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Safeguarding the rights at internal borders. Commentary on the judgment of the Court of Justice of the European Union of 19 March 2019 in case C-444/17 *Prefet des Pyrenees-Orientales v. Abdelaziz Arib and Others*

Introduction

In the commented judgement¹, the Court of Justice of the European Union ruled that Article 2(2)(a) of Directive 2008/115², read in conjunction with Article 32 of the Schengen Border Code³ (SBC), does not apply to the situation of a third-country national apprehended in the immediate vicinity of the internal border of a Member State and unlawfully present on the territory of that Member State, even where that Member State has reintroduced border control at that border on account of a serious threat to public policy or internal security in that Member State.

The judgment is important for several reasons, discussed below in the commentary. At the same time, it is a part of a series of judgments discussing the possibility of depriving a third-country national of his or her liberty, as permitted by Directive 2008/115, in the context of their illegal stay on the territory of a particular Member State. At the heart of the case pending before the French Court of Cassation in 2017 was a dispute between the administrative authority and the third-country national over the extension of his administrative detention.

¹ Judgment of the Court (Grand Chamber) of 19 March 2019 in case C-444/17 *Prefet des Pyrenees Orientales v. Abdelaziz Arib and Others*, ECLI:EU:C:2019:220

² Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, pp. 98-107.

³ 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 L 77, 23.3.2016, pp. 1-52.

Facts of the case

In 2013. A. Arib, a Moroccan national, left France following an expulsion measure imposed on him. In June 2016, during the period when internal border controls were reintroduced in France at the internal borders, Mr Arib was subjected to identity checks (pursuant to Article 78-2 of the French Code of Criminal Procedure) in the zone between the border between France and Spain and a line drawn 20 km inland. He was subsequently detained (pursuant to Article L. 621-2 of the *Ceseda* - the Code of the entry and stay of foreign nationals and the right of asylum) for suspected illegal entry into French territory (constituting an offence under that Code) and an order was issued obliging him to leave the French territory, accompanied by an order to place him in detention. The detention order was annulled by a decision of the court of first instance and the further proceedings - including the order to place Mr Arib in detention - were discontinued. In the court of first instance's view, that detention could not have been carried out at all, because in a situation such as that in the case before it - namely the unlawful presence in the territory of a Member State of a third-country national who has crossed an internal border - Directive 2008/115 must be taken into account, under which no imprisonment may be imposed in circumstances such as those in that case. Since the decision of the court of first instance was upheld by the Court of Appeal, the administrative authority appealed against the Court of Appeal's decision to the Court of Cassation, arguing that a Member State could partially exclude the application of Directive 2008/115 if, on account of a serious threat to public policy or internal security, it reintroduced controls at its internal borders. Disapplying the Directive 2008/115 in these circumstances makes the protective measures provided for in the Directive not applicable and, consequently, a person who has entered France illegally may be subject to checks pursuant to Article 78 of the Code of Criminal Procedure - a provision of national law - and, as a person staying illegally, may be liable to imprisonment and may therefore be detained. The Court of Cassation, after referring to the EU law which it considered relevant in that case (Article 32 of the Schengen Borders Code, Article 2(2)(a) of Directive 2008/115), referred to the provisions of the French Code of the entry and stay of foreign nationals and the right of asylum (Art. L. 621-2 of *CESEDA*) which penalizes with a term of imprisonment together with a fine the illegal entry into French territory detected at the time of its commission and, in the light of those provisions, found that the key issue to be addressed was whether a control reintroduced at the internal border of a Member State could be equated to an external border check carried out on a third-country national with no right of entry when the control is carried out at the time of the illegal border crossing.

The Court of Cassation eventually referred three questions for a preliminary ruling to the Court of Justice⁴:

1. Is Article 32 of the Schengen Border Code – which provides that, when border control at internal borders is reintroduced, the relevant provision of Title II, relating to external borders, are to apply *mutatis mutandis* – to be interpreted as meaning that 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 who has no right of entry?

2. In the same circumstances of reintroduction of controls at internal borders, do the Schengen Border Code and Directive 2008/115 permit the application, to the situation of a third-country national crossing a border at which controls have been reintroduced, of the power, conferred on the Member States by Article 2(2)(a) of the directive, to continue to apply simplified national return procedures at their external borders?

3. Should the answer to the previous question be in the affirmative, do the provisions of Article 2(2)(a) and of Article 4(4) of the directive preclude national legislation such as Article L. 621-2 of the *Ceseda*, which penalises with a term of imprisonment the illegal entry into national territory of a third-country national in respect of whom the return procedure established by that directive has not yet been completed?

Judgment of the Court of Justice

The Court of Justice decided to examine together the first and the second question for the purposes of the judgment and – as a consequence of the findings which were reached – to refrain from answering the third question. The question finally answered by the Court was as follows: Does Article 2(2)(a) of Directive 2008/115, read in conjunction with Article 32 of the Schengen Border Code, apply to the situation of a third-country national apprehended in the immediate vicinity of the internal border of a Member State, where that Member State has reintroduced border controls at that border, pursuant to Article 25 of the Schengen Border Code, on account of a serious threat to public policy or the internal security of that Member State?

The Court started by acknowledging that, in the light of the facts, Mr Arib was staying illegally on French territory and therefore fell within the scope of Directive 2008/115.

Next, the Court recalled that, under certain circumstances, Directive 2008/115 does not prohibit a Member State from imposing an imprisonment on a third-country national staying illegally. This is the case, first, where such a person has been subject to a return procedure under

⁴ Cf. note 1, para 34.

that directive and is still staying illegally in the territory of the Member State concerned or, second, where such a person has been subject to a return procedure under that directive and has re-entered that territory in breach of an entry ban imposed on them. It was apparent however from the facts of the case that Mr Arib did not find himself in either of those situations.

The Court went on to point out that Directive 2008/115, in its Article 2(2)(a), allows Member States not to apply it (while granting a certain scope of protection under Article 4(4) of the Directive) where a third-country national is subject to a refusal of entry across an external border pursuant to Article 14 SBC, or where such a person has been apprehended in connection with the irregular crossing of an external border and has not subsequently obtained an authorisation or a right to stay in that Member State. In the light of the facts, Mr Arib was not the addressee of the refusal of entry into French territory and was therefore not, in the Court of Justice's view, subject to the first of the two situations.

The Court then proceeded to clarify whether a person apprehended in the vicinity of an internal border is or is not covered by Directive 2008/115 if the Member State concerned has reintroduced border controls at that border on account of serious threat to public policy or internal security.

In that regard, the Court referred to its previous case-law in which it held that the situations covered by Article 2(2)(a) of Directive 2008/115 relate exclusively to the crossing of an external border. Accordingly, that provision does not permit Member States to exclude a third-country national from its scope on the ground that they have entered illegally across an internal border.

However, in view of the circumstances of this particular case, it was, according to the Court, necessary to determine whether and how this situation would change if a Member State introduced border controls at its internal borders. In this regard, the Court referred to Article 32 of the Schengen Borders Code, which provides that where internal border control is reintroduced pursuant to Article 25 of the SBC, the relevant provisions of that Code relating to external borders shall apply *mutatis mutandis*. On the other hand, the exceptions set out in Article 2(2)(a) of Directive 2008/115 must, as a derogation from the scope of that directive, be interpreted strictly. The Court then interpreted that provision in the light of its wording, purpose and context. According to the Court, the wording of Article 2(2)(a) is unambiguous in that there is no mention that the situation referred to in that provision may be equated with that of a third-country national crossing an internal border at which a border control has been reintroduced. As to the objective pursued by this provision, it consists in permitting a Member State to continue to apply simplified national return procedures at their external borders without having

to follow all the procedural stages established by the Directive, in order to be able to remove more swiftly third-country nationals intercepted in connection with the crossing of such a border. The purpose of adopting a refusal of entry is to prevent entry into the territory of a Member State, whereas apprehension or interception in connection with crossing an external border enables a national authority to take measures easily and swiftly in order to prevent a third-country national from staying on the territory of a Member State. It must therefore be concluded that, in the light of the objective pursued by Article 2(2)(a) of Directive 2008/115, the situation of a third-country national staying illegally and apprehended in the vicinity of an internal border does not differ according to whether or not a border control at that border has been reintroduced. The Court further held that the need for a strict interpretation of the scope of Article 2(2)(a) of Directive 2008/115 is also supported by an analysis of the context of which that provision forms part and by a systematic reading of the Schengen Border Code. First of all, it follows from the SBC that an internal border at which border controls have been reintroduced is not tantamount to an external border within the meaning of that Code, since, according to Article 2 of the SBC, those concepts are mutually exclusive. It is true that Article 32 of the SBC provides that where border controls are reintroduced at internal borders the relevant provisions relating to the external border are to apply *mutatis mutandis*, it does not, however, provide that Article 2(2)(a) of Directive 2008/115 is to be applied in such a case. Hence, the wording of the SBC itself precludes the internal border, following the reintroduction of border controls thereon, from being equated with the external border for the purposes of Directive 2008/115.

The Court also referred to the wording of Article 5(3) of the SBC, which imposes an obligation on Member States to introduce effective, proportionate and dissuasive penalties for the unauthorised crossing of external borders at places and times other than those laid down in the SBC itself, noting that that provision does not, however, derogate from the common standards and procedures established by Directive 2008/115. The relationship between border surveillance and the implementation of the return procedures under Directive 2008/115, on the other hand, is explained by Art. 13(1) of the SBC, which confirms that a person unlawfully present on the territory of a Member State shall be apprehended and made subject to procedures respecting Directive 2008/115. Thus, measures adopted by Member States, for example in compliance with Article 5 of the SBC, in order to ensure the effectiveness of border surveillance cannot lead to a modification of Member States' obligations under Directive 2008/115.

Opinion of the Advocate General

The Court of Justice's judgment reflects the views expressed in the Opinion⁵ of the Advocate General, where the latter, while concluding that it is not possible to derogate from Directive 2008/115 in a situation such as that in that case, made an attempt to answer the referring court's third question in the event where the Court's subsequent analysis would lead to a different conclusion. In the view of the Advocate General, where the simplified national return procedures apply, the provisions of Article 2(2)(a) and Article 4(4) of Directive 2008/115 do not preclude national legislation which penalizes, with a term of imprisonment, the illegal entry into a Member State territory of a third-country national in respect of whom the return procedure provided for by that Directive has not yet been completed.

Commentary

As has already been mentioned in the introduction, the reference for the preliminary ruling was made in the context of the dispute concerning the extension of the administrative detention of a third-country national who had entered the French territory illegally. In the context of the facts of the case before the Court of Cassation, it is important to refer to three issues that this very important judgment of the Court of Justice addresses. Firstly, it systematizes the cases in which a term of imprisonment is permitted under Directive 2008/115. Secondly, it clarifies the relationship between the concepts of "internal border" and "external border", also in the context of the interaction between Directive 2008/115 and the Schengen Borders Code. Thirdly, it demonstrates the capacity of Directive 2008/115 to safeguard the rights of individuals. The fourth issue to be addressed here relates to the incorrect translation of Directive 2008/115 into Polish.

Penalization with term of imprisonment of illegal stay or entry

The judgment in C-444/17 *Arib* is the third judgment of the Court of Justice, following that in C-329/11 *Achughbabian*⁶ and that in C-47/15 *Affum*⁷, in which it has ruled on the compatibility with European Union law of Articles L. 621-1 and L. 621-2 of *Ceseda* - the French

⁵ Opinion of Advocate General Szpunar of 17 October 2018 in case C-444/17 *Arib*, ECLI:EU:C:2018:836.

⁶ Judgment of the Court (Grand Chamber) of 6 December 2011 in case C-329/11 *Alexandre Achughbabian v. Prefet du Val-de-Marne*, ECLI:EU:C:2011:807.

⁷ Judgment of the Court (Grand Chamber) of 7 June 2016 in case C-47/15 *Selina Affum v. Prefet du Pas-de-Calais and Procureur general de la Cour d'appel de Douai*, ECLI:EU:C:2016:408.

Code of the entry and stay of foreign nationals and the right of asylum⁸ which penalized with term of imprisonment the illegal - respectively - stay or entry into the French territory.

The first of these exceptions where the term of imprisonment is allowed, is the situation where the return procedure as established in Directive 2008/115 has been completed and the third-country national continues to stay illegally on the territory of the Member State without a justified ground for non-return (Case C-329/11 *Achughbabian*).

The second exception is when the return procedure has been completed in a Member State and the third-country national has re-entered the territory illegally in breach of an entry ban (Case C-290/14 *Celaj*)⁹.

Moreover, Directive 2008/115 allows to penalize with a term of imprisonment offences other than those related to the mere fact of illegal entry in situations where the return procedure has not yet been completed. In *Arib* the Court refers to an offence likely to pose a threat to public policy or internal security of the Member State concerned¹⁰.

By contrast, such exceptions do not include the situation where an illegally staying third-country national has been apprehended in the immediate vicinity of an internal border even where border controls at that internal border have been reintroduced by a Member State on account of a serious threat to public policy or internal security.

Setting out the above list is closely related to the purpose underlying the adoption of Directive 2008/115 as part of the return policy of the European Union, which links the purpose of the directive to its effectiveness in putting an end to the illegal stay of third-country nationals in the territories of the Member States of the European Union. That concept has been firmly established in the case-law of the Court of Justice since the adoption of the judgment in Case C-61/11 PPU *El Dridi*¹¹, and systematically developed in a series of subsequent judgments. It follows from that case-law that all national measures which interfere in any way with the return procedure as established by Directive 2008/115, which begins in principle with the issuing of a return decision and ends, where appropriate, with the carrying out of a removal operation, including detention in strictly defined cases, are contrary to the purpose of that directive. In that

⁸ Opinion of Advocate General Szpunar, para 33. See also E. MacErid, *L'incidence d'une reintroduction des controles sur la notion de frontieres interieures*, <https://blogdroiteuropeen.com/2019/04/05/lincidence-dune-reintroduction-des-controles-sur-la-notion-de-frontieres-interieures-par-elli-macerid/>, V. Tchen, *Code de l'entrée et du séjour des étrangers et du droit d'asile*, 2022 (18e ed.), X. Vandendriesche, *Code de l'entrée et du séjour des étrangers et du droit d'asile, annoté et commenté*, 2022 (13e ed.)

⁹ Judgment of the Court of 1 October 2015 in case C-290/14 *Criminal proceedings against Skerdjan Celaj*, ECLI:EU:C:2015:640.

¹⁰ Para 66.

¹¹ Judgment of the Court (Grand Chamber) of 28 April 2011 in case C-61/11 PPU *El Dridi*, ECLI:EU:C:2011:268.

regard, it is important that national legislation should not jeopardise the achievement of the objectives pursued by Directive 2008/115 and thus deprive it of its effectiveness.

Directive 2008/115 therefore requires, in the first place, that the return procedure, even including administrative detention, is to be applied instead of a term of imprisonment in cases where only the unlawful nature¹² of the third-country national's stay can be established. In *Arib* the Court of Justice reasonably continues its previous case-law.

Relationship between “internal borders” and “external borders”

The *Arib* judgment also continues and develops more fully the observations expressed in the *Affum* judgment. In *Affum*, a third-country national entered illegally the territory of a Schengen Member State by crossing the border between that State and another Schengen Member State and was subsequently apprehended while attempting to enter the territory of a EU Member State not belonging to the Schengen area. In *Arib*, a new element was added, namely that the border between the Schengen Member States was crossed during the period where border controls were reintroduced at that border pursuant to the SBC. Against this background, the Court of Justice's role in both cases was to determine whether Article 2(2)(a) - which allows for the non-application of Directive 2008/115 in the situations specified in it - permits the exclusion from the scope of the Directive of third-country nationals apprehended not only in connection with the crossing of an external border, but also in connection with the crossing of an internal border. Thus, the Court had to determine whether the notions of “internal border” and “external border” were equivalent concepts.

These concepts are defined in Article 2 SBC as mutually excluding. 'External borders' (Article 2(2) SBC) are all borders provided that they are not internal borders, as detailed in point 1 of Article 2 of the SBC. At the same time, it should be borne in mind that the reintroduction by a Member State of border controls at its internal borders constitutes an exception to the principle expressed in Article 1 of the SBC (which is at the same time the purpose of the SBC itself) that border controls shall not be carried out on persons crossing the internal borders between the Member States of the Union, as well as to the free movement of persons within the internal market, and that this exception should therefore be interpreted strictly. The European Commission itself noted in 2010 in its report on the application of Title III of the SBC that “When border control is temporarily reintroduced, internal borders do not

¹² See also S. Bartolini, *Return Directive or Criminal Law? The next episode of the series is called Arib*, <https://eumigrationlawblog.eu/internal-border-control-and-the-return-directive-the-cjeus-ruling-in-arib-sets-the-record-straight-on-an-ambiguous-relationship/>.

become external borders"¹³ and that the measures taken by the Member States when such controls are reintroduced, should themselves comply with the principle of proportionality. In the same report, the European Commission also indicated that if a third-country national is refused "entry on account of illegal stay, procedures should be launched in accordance with Directive 2008/115/EC"¹⁴, although it is not entirely clear in the context of the report whether the Commission was referring to refusals of entry at internal borders or external borders.

However, the Court had no such doubts, since it ruled in both *Affum* and *Arib*, that Article 2(2)(a) of Directive 2008/115 does not allow the Member States to exclude illegally staying third-country nationals from the scope of the Directive on the sole ground of illegal entry across an internal border, and this irrespective (*Arib*) whether or not border controls at that border have been reintroduced. This situation is not affected by other provisions of the SBC, such as Article 5(3) or Article 13(1), since nothing in their wording suggests that they are likely to modify the scope of Member States' obligations under Directive 2008/115.

Capacity of Directive 2008/115 to safeguard the rights of individuals

Lastly, it should also be clarified as to why it is significant that the Court of Justice ruled that Article 2(2)(a) prevents third-country nationals from being excluded from the scope of Directive 2008/115 under the circumstances of *Arib* case.

The cornerstone of the return policy of the European Union is Article 6 of Directive 2008/115, which, in paragraph 1, establishes the obligation for Member States to issue return decisions to any third-country nationals staying illegally on their territories, albeit without prejudice to the exceptions referred to in the subsequent paragraphs.

The relationship between the purpose of Directive 2008/115 and its effectiveness has already been highlighted above. At this point, it should be also mentioned that the Directive can be considered fully effective only if the illegal stay of a third-country national, in this case by leaving the territory of the Union, is ended without delay and on a permanent basis, in compliance with the procedures laid down in the Directive and with full respect for the fundamental rights of the third-country national concerned.

In any event, the Court always examines the criterion of illegal stay in order to determine whether the third-country national concerned falls within the scope of Directive 2008/115 as defined above.

¹³ Report from the Commission to the European Parliament and the Council on the application of Title III (Internal Borders) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), COM (2010)554 of 13 October 2010, p. 10.

¹⁴ *Ibid.*

However, Article 2(2)(a) of the Directive allows Member States not to apply the Directive to third-country nationals who are subject to a refusal of entry under Article 14 SBC or who have been apprehended in connection with the irregular crossing of the external border of a particular Member State. In this way, Member States are allowed to continue to apply simplified national return procedures at their external borders without having to follow all the stages of the return procedure as established by the Directive. In this regard, Member States are only obliged, under Article 4(4) of Directive 2008/115, to respect the principle of *non-refoulement* and to ensure that the treatment of third-country nationals and the level of protection granted are no less favourable than those relating to the application of certain limitations on the use of coercive measures against third-country nationals, the postponement of removal, emergency health care and taking into account the needs of vulnerable persons and the detention conditions.

Thus, were the Court to allow - pursuant to Article 2(2)(a) - the exclusion of third-country nationals such as Mr Arib from the scope of Directive 2008/115, it would not mean, in the light of the purpose of Article 6 of that directive, that the return procedure would not be carried out at all. It would mean that a third-country national such as Mr Arib would be subject to the simplified national return procedure, with the result that they would not enjoy some of the procedural rights set out in Directive 2008/115. Consequently, in the light of the French law, they would also be subject to a term of imprisonment, whereas the conditions for the restriction of liberty in the context of a return procedure (detention) are set out in detail in Article 15 of the directive.

In this particular case, the "application of Directive 2008/115" means not only that a third-country national is subject to a return procedure pursuant to the EU law, but also that the person concerned is subject to the full range of guarantees provided for in Directive 2008/115, and not only to the guarantees listed in Article 4(4) of that Directive.

The Court thus once again put forward an interpretation of Directive 2008/115 which presents it as a legal instrument which strongly pursues the objective of the protection of individuals when confronted with national laws. Hence, it is right to support the view that the Directive does not just establish a return mechanism aiming at removing third-country nationals staying illegally. In the course of its interpretation, the Court of Justice took out those elements which ensure respect for EU fundamental rights, including the right to liberty pursuant to Article 6 of the Charter of Fundamental Rights of the EU¹⁵.

¹⁵ S. Bartolini, *op.cit.*

“Entry ban” or “Refusal of entry”?

Finally, this commentary gives an opportunity to identify an error in Polish translation of *Arib* judgment, which is a consequence of an incorrect translation into Polish of Article 2(2)(a) of Directive 2008/115. Although this error does not entail negative consequences in terms of the application of the judgment, it does make it difficult to read (in Polish), and as such should be eliminated.

The current translation into Polish of Article 2(2)(a) of the Directive reads: "a) podlegają zakazowi wjazdu zgodnie z art. 13 kodeksu granicznego Schengen" [are subject to an entry ban in accordance with Article 13 of the Schengen Borders Code]" (now: Article 14 SBC), whereas the current Article 14 SBC refers to the concept of refusal of entry, and this is how this provision is entitled in the SBC, both in Polish ('Odmowa wjazdu') and English ('Refusal of entry'). The English translation of Article 2(2)(a) of the Directive is correct and reads 'a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Border Code'.

The entry ban (*zakaz wjazdu*) and the refusal of entry (*odmowa wjazdu*) are however two different measures, the former regulated by Article 11 of Directive 2008/115, the latter by Article 14 of the SBC. They should not be considered to be one and the same, even though an entry ban may be – indirectly - one of the reasons for refusing an entry at an external border of an EU Member State.

Conclusions

To complete the picture, it should be mentioned that, following the Court of Justice's judgment, the French Court of Cassation dismissed the action brought by the prefect of Pyrenees-Orientales¹⁶. What is more, through years, the provisions of the *Ceseda* were substantially amended as a consequence of the case-law of the Court of Justice. In 2012, after *Achughbabian* judgment, Article L. 621.1 was repealed and Article L. 621.2 was accordingly amended: the offence of illegal residence was repealed, but the offence of illegal entry was retained¹⁷. In 2018 Article L. 621.2(2) (the offence of illegal entry from the territory of another Member State, across an internal border) was repealed as well, following the *Affum* judgment¹⁸.

¹⁶ Judgment of the Court of Cassation of 13 June 2019, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000038674658/>.

¹⁷ See: Judgment of the Court (Grand Chamber) of 7 June 2016 in case C-47/15 *Selina Affum v. Prefet du Pas-de-Calais and Procureur general de la Cour d'appel de Douai*, ECLI:EU:C:2016:408, para 56. See also: Contrôle des étrangers. Ce qui change la loi du 31 décembre 2012. Analyse de la loi no 2012-1560 relative à la retenue pour vérification du droit au séjour et modifiant le délit d'aide au séjour irrégulier, Gisti 2013, https://www.gisti.org/IMG/pdf/cj_valls.pdf, consulted 11.01.2024.

¹⁸ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000006147788?isAbrogated=true#LEGISCTA000026911180, consulted 22.04.2024.

Last but not least, in May 2021 a new, reorganized version, of CESEDA, aiming at enhancing its clarity, entered into force¹⁹. Directive 2008/115, despite the deficiencies it has due to its poor level of harmonisation, remains one of those EU legal instruments which, thanks to the Court of Justice's interpretation of what is its detailed scope of application, ensures the protection of third-country nationals' fundamental rights against different forms of Member States' activities.

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Summary

This commentary aims at explaining the nature of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals in the light of the *Arib* judgment of the Court of Justice of the EU, especially as far as the capacity of Directive 2008/115 to safeguard the rights of individuals is concerned.

Key words: Return procedure, detention, imprisonment, Directive 2008/115, Schengen Border Code, internal borders control, illegal stay, third-country national, Court of Justice of the European Union