Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

1 August 2025 *

(References for a preliminary ruling – Border controls, asylum and immigration – Immigration policy – Directive 2008/115/EC – Common standards and procedures in Member States for returning illegally staying third-country nationals – Article 3(4) and (6), Article 7(1) and (4), Article 8(1) and (2), Article 11(1) and Article 13 – Article 47 of the Charter of Fundamental Rights of the European Union – Return decision – Decision not to grant a period for voluntary departure – Entry ban – Actionable administrative act – Enforceability of a return decision not containing a provision relating to the period for voluntary departure – Right to an effective remedy – Entry ban decision adopted after a considerable period of time)

In Joined Cases C-636/23 [Al Hoceima] [i] and C-637/23 [Boghni], [i]

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium) and the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), respectively, made by decisions of 16 October 2023, received at the Court on 24 October 2023, in the proceedings

W

v

Belgische Staat (C-636/23),

and

X

v

État belge, represented by the Secrétaire d'État à l'Asile et la Migration (C-637/23),

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias, E. Regan, J. Passer (Rapporteur) and B. Smulders, Judges,

Advocate General: D. Spielmann,

* Languages of the case: French and 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.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– X, by M. Demol, avocat,

– the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by T. Bricout, avocate,

– the Czech Government, by A. Edelmannová, M. Smolek and J. Vláčil, acting as Agents,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the European Commission, by A. Katsimerou and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2025,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 3(4) and (6), Article 7(1) and (4), Article 8(1) and (2), Article 11(1) and Article 13 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 the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in two sets of proceedings between W (C-636/23) and X (C-637/23), both of whom are third-country nationals, and the Belgische Staat (Belgian State) and the État belge (Belgian State), respectively, concerning an order to leave the territory and an entry ban.

Legal context

European Union law

3 Recitals 2, 6, 10, 11 and 14 of Directive 2008/115 are worded 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.

…

(6) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. …

…

(10) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case. In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.

(11) A common minimum set of legal safeguards on decisions related to return should be established to guarantee effective protection of the interests of the individuals concerned. …

…

(14) The effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all the Member States. …'

4 Article 3 of that directive, headed 'Definitions', provides:

'For the purpose of this Directive the following definitions shall apply:

…

(3) "return" means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

– his or her country of origin, or

– a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

– another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

(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;

…

(6) "entry ban" means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;

…’

5 As set out in Article 6(1) of that directive:

‘Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.’

6 Article 7 of the same directive, headed ‘Voluntary departure’, provides, in paragraphs 1 and 4:

‘1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

…

4. If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days.’

7 Article 8 of Directive 2008/115, headed ‘Removal’, provides, in paragraphs 1 and 2:

‘1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

2. If a Member State has granted a period for voluntary departure in accordance with Article 7, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.’

8 Article 11 of that directive, headed ‘Entry ban’, provides, in paragraph 1:

‘Return decisions shall be accompanied by an entry ban:

(a) if no period for voluntary departure has been granted, or

(b) if the obligation to return has not been complied with.

In other cases return decisions may be accompanied by an entry ban.’

9 Article 12 of that directive, headed ‘Form’, provides, in the first subparagraph of paragraph 1:

‘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.’

10 Article 13 of the same directive, headed 'Remedies', provides:

'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.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of [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)].'

11 Article 14 of Directive 2008/115, headed 'Safeguards pending return', provides, in paragraph 1:

'Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

(a) family unity with family members present in their territory is maintained;

(b) emergency health care and essential treatment of illness are provided;

(c) minors are granted access to the basic education system subject to the length of their stay;

(d) special needs of vulnerable persons are taken into account.'

Belgian law

12 Article 1(1), points 6 and 8 of the loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law of 15 December 1980 on the access to the territory, residence, settlement and removal of foreign nationals (*Moniteur belge* of 31 December 1980, p. 14584; 'the Law of 15 December 1980')), which is intended to transpose Article 3(4) and (6) of Directive 2008/115, reads as follows:

'For the purposes of this Law:

…

6° removal decision means a decision declaring the stay of a foreign national to be illegal and imposing an obligation to return;

…

8° entry ban means a decision that may accompany a removal decision and which, for a specified period, prohibits entry into and stay either on the territory of the Kingdom of Belgium or on the territory of all Member States, including that of the Kingdom of Belgium'.

13 The first paragraph of Article 7 of that law, which is intended to transpose Article 6(1) of Directive 2008/115, provides, in points 1 and 3:

'Without prejudice to more favourable provisions that may be contained in an international treaty, the minister or his or her representative may, or, in the cases referred to in points 1, 2, 5, 9, 11 or 12, the minister or his or her representative shall, issue to a foreign national, who is neither authorised nor permitted to stay for more than three months or to settle in the Kingdom of Belgium, an order to leave the territory within a specified period:

1° if he or she is staying in the Kingdom of Belgium without being in possession of the documents required by Article 2;

…

3° if his or her conduct is considered to be a threat to public policy or national security'.

14 The first paragraph of Article 39/56 of that law provides:

'The actions referred to in Article 39/2 may be brought before the Council [for asylum and immigration proceedings] by a foreign national who is able to establish harm or an interest.'

15 Article 74/11 of that law is intended to transpose Article 11(1) of Directive 2008/115 and provides, inter alia, that the duration of the entry ban is to be determined taking into account the specific circumstances of each case.

16 As set out in Article 74/14 of the Law of 15 December 1980:

'(1) The removal decision shall provide for a period of 30 days to leave the territory.

…

Upon reasoned application made by the third-country national to the minister or to his or her representative, the period for leaving the territory, referred to in paragraph 1, shall be extended on production of evidence that voluntary return cannot be achieved within the period prescribed.

If necessary, that period of time may be extended, upon reasoned application made by the third-country national to the minister or to his or her representative, in order to take account of the specific circumstances of that person's case, such as the length of stay, the fact that children are attending school, the finalising of arrangements for voluntary departure and other family and social links.

…

(2) For as long as the period for voluntary departure is running, the third-country national shall be protected against forced removal.

To avoid the risk of absconding during that period, the minister or his or her representative may require the third-country national to comply with preventive measures.

…

(3) Derogation from the period provided for in paragraph 1 may be permitted where:

1° there is a risk of absconding, or;

2° the third-country national has not complied with the preventive measure imposed, or;

3° the third-country national poses a threat to public policy or national security or;

…

In such a case, the removal decision shall stipulate a period of less than seven days or no period at all.'

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

Case C-636/23

17 W states that he is of Moroccan nationality. On 3 January 2015, the representative of the Secrétaire d'État à l'Asile et la Migration et à la simplification administrative (State Secretary for Asylum and Migration and Administrative Simplification, Belgium) issued an order for W to leave the territory and imposed on him a three-year entry ban. On 22 May 2019, W lodged an application for international protection with the Belgian authorities. On 7 June 2019, W was sentenced by the correctionele rechtbank Antwerpen (Criminal Court, Antwerp, Belgium) to an eighteen-month custodial sentence, nine months of which were suspended for five years, for drug offences. By decision of 9 July 2019, the Commissariat général aux réfugiés et aux apatrides (Commissioner-General for Refugees and Stateless Persons) refused to grant W refugee status and subsidiary protection.

18 On 18 July 2019, the Belgian authorities issued an order for W to leave the territory and imposed on him an eight-year entry ban; that order and that entry ban were served on W on the same date. No period for voluntary departure was granted to W on the ground that there was a risk of him absconding and he was a threat to public policy and national security.

19 By application lodged on 19 August 2019, W brought an action before the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium), which is the referring court, for the suspension and annulment of that order to leave the territory and of that entry ban.

20 By judgment of 19 November 2019, the referring court annulled that order to leave the territory and that entry ban, upholding W's argument that the grounds underlying the decision not to grant him a period for voluntary departure were unlawful. Referring to the case-law of the Court of Justice, the referring court held, inter alia, that any assessment of the risk of absconding must be based on an individual assessment of the situation of the person concerned and that, in the present case, insufficient reasons were given for the existence of a threat to public policy. According to the

referring court, indicating a period for voluntary departure is a constituent or essential element of the order to leave the territory. It therefore annulled the order to leave the territory in question in its entirety.

21 The Belgische Staat (Belgian State) brought an appeal in cassation before the Raad van State (Council of State, Belgium) against that judgment as regards the annulment of the order to leave the territory, but without challenging the annulment of the entry ban.

22 By judgment of 1 September 2022, the Raad van State (Council of State) set aside in part the judgment of 19 November 2019 referred to in paragraph 20 above, on the ground, inter alia, that the grant of, or refusal to grant, a period for voluntary departure is merely an enforcement measure, which does not alter the legal position of the foreign national concerned, since it has no bearing on the finding that his or her stay in the territory concerned was illegal.

23 Consequently, the referring court must issue a fresh ruling on W's appeal against the order to leave the territory issued to him. In that context, that court is uncertain whether a decision not to grant a period for voluntary departure in the context of a return decision must in fact be regarded merely as a means of enforcement – which cannot be challenged and does not alter the legal position of the foreign national concerned – of that return decision. The referring court considers, inter alia, that, in so far as the return decision sets out that a period for voluntary departure has not been granted and gives reasons therefor, an effective remedy against that aspect of the return decision is required. According to that court, a contrary solution could lead to situations in which the very legal basis for imposing an entry ban, namely the fact that no period for voluntary departure has been granted, could not be challenged, since the Raad van State (Council of State) does not allow, in an action directed solely against an entry ban, a plea to be raised against the decision not to grant a period for voluntary departure, in particular because such a plea concerns a different decision. The referring court points out that Article 11(1) of Directive 2008/115 states that return decisions are to be accompanied by an entry ban if no period for voluntary departure has been granted.

24 Taking the view that, following the judgment of 1 September 2022 of the Raad van State (Council of State), it finds itself in a situation in which the only decision challenged before it is the order to leave the territory concerned, which does not grant a period for voluntary departure, the referring court is unsure whether the competent authority is obliged or able to adopt a new entry ban decision, thus raising the question whether such a decision can be taken even after a considerable period of time has elapsed. That court also seeks to ascertain, inter alia, whether the decision not to grant a period for voluntary departure, within the framework of the obligation to return imposed or stated by a return decision, is an essential element of that return decision, with the result that, if any unlawfulness is found as regards that period, the return decision lapses in its entirety and a new return decision must be issued.

25 In those circumstances, the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 7(4), Article 8(1) and (2) and Article 11(1) of Directive 2008/115, read either in isolation or together in the light of Article 13 of Directive 2008/115 and Article 47 of the [Charter], be interpreted as precluding the refusal to grant a period for voluntary departure from being regarded as a mere means of enforcement which does not alter the legal position of the foreign national concerned, given that the grant or otherwise of a period for voluntary departure does not alter the primary finding of an illegal stay in the territory?

(2) If the answer to the first question is in the affirmative, must the [word "accompanying"] in Article 3(6) [of Directive 2008/115] and the words ["shall be accompanied"] in Article 11(1) of [that directive] be interpreted as meaning that they do not preclude the competent authority from being able or having to issue, even after a considerable period of time, an entry ban based on a return decision that has not granted a period for voluntary departure?

If the answer to that question is in the negative, does that wording mean that a return decision which has not granted a period for voluntary departure must be accompanied simultaneously by an entry ban or within a reasonably short period of time?

If the answer to that question is in the affirmative, does the right to an effective remedy guaranteed by Article 13 of Directive 2008/115 and Article 47 of the [Charter] mean that it is possible, in the context of an appeal against a return decision, to challenge the legality of a decision not to grant a period for voluntary departure, whereas otherwise the legality of the legal basis of the entry ban could no longer be effectively challenged?

(3) If the answer to the first question is in the affirmative, must the terms "an appropriate period" in the first subparagraph of Article 7(1) [of Directive 2008/115] and "an obligation to return" in Article 3(4) of [that directive] be interpreted as meaning that a provision laying down a period of time, or in any event the refusal to grant a period of time, within the framework of the obligation to depart is an essential element of a return decision, in the sense that, if that period is found to be unlawful, the return decision lapses in its entirety and a new return decision must be issued?

If the Court considers that the refusal to grant a period of time is not an essential element of a return decision, and if the Member State concerned has not made use of the option, under Article 7[(1)] of Directive 2008/115, to grant a period of time only upon application by the [third-country] national concerned, what is the practical scope and enforceability of a return decision, within the meaning of Article 3(4) of Directive 2008/115, from which the element relating to the period would disappear?'

Case C-637/23

26 X states that he has been living in Belgium for two years, is staying with his brother and is of Algerian nationality.

27 On 27 January 2023, X was deprived of his liberty following an administrative report on the monitoring of a foreign national.

28 On 28 January 2023, X was served with an order to leave the territory with deportation and detention for the purpose of removal, and a two-year entry ban. No period for voluntary departure was granted.

29 The reason given for not granting X a period for voluntary departure was that there is a risk of absconding, within the meaning of point 1 of Article 74/14(3) of the Law of 15 December 1980. The refusal to grant that period was essentially reasoned as follows:

'1° The person concerned did not submit an application for residence or for international protection following his illegal entry or during his illegal stay or within the period provided for by this law.

The person concerned claims to have resided in Belgium for two years. The administrative file does not show that he has tried to legalise his stay in a manner provided for by law.

3° The person concerned is not cooperating or has not cooperated with the authorities.

The person concerned did not report to the local authority within the [statutory] period and has provided no proof that he is staying in a hotel.'

30 X's release was ordered by judgment of 6 February 2023 of the tribunal de première instance du Hainaut, division de Mons (Court of First Instance, Hainaut, Mons Division, Belgium), which was upheld on appeal by a judgment of 21 February 2023 of the indictment division of the cour d'appel de Mons (Court of Appeal, Mons, Belgium).

31 By application lodged on 6 February 2023, X brought an action before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), which is the referring court, seeking the suspension and annulment of the order to leave the territory with deportation and of the entry ban issued to him on 28 January 2023.

32 Before that court, as regards the order to leave the territory with deportation, X is arguing, in essence, that the État belge (Belgian State) did not comply with its obligation to carry out an individual assessment prior to establishing a risk of absconding. X also submits that it is not sufficient simply to refer to the criteria contained in Article 1(2) of the Law of 15 December 1980, but that it is also necessary to explain how those criteria apply to each individual case. According to X, there is nothing in the grounds for that order or in the administrative file to explain why the État belge (Belgian State) relied on any risk of absconding in order to waive the standard 30-day period provided for in that law. As regards that entry ban, X argues that the reasons given for it are also inadequate and insufficient in so far as they are based on a risk of X absconding.

33 When questioned at the hearing before the referring court on the nature of the decision not to grant him a period of time in which to leave Belgian territory, X submitted that, since that decision produced legal effects, in particular as regards detention and the entry ban, it is not merely an enforcement measure and must therefore be open to legal challenge. The État belge (Belgian State), on the other hand, contends that that decision is not subject to review.

34 When questioned at that hearing about the continued interest in challenging the deportation decision, the État belge (Belgian State) argued that, given X's release, that interest has ceased to exist. X defers on that point to the wisdom of the referring court, which considers that, as a result of X being released, the action has become devoid of purpose in so far as it relates to that decision.

35 In that context, that court is uncertain whether the decision not to grant a period for voluntary departure in the context of a return decision must be regarded merely as a measure to enforce that return decision, which does not alter the legal position of the foreign national concerned. In addition, the referring court asks whether the right to an effective remedy, guaranteed by Article 13 of Directive 2008/115 and by Article 47 of the Charter, means that, in an appeal against a return decision, it is possible to challenge the lawfulness of the decision not to grant a period for voluntary departure where the lawfulness of the legal basis for the entry ban accompanying that return decision could otherwise no longer be effectively challenged. Lastly, it asks whether a provision relating to the period for voluntary departure, within the framework of the obligation to return imposed or laid down by a return decision, is an essential element of that return decision, with the result that, if any unlawfulness is found as regards that period, the return decision lapses in its entirety and a new return decision must be issued.

36 In those circumstances, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 7(4), Article 8(1) and (2) and Article 11(1) of Directive 2008/115, read together or separately in the light of Article 13 of Directive 2008/115 and Article 47 of the [Charter], be interpreted as meaning that they preclude the decision not to grant a period for voluntary departure from being regarded as a mere enforcement measure which does not alter the legal position of the foreign national concerned, since the granting or not of a period for voluntary departure in no way alters the first finding of an illegal stay on the territory?

Moreover, does the right to an effective remedy, guaranteed by Article 13 of Directive 2008/115 and by Article 47 of the [Charter], mean that it is possible to challenge, in an appeal against the return decision, the lawfulness of a decision not to grant a period for voluntary departure where, if that is not the case, the lawfulness of the legal basis for the entry ban can no longer be effectively challenged?

(2) If the answer to the first question is in the affirmative, must the words “provide for an appropriate period” in Article 7(1) [of Directive 2008/115] and “and … an obligation to return” in Article 3(4) of [that directive] be interpreted as meaning that a provision relating to the period, [or, in any event, not granting a period,] in the context of the departure obligation, constitutes an essential element of a return decision, with the result that if that period is found to be unlawful, the return decision becomes null and void in its entirety and a new return decision must be issued?

If the Court of Justice is of the opinion that the refusal to grant a period is not an essential element of the return decision, and if the Member State concerned has not made use, under Article 7(1) of Directive 2008/115, of the option of setting a period only following an application by the third-country national concerned, what practical scope and enforceability is to be given to a return decision within the meaning of Article 3(4) of Directive 2008/115 which would be deprived of its component relating to the period?’

Consideration of the questions referred

The first question in Case C-636/23 and the first part of the first question in Case C-637/23

37 By its first question in Case C-636/23, and by the first part of its first question in Case C-637/23, which it is appropriate to consider together, the referring court asks, in essence, whether Article 7(4), Article 8(1) and (2) and Article 11(1) of Directive 2008/115 must be interpreted as precluding the decision not to grant a period for voluntary departure from being regarded merely as an enforcement measure which does not alter the legal position of the third-country national concerned, given that the grant of, or refusal to grant, that period does not affect the finding that that national is staying illegally on the territory of the Member State concerned.

38 As regards the legal nature of a decision to grant a period for voluntary departure, it should be borne in mind that Directive 2008/115 sets out specifically the procedure to be applied by each Member State for returning illegally staying third-country nationals and fixes the order in which the various successive stages of that procedure should take place (judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 34).

39 Article 6(1) of that directive provides, principally, for an obligation on Member States to issue a return decision against any third-country national staying illegally on their territory. As part of that initial stage of the return procedure, priority is to be given, except where otherwise provided for, to voluntary compliance with the obligation resulting from the return decision, as is apparent from recital 10 of that directive. In that regard, Article 7(1) of that directive requires that decision to provide for an appropriate period for voluntary departure of between seven and thirty days (see, to that effect, judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraphs 35 and 36).

40 Member States may, nevertheless, refrain from granting such a period or grant a period shorter than seven days in the particular circumstances expressly listed in Article 7(4), namely where there is a risk of absconding, where an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or where the person concerned poses a risk to public policy, public security or national security (see, to that effect, judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 37).

41 Where a Member State has refrained from granting a period for voluntary departure, and also where the obligation to return has not been complied with within the period for voluntary departure granted, Article 8(1) and (4) of Directive 2008/115 imposes an obligation on the Member State concerned to carry out the removal by taking all necessary measures including, where appropriate, coercive measures, in a proportionate manner and with due respect for fundamental rights (see, to that effect, judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 38).

42 By contrast, it is clear from the wording of Article 8(2) of Directive 2008/115 that, if a Member State has granted a period for voluntary departure in accordance with Article 7 of that directive, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.

43 Thus, the order in which the stages of the return procedure established by Directive 2008/115 are to take place corresponds to a gradation of the measures to be taken in order to enforce the return decision, a gradation which goes from the measure which allows the person concerned the most

liberty, namely granting a period for his or her voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility; the principle of proportionality must be observed throughout those stages (judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 41).

44 It follows from the foregoing that a return decision may not be enforced immediately on the sole ground that the person concerned is staying illegally in the Member State concerned, except in the situations referred to in Article 7(4) of Directive 2008/115.

45 Accordingly, a decision whether or not to grant a period for voluntary departure has immediate legal consequences, which the competent national authorities are required to implement.

46 In addition, the first subparagraph of Article 11(1) of Directive 2008/115 provides that an entry ban is to be issued to an illegally staying third-country national if no period for voluntary departure has been granted or if the obligation to return has not been complied with.

47 The determination of those legal consequences of a decision whether or not to grant a period for voluntary departure is consistent with the objective of Article 7 of Directive 2008/115, since, by providing that the Member States are, in principle, required to grant a period for voluntary departure to illegally staying third-country nationals, that article seeks, inter alia, to ensure that the fundamental rights of those nationals are observed in the implementation of a return decision taken under Article 6 of that directive. In accordance with Article 79(2) TFEU, the objective pursued by that directive is, as is apparent from recitals 2 and 11 thereof, to establish an effective removal and repatriation policy, based on common standards and common legal safeguards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity (see, to that effect, judgment of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 47).

48 The fact that the grant of a period for voluntary departure does not alter the illegal nature of the stay on the territory of the Member State concerned does not in any way invalidate that interpretation. While it is true that the third-country national continues to stay illegally during the period granted for his or her voluntary return, the fact remains that, as the Advocate General observed, in essence, in point 53 of his Opinion, the failure to grant a period for voluntary departure has, as found in paragraph 45 of the present judgment, significant consequences on the legal position of that third-country national.

49 Lastly, the wording of Article 14(1) of that directive makes clear that, with the exception of the situation covered in Articles 16 and 17, Member States are to ensure that, in relation to third-country nationals during the period for voluntary departure, the following principles are taken into account as far as possible: family unity with family members present in the territory concerned is maintained, emergency health care and essential treatment of illness are provided, minors are granted access to the basic education system subject to the length of their stay and the special needs of vulnerable persons are taken into account.

50 Consequently, a decision whether or not to grant a period for voluntary departure cannot be regarded merely as an enforcement measure which does not alter the legal position of the third-country national concerned.

51 In the light of the foregoing considerations, the answer to the first question in Case C-636/23, and to the first part of the first question in Case C-637/23, is that Article 7(4), Article 8(1) and (2) and Article 11(1) of Directive 2008/115 must be interpreted as precluding the decision not to grant a period for voluntary departure from being regarded merely as an enforcement measure which does not alter the legal position of the third-country national concerned.

The third part of the second question in Case C-636/23, and the second part of the first question in Case C-637/23

52 By the third part of its second question in Case C-636/23, and by the second part of its first question in Case C-637/23, the referring court asks, in essence, whether Article 13 of Directive 2008/115, read in the light of Article 47 of the Charter, must be interpreted as requiring that a decision not to grant a period for voluntary departure may be challenged in legal proceedings.

53 In that regard, it should be recalled that Article 13(1) of that directive guarantees the third-country national concerned an effective remedy to challenge return decisions, decisions banning entry to the territory of the Member States and decisions on removal before a competent judicial or administrative authority, or a competent body composed of members who are impartial and who enjoy safeguards of independence.

54 Those procedural safeguards, combined with those provided for in Article 12(1) of Directive 2008/115, namely the obligation on Member States to issue their return decisions in writing, giving reasons in fact and in law as well as information about available legal remedies, ensure the protection and defence of the person concerned against a decision which adversely affects him or her (see, to that effect, judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 58).

55 In particular, when the competent national authority is contemplating the adoption of a return decision, that authority should hear the person concerned on that subject. The right to be heard prior to the adoption of a return decision implies that the competent national authorities are under an obligation to enable the person concerned to express his or her point of view on the detailed arrangements for his or her return, such as the period allowed for departure and whether return is to be voluntary or coerced. Thus, the illegally staying third-country national concerned will have the opportunity to challenge, if he or she wishes, the assessment made by the administrative authorities of his or her situation by bringing legal proceedings (see, to that effect, judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 49, 51 and 57).

56 In those circumstances, an effective remedy must be guaranteed both as regards the decision whether or not to grant a period for voluntary departure and as regards the duration of that period. Indeed, the third-country national concerned must be able to challenge before a court or tribunal or a similar impartial body a decision not to grant him or her a period for voluntary departure, adopted under Article 7(4) of Directive 2008/115, just as he or she must be able to argue that the period for departure granted to him or her in accordance with Article 7(1) of that directive is not sufficient.

57 The answer to the third part of the second question in Case C-636/23, and the second part of the first question in Case C-637/23, is that Article 13 of Directive 2008/115, read in the light of Article 47 of the Charter, must be interpreted as meaning that a decision not to grant a period for voluntary departure must be open to challenge in legal proceedings.

The first and second parts of the second question in Case C-636/23

58 By the first and second parts of its second question in Case C-636/23, the referring court asks, in essence, whether, if the first question in that case is answered in the affirmative, the terms 'accompanying' and 'accompanied' in Article 3(6) and Article 11(1) of Directive 2008/115, respectively, must be interpreted as not precluding the competent national authority from imposing an entry ban, even after a considerable period of time, on the basis of a return decision that does not grant a period for voluntary departure.

59 It should be recalled that Article 3(6) of Directive 2008/115 defines an 'entry ban' as 'an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision'. Article 3(4) of that directive defines a 'return decision' as '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'.

60 As set out in recital 14 of Directive 2008/115, an entry ban is intended to prohibit its addressee from entering and staying in the territory of all the Member States, and thus confers a 'European dimension' on the effects of national return measures.

61 As recalled in paragraph 46 of the present judgment, under Article 11(1) of that directive, 'return decisions shall be accompanied by an entry ban if no period for voluntary departure has been granted, or if the obligation to return has not been complied with. In other cases return decisions may be accompanied by an entry ban'.

62 It follows from the wording of Article 3(4) and (6) and Article 11(1) of Directive 2008/115 that an 'entry ban' is intended to supplement a return decision by prohibiting the person concerned, for a specified period following his or her 'return', as defined in Article 3(3) of that directive, and therefore after leaving the territory of the Member States, from again entering and staying in that territory. Consequently, an entry ban produces its effects only from the point in time at which the person concerned actually leaves the territory of the Member States (judgment of 3 June 2021, *Westerwaldkreis*, C-546/19, EU:C:2021:432, paragraph 52 and the case-law cited).

63 It follows that the terms 'accompanying' and 'accompanied', contained in Article 3(6) and Article 11(1) of Directive 2008/115, respectively, may be equated with the term 'supplement', within the meaning of the case-law referred to in paragraph 62 above.

64 As the Advocate General observed, in essence, in points 66 to 68 of his Opinion, the Court did not use the verb 'supplement' in the sense that an entry ban can only be linked simultaneously or after a short period of time with a return decision which does not grant a period for voluntary departure, but in the sense that it is 'to be supplementary' to that decision, and refers to a material link whereby that decision is, in principle, a prerequisite for the validity of the entry ban.

65 That interpretation is confirmed by the wording of Article 11(1) of Directive 2008/115. Not only does the situation involving an entry ban adopted as a result of the fact that no period for voluntary departure has been granted – such as that referred to by the referring court and provided for in Article 11(1)(a) – not require any temporal link between the return decision and the entry ban concerned, but the situation referred to in Article 11(1)(b) explicitly excludes such a link, given that it concerns an entry ban imposed after a return decision.

66 Accordingly, the national authority competent to impose an entry ban accompanying a return decision which does not grant a period for voluntary departure is not required to adopt that entry ban at the same time as that return decision, or even after a short period of time following the adoption of that return decision.

67 The answer to the first and second parts of the second question in Case C-636/23 is that Article 3(6) and Article 11(1) of Directive 2008/115 must be interpreted as not precluding the competent national authority from imposing an entry ban, even after a considerable period of time, on the basis of a return decision that does not grant a period for voluntary departure.

The third question in Case C-636/23 and the second question in Case C-637/23

68 By its third question in Case C-636/23 and its second question in Case C-637/23, the referring court asks, in essence, whether Article 3(4) and Article 7 of Directive 2008/115 must be interpreted as meaning that any unlawfulness of the provision relating to the period for voluntary departure contained in a return decision entails the annulment of that return decision in its entirety. If not, and in the event that the Member State concerned has not made use of the option, provided for in Article 7(1) of that directive, to determine that period only following an application by the third-country national concerned, the referring court asks what the practical scope and enforceability are of a return decision which does not contain a provision relating to the period for voluntary departure.

69 It should be recalled that, under Article 3(4) of Directive 2008/115, a '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. In accordance with Article 3(3) of that directive, that obligation to return requires the person concerned to return either to his or her country of origin, or to a country of transit, or to another third country to which he or she voluntarily decides to return and in which he or she will be accepted (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 114).

70 It therefore follows from the very wording of Article 3(4) that the actual imposition or declaration of an obligation to return constitutes one of the two components of a return decision, such an obligation to return being inconceivable, in the light of paragraph 3 of that article, unless a destination, which must be one of the countries referred to in paragraph 3, is identified (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 115).

71 It follows that, when the competent national authority amends the country of destination stated in an earlier return decision, it makes an amendment to that return decision that is so substantial that that authority must be considered to have adopted a new return decision, within the meaning of Article 3(4) of Directive 2008/115 (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 116).

72 In essence, the referring court seeks to ascertain whether, by analogy with the case-law referred to in paragraphs 69 to 71 above, the provision relating to the period for voluntary departure contained in a return decision forms an integral part of the obligation to return imposed or set out by that decision, so that any unlawfulness vitiating that provision would have the effect of rendering that decision void in its entirety.

73 In that regard, it should be observed that the definition of 'return' contained in Article 3(3) of Directive 2008/115 refers expressly to the voluntary or enforced nature of the return. In accordance with that definition, an obligation to return concerns the process of the third-country national going back, whether in voluntary compliance, or enforced, to one of the countries mentioned in that provision. Accordingly, the decision by which the competent national authority decides whether or not to grant a period for voluntary departure is an integral part of that obligation.

74 Furthermore, it is apparent from paragraph 56 of the present judgment that an effective remedy must be guaranteed both as regards the decision whether or not to grant a period for voluntary departure and as regards the duration of that period.

75 It follows that if any unlawfulness is found as regards the decision whether or not to grant a period for voluntary departure or as regards the duration of that period, the return decision concerned must be annulled in its entirety.

76 That interpretation is confirmed by the objective pursued by Directive 2008/115, as recalled in paragraph 47 of the present judgment, of establishing an effective removal and repatriation policy, based on common standards and legal safeguards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

77 It is also consistent with recital 6 of Directive 2008/115, according to which the Member States are to ensure that the ending of the illegal stay of third-country nationals is carried out through a fair and transparent procedure. That recital also states that, according to general principles of EU law, decisions taken under that directive should be adopted on a case-by-case basis and be based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. In particular, as the Court has previously held, the principle of proportionality must be observed throughout all the stages of the return procedure established by that directive, including the stage relating to the return decision, in the context of which the Member State concerned must rule on the grant of a period for voluntary departure under Article 7 of that directive (judgment of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 49).

78 Accordingly, the concept of 'obligation to return' as a constituent element of the return decision must be understood in such a way as to reflect the balance between the effectiveness of the removal policy and respect for the fundamental rights of the persons concerned, as the Advocate General observed in point 81 of his Opinion. Any interpretation whereby the provision relating to the period for voluntary departure contained in a return decision is not an integral part of the obligation to return imposed or set out by that decision would be tantamount to compromising that balance and would thus run counter to the objective of Directive 2008/115.

79 Furthermore, it should be noted that the interpretation given in paragraph 75 of the present judgment is not called into question by the fact that Article 7(1) of that directive gives Member States the possibility to provide, in their national legislation, that a period for voluntary departure is to be granted only following an application by the third-country national concerned.

80 In such a case, that provision would state that no period for voluntary departure was granted because the procedural condition to which that period was subject had not been satisfied. However, the application of that provision by the competent authorities would also be subject to judicial review, in accordance with Article 13 of Directive 2008/115, read in the light of recitals 6 and 10 of that directive and Article 47 of the Charter. It follows that, as the Advocate General

observed in point 83 of his Opinion, any unlawfulness vitiating that provision would have an impact on the obligation to return imposed or set out in the return decision concerned and, consequently, on the return decision in its entirety.

81 Lastly, it should be pointed out that the annulment of the return decision in its entirety does not affect the objective of the effectiveness of the removal policy pursued by Directive 2008/115, since that annulment does not necessarily mean that the procedure initiated under that directive must be resumed from the beginning (see, to that effect, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 75) and does not prevent, where appropriate, the competent authority from adopting a new return decision containing the measures necessary to remedy the irregularity found (see, by analogy, judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 50 and the case-law cited).

82 In the light of the foregoing considerations, the answer to the third question in Case C-636/23 and the second question in Case C-637/23 is that Article 3(4) and Article 7 of Directive 2008/115 must be interpreted as meaning that the provision relating to the period for voluntary departure contained in a return decision is an integral part of the obligation to return imposed or set out by that decision, with the result that, if any unlawfulness is found as regards that provision relating to the period for voluntary departure, that decision must be annulled in its entirety.

Costs

83 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 (Fifth Chamber) hereby rules:

1. **Article 7(4), Article 8(1) and (2) and Article 11(1) 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 they preclude the decision not to grant a period for voluntary departure from being regarded merely as an enforcement measure which does not alter the legal position of the third-country national concerned.

2. **Article 13 of Directive 2008/115, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as meaning that a decision not to grant a period for voluntary departure must be open to challenge in legal proceedings.

3. **Article 3(6) and Article 11(1) of Directive 2008/115**

   must be interpreted as not precluding the competent national authority from imposing an entry ban, even after a considerable period of time, on the basis of a return decision that does not grant a period for voluntary departure.

4. **Article 3(4) and Article 7 of Directive 2008/115**

must be interpreted as meaning that the provision relating to the period for voluntary departure contained in a return decision is an integral part of the obligation to return imposed or set out by that decision, with the result that, if any unlawfulness is found as regards that provision relating to the period for voluntary departure, that decision must be annulled in its entirety.

[Signatures]