for the purposes of its enforcement the third-country national was detained?’

The request for the application of the urgent preliminary ruling procedure

- 31 The referring court has requested that the case 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.
- 32 It follows from those provisions that the application of that procedure is subject to two cumulative conditions. First, the reference for a preliminary ruling must raise questions of interpretation relating to the area of freedom, security and justice, which is the subject of Title V of Part Three of the FEU Treaty. Second, the circumstances of the dispute in the main proceedings, as described by the referring court, must be characterised by the existence of a situation of urgency.
- 33 As regards the first condition, it should be noted that the present request for a preliminary ruling concerns the interpretation of Directive 2008/115, which falls within the areas referred to in Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Accordingly, that request may be dealt with under the urgent preliminary ruling procedure.
- 34 As regards the second condition relating to urgency, it should be observed that, according to the case-law of the Court, that condition is satisfied, in particular, where the person concerned in the main proceedings is currently deprived of liberty and when his or her continued detention turns on the outcome of the dispute in the main proceedings, it being specified that the situation of the person concerned must be assessed as it stood at the time when consideration was given to whether the reference for a preliminary ruling should be dealt with under the urgent procedure (judgments of 4 October 2024, *Bouskoura*, C-387/24 PPU, EU:C:2024:868, paragraph 33 and the case-law cited, and of 19 June 2025, *Kamekris*, C-219/25 PPU, EU:C:2025:456, paragraph 26 and the case-law cited).

- 35 In the present case, first, it is apparent from the order for reference that GB was detained on 10 April 2025 with a view to his removal to Algeria, with the result that he is currently deprived of his liberty.
- 36 Second, the questions raised by the referring court seek to determine whether EU law requires that court to assess, as part of the conditions governing the lawfulness of detention, whether the principle of non-refoulement and the other interests referred to in Article 5 of Directive 2008/115 preclude GB's removal to Algeria, in which case the court would have to bring an end to his detention.
- 37 In those circumstances, the Second Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided, on 21 May 2025, to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

The questions referred for a preliminary ruling

Preliminary observations

- 38 According to settled case-law, the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and national courts by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (see order of 26 January 1990, *Falciola*, C-286/88, EU:C:1990:33, paragraph 7, and judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 21).
- 39 According to equally settled case-law, in the procedure providing for cooperation, it is for the Court to provide the referring court with an answer which will be of use to it and enable it to determine the case before it (see judgment of 17 July 1997, *Krüger*, C-334/95, EU:C:1997:378, paragraphs 22 and 23). To that end, the Court of Justice may have to reformulate the questions referred to it (see judgments of 28 November 2000, *Roquette Frères*, C-88/99, EU:C:2000:652, paragraph 18, and of 3 June 2025, *Kinsa*, C-460/23, EU:C:2025:392, paragraph 34).
- 40 By its questions, the referring court seeks, in essence, an interpretation of Article 5, Article 13(1) and (2) and Article 15 of Directive 2008/115, read in conjunction with several provisions of the Charter.
- 41 Article 13(1) and (2) of Directive 2008/115 provides, inter alia, that the third-country national concerned is to be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1) of that directive, namely return decisions and, if issued, entry-ban decisions and decisions on removal.
- 42 In the present case, however, it is apparent from the explanations provided by the referring court that the dispute in the main proceedings concerns not the lawfulness of a return decision or another decision related to return, within the meaning of Article 13(1) and (2) of Directive 2008/115, but the lawfulness of the detention of an illegally staying third-country national with a view to his removal pursuant to a return decision that has become final.

- 43 As regards the detention of an illegally staying third-country national under Article 15(1) and (2) of Directive 2008/115, common EU standards on judicial protection are set out in the third subparagraph of Article 15(2) thereof (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Ex officio review of detention), C-704/20 and C-39/21, EU:C:2022:858, paragraph 82).
- 44 Accordingly, Article 13(1) and (2) of Directive 2008/115 is not relevant to the outcome of the dispute in the main proceedings, with the result that it is not necessary to interpret it.

The first question

- 45 By its first question, the referring court seeks, in essence, to ascertain whether Articles 5 and 15 of Directive 2008/115, read in conjunction with Article 6, Article 19(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, called upon to review the lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the principle of non-refoulement precludes that removal.
- 46 As a preliminary point, it should be recalled that the main objective of Directive 2008/115, as 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 (judgments of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 48; of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Removal – Medicinal cannabis), C-69/21, EU:C:2022:913, paragraph 88; and of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 30).
- 47 It follows that, when they implement Directive 2008/115, including when they adopt detention measures with a view to preparing the removal of an illegally staying third-country national, Member States are required to respect the fundamental rights which the Charter grants to that national (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Removal – Medicinal cannabis), C-69/21, EU:C:2022:913, paragraph 89).
- 48 With the benefit of those preliminary remarks, it should be noted, in the first place, that any detention of a third-country national 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 of the person concerned, enshrined in Article 6 of the Charter (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Ex officio review of detention), C-704/20 and C-39/21, EU:C:2022:858, paragraph 72 and the case-law cited).
- 49 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 (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Ex officio review of detention), C-704/20 and C-39/21, EU:C:2022:858, paragraph 73 and the case-law cited).
- 50 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 (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Ex officio review of detention), C-704/20 and C-39/21, EU:C:2022:858, paragraph 74). Thus, when ordered for the purpose of removal, the detention of an illegally staying

third-country national is intended only to ensure the effectiveness of the return procedure and does not pursue any punitive purpose (see, to that effect, judgment of 10 March 2022, *Landkreis Gifhorn*, C-519/20, EU:C:2022:178, paragraph 38).

- 51 In view of the seriousness of that interference with the right to liberty enshrined in Article 6 of the Charter and of 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 (see, to that effect, judgments of 10 March 2022, *Landkreis Gifhorn*, C-519/20, EU:C:2022:178, paragraph 62, and of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 75).
- 52 The general and abstract rules laying down, as common EU standards, the conditions governing the lawfulness of the detention of an illegally staying third-country national in the light of Directive 2008/115, including from the perspective of Article 6 of the Charter, are set out in Article 15 of that directive (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraphs 76 and 77).
- 53 Article 15(1) of that directive provides that, 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 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. Any detention is to be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.
- 54 Where it is apparent that the conditions governing the lawfulness of detention laid down in Article 15 of Directive 2008/115 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 that directive, be released immediately (see, to that effect, judgments of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 79, and of 4 October 2024, *Bouskoura*, C-387/24 PPU, EU:C:2024:868, paragraph 44).
- 55 Thus, first, in accordance with the fourth subparagraph of Article 15(2) of Directive 2008/115, the third-country national concerned must be released immediately if the detention is not lawful. Second, the same is true, in accordance with Article 15(4) of that directive, where it appears that a reasonable prospect of removal no longer exists for legal or other considerations or when the conditions set out in Article 15(1) of that directive no longer exist.
- 56 For it to be possible to consider that there is a ‘reasonable prospect of removal’ within the meaning of Article 15(4) of Directive 2008/115, there must, at the time of the review of the lawfulness of detention, be a real prospect that the removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6) of that directive (see, to that effect, judgments of 30 November 2009, *Kadzoev*, C-357/09 PPU, EU:C:2009:741, paragraph 65, and of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraph 60), and without it being precluded by ‘legal ...considerations’ within the meaning of Article 15(4).

- 57 Accordingly, the competent national authority must, inter alia, determine, in accordance with the conditions governing the lawfulness of detention laid down in Article 15 of Directive 2008/115, whether there is a reasonable prospect of the illegally staying third-country national concerned being removed or whether such legal considerations preclude his or her removal.
- 58 In that regard, the concept of ‘legal ...considerations’ is not defined in Directive 2008/115. Having regard to its usual meaning, it must be held that that concept covers any rule of law the observance of which is binding on Member States when removing an illegally staying third-country national.
- 59 That is true of, as is acknowledged, moreover, by all the parties and persons concerned who have submitted observations in the present case, as regards Article 5 of Directive 2008/115, which is a general rule binding on Member States as soon as they implement that directive.
- 60 In particular, Article 5 of Directive 2008/115 obliges the competent national authority to observe, at all stages of the return procedure, the principle of non-refoulement, which is guaranteed, as a fundamental right, in Article 18 of the Charter, read in conjunction with Article 33 of the Convention relating to the Status of Refugees, as amended by the Protocol relating to the Status of Refugees, and in Article 19(2) of the Charter (judgments of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 55, and of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 35).
- 61 According to settled case-law, Article 19(2) of the Charter, read in conjunction with Article 4 thereof, prohibits in absolute terms, irrespective of the conduct of the person concerned, removal, expulsion or extradition to a State where there is a serious risk of that person being subjected to the death penalty, torture or inhuman or degrading treatment or punishment. Therefore, Member States may not remove, expel or extradite a foreign national where there are substantial grounds for believing that he or she will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by those two provisions of the Charter (judgment of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 36 and the case-law cited).
- 62 Thus, where there are substantial grounds for believing that an illegally staying third-country national will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by those provisions of the Charter, that national cannot be removed while such a risk persists, as is expressly provided for in Article 9(1)(a) of Directive 2008/115 (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraphs 58 and 59).
- 63 That is the case even where the third-country national concerned is the subject of a return decision that he or she has not contested and that has thus become final.
- 64 The competent national authority must take account of the principle of non-refoulement at all stages of the procedure, from the time of the adoption of a return decision until the judicial review of the enforcement of that decision (see, to that effect, judgment of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 46), irrespective of the conduct of the third-country national concerned and, in particular, of whether he or she challenged that decision, as is apparent from paragraph 61 above.

- 65 Furthermore, the Member States are required to allow such a national to rely on any change in circumstances that occurred after the adoption of the return decision and that may have a significant bearing on the assessment of his or her situation under, in particular, Article 5 of Directive 2008/115 (see, to that effect, judgment of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 37 and the case-law cited).
- 66 It follows that, where the competent national authority is called upon to order, review or extend a detention measure for the purpose of the removal of an illegally staying third-country national, it must verify that the principle of non-refoulement does not preclude removal of that national.
- 67 As regards, in the second place, the right of third-country nationals who have been detained to effective judicial protection, it is settled case-law that, under Article 47 of the Charter, the Member States must ensure effective judicial protection of rights which individuals derive from EU law (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 81).
- 68 That right is given concrete form, as regards detention of an illegally staying third-country national pursuant to Directive 2008/115, in the third subparagraph of Article 15(2) of that directive, under which, where detention has been ordered by an administrative authority, provision must be made for a speedy judicial review, either *ex officio* or at the request of the person concerned, of the lawfulness of that detention (see, to that effect, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraphs 82 and 83).
- 69 In addition, Article 15(3) of Directive 2008/115 – which imposes, where a detention measure is maintained, a periodic review ‘at reasonable intervals of time’ in order to determine whether the conditions governing the lawfulness of detention continue to be fulfilled – requires that that review be subject to the supervision of a judicial authority in the event of prolonged periods of detention.
- 70 The EU legislature has thus established common procedural standards, the purpose of which is to ensure that, in each Member State, there is a system which enables the competent judicial authority to release the person concerned, where appropriate after an examination of its own motion, as soon as it is apparent that his or her detention is not, or is no longer, lawful (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 86).
- 71 In order that such a system of protection effectively ensures compliance with the strict conditions which a detention measure covered by Directive 2008/115 is required to satisfy in order to be lawful, the competent judicial authority must be in a position to rule on all matters of fact and of law relevant to the review of that lawfulness. To that end, it must be able to take into account the facts stated and the evidence adduced by the administrative authority which ordered the initial detention. It must also be able to take into account any facts, evidence and observations which may be submitted to it by the person concerned. Furthermore, that authority must be able to consider any other element that is relevant for its decision should it so deem necessary. The powers which it has in the context of an examination can under no circumstances be confined just to the matters adduced by the administrative authority (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 87 and the case-law cited).

- 72 Moreover, in view of the importance of the right to liberty, the gravity of the interference with that right which the detention of persons on grounds other than the prosecution or punishment of criminal offences represents and of the requirement, highlighted by the common rules laid down by the EU legislature, of a high level of judicial protection which enables compliance with the imperative need to release such a person, where the conditions governing the lawfulness of detention are not, or are no longer, satisfied, the competent judicial authority must take into consideration all the elements, in particular the facts, brought to its knowledge, as supplemented or clarified in the context of procedural measures which it deems necessary to adopt on the basis of its national law, and, on the basis of these elements, raise, where appropriate, the failure to comply with a condition governing lawfulness arising from EU law, even if that failure has not been raised by the person concerned. That requirement is without prejudice to the obligation, for the judicial authority thus called upon to raise of its own motion such a condition governing lawfulness, to invite each party to express its views on that condition in accordance with the adversarial principle (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid* (Ex officio review of detention), C-704/20 and C-39/21, EU:C:2022:858, paragraph 88).
- 73 In those circumstances, and having regard to the grounds set out in paragraphs 54 to 66 above, it must be held that the judicial authority with the power to review detention or continued detention of an illegally staying third-country national must satisfy itself, if necessary of its own motion, that the principle of non-refoulement does not preclude the removal of that third-country national. If it were to conclude that that principle precludes the removal, it would be required, in accordance with the fourth subparagraph of Article 15(2) and Article 15(4) of Directive 2008/115, to release that national immediately.
- 74 It also follows from the foregoing that a national rule or practice under which the full examination of the principle of non-refoulement may be carried out only in the context of a procedure for international protection would be contrary to Articles 5 and 15 of Directive 2008/115, read in conjunction with Article 19(2) of the Charter. That directive, including Article 5 thereof, applies to any third-country national staying illegally, irrespective of the reasons for that situation (see, to that effect, judgments of 3 June 2021, *Westerwaldkreis*, C-546/19, EU:C:2021:432, paragraph 45, and of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraphs 32 and 40).
- 75 Thus, contrary to the position expressed by the Netherlands Government at the hearing before the Court, GB cannot be required to lodge an application for international protection in order to be ensured full compliance with the principle of non-refoulement referred to in Article 5 of Directive 2008/115, read in conjunction with Article 19(2) of the Charter (see, by analogy, judgment of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraph 41).
- 76 In the light of the foregoing, the answer to the first question is that Articles 5 and 15 of Directive 2008/115, read in conjunction with Article 6, Article 19(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, called upon to review the lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the principle of non-refoulement precludes that removal.

The second question

- 77 By its second question, the referring court seeks, in essence, to ascertain whether Articles 5 and 15 of Directive 2008/115, read in conjunction with Articles 6 and 7, Article 24(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, called upon to review the

lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the best interests of the child and family life, referred to, respectively, in Article 5(a) and (b) of that directive, preclude that removal.

- 78 In that regard, it should be borne in mind that it follows from the reasons for the answer to the first question that the judicial authority with the power to review the detention or continued detention of an illegally staying third-country national under Article 15 of Directive 2008/115 must establish, if necessary of its own motion, any failure to comply with the conditions governing the lawfulness of detention laid down in Article 15 of that directive. In accordance with those conditions of lawfulness, it is for that authority, inter alia, to determine whether a reasonable prospect of removal of that third-country national exists, without there being any legal considerations precluding his or her removal.
- 79 Article 5 of Directive 2008/115, which constitutes, as recalled in paragraph 59 above, a general rule binding on the Member States as soon as they implement that directive and which falls within, inter alia, ‘legal ...considerations’ within the meaning of Article 15(4) of that directive, obliges the Member States to take due account of the best interests of the child, family life and the state of health of the third-country national concerned. Like the principle of non-refoulement, those interests must be duly taken into account at all stages of the return procedure, whether, inter alia, at the time of the adoption of a return decision, an entry ban decision or a removal measure (see, to that effect, judgments of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 104; of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid (Return of an unaccompanied minor)*, C-441/19, EU:C:2021:9, paragraph 44; of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 91; and of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraphs 89 to 91), or during detention for the purpose of removal.
- 80 It follows that, as part of the examination of the conditions governing the lawfulness of detention, it is for the competent judicial authority to determine, if necessary of its own motion, whether, first, those interests preclude detention as such of the illegally staying third-country national concerned and, second, whether the same interests preclude removal of that third-country national, pursuant to a final return decision.
- 81 That interpretation is supported by the objective pursued by Article 5 of Directive 2008/115. As confirmed by recitals 22 and 24 of that directive, Article 5 seeks to ensure, in the context of the return procedure established by that directive, respect for a number of fundamental rights, including the right to family life and the fundamental rights of the child, as enshrined, respectively, in Articles 7 and 24 of the Charter. It follows that, in the light of the objective which it pursues, Article 5 cannot be interpreted restrictively (see, to that effect, judgment of 11 March 2021, *État belge (Return of the parent of a minor)*, C-112/20, EU:C:2021:197, paragraph 35).
- 82 That said, unlike protection against any inhuman or degrading treatment enshrined in Article 4 of the Charter, the rights guaranteed by Articles 7 and 24 of the Charter are not absolute in nature and may therefore be subject to restrictions under the conditions set out in Article 52(1) thereof (judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, C-483/20, EU:C:2022:103, paragraph 36).

- 83 In addition, it should be recalled that an illegally staying third-country national is under a duty of sincere cooperation, in accordance with which he or she must inform the competent national authority as soon as possible of all the relevant developments concerning his or her family life (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraphs 103 to 105).
- 84 In the light of the foregoing, the answer to the second question is that Articles 5 and 15 of Directive 2008/115, read in conjunction with Articles 6 and 7, Article 24(2) and Article 47 of the Charter, must be interpreted as meaning that a national court, called upon to review the lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the best interests of the child and family life, referred to, respectively, in Article 5(a) and (b) of that directive, preclude that removal.

Costs

- 85 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 (Second Chamber) hereby rules:

- 1. Articles 5 and 15 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, read in conjunction with Article 6, Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as meaning that a national court, called upon to review the lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the principle of non-refoulement precludes that removal.

- 2. Articles 5 and 15 of Directive 2008/115, read in conjunction with Articles 6 and 7, Article 24(2) and Article 47 of the Charter of Fundamental Rights,**

must be interpreted as meaning that a national court, called upon to review the lawfulness of the detention of an illegally staying third-country national, with a view to his or her removal pursuant to a final return decision, is required to examine, if necessary of its own motion, whether the best interests of the child and family life, referred to, respectively, in Article 5(a) and (b) of that directive, preclude that removal.

[Signatures]