Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 28 May 2020[1]

Case C-233/19

B.
v
Centre public d'action sociale de Liège (CPAS)

(Request for a preliminary ruling from the Cour du travail de Liège (Higher Labour Court, Liège, Belgium))

(Reference for a preliminary ruling — Immigration policy — Directive 2008/115/EC — Article 14(1)(b) — Return of illegally staying third-country nationals — Third-country national suffering from a serious illness — Refusal to grant leave to reside on medical grounds — Order to leave the national territory — Grant of social assistance)

1. In this request for a preliminary ruling from the Cour du travail de Liège (Higher Labour Court, Liège, Belgium), the Court is asked to rule on the conditions attached to the suspensive effect of an appeal against a decision ordering a third-country national suffering from a serious illness to leave the territory of a Member State, in the light of Directive 2008/115/EC.[2] This case is unusual in that the referring court has no jurisdiction under national procedural law to rule on the lawfulness of that decision. I propose that the Court answer the question referred by limiting itself to the aspects of the case which fall within the scope of the jurisdiction of the referring court.

Legal context

Directive 2008/115

2. Article 3(4) and (5) of Directive 2008/115 provides:

'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'.

1 Original language: French.

2 Directive 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).

3. Article 5 of that directive states:

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

…

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

and respect the principle of *non-refoulement*.’

4. Article 8(3) of that directive provides:

‘Member States may adopt a separate administrative or judicial decision or act ordering the removal.’

5. Article 12(1) of Directive 2008/115 provides:

‘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.

…’

6. Article 13(1) and (2) of that directive states:

‘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.’

7. Article 14(1) of Directive 2008/115 provides as follows:

‘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 nations 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

8. Article 9b of the loi sur l'accès au territoire, le séjour, l'établisssment et l'éloignement des étrangers (Law on the entry, residence, establishment and removal of foreign nationals) of 15 December 1980 (*Moniteur belge* of 31 December 1980, p. 14584), in the version applicable to the facts in the main proceedings, provides:

'A foreign national residing in Belgium who can prove his identity in accordance with paragraph 2 and who suffers from an illness occasioning a genuine risk to his life or physical integrity or a genuine risk of inhuman or degrading treatment where there is no appropriate treatment in his country of origin or in the country in which he resides may apply to the Minister or his representative for leave to reside in the Kingdom of Belgium.

…'

9. Article 57(2) of the loi organique des centres publics d'action sociale (Basic Law on public social welfare centres) of 8 July 1976 (*Moniteur belge* of 5 August 1976, p. 9876), provides:

'By derogation from the other provisions of this law, the functions of the public social welfare centre shall be limited to:

1. the grant of urgent medical assistance, in respect of a foreign national residing illegally in the Kingdom;

…

A foreign national who has declared himself a refugee and has asked to be recognised as such will be deemed to be staying in Belgium illegally where his application for asylum has been rejected and an order to leave the territory has been served on him.

With the exception of urgent medical assistance, social assistance granted to a foreign national who was in receipt thereof at the time when an order to leave the territory was served on him will be stopped on the day when that foreign national actually leaves Belgium and, at the latest, on the day when the period prescribed in the order to leave the territory expires.

…'

Facts, procedure and the question referred

10. On 4 September 2015, B., a third-country national, submitted an application for asylum in Belgium. That application was rejected by the competent authority. On 27 April 2016, the conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) dismissed the appeal brought by B. against that decision.

11. On 26 September 2016, B. submitted an application for leave to reside [3] on medical grounds, the reasons given relating to a number of serious illnesses.

12. That application was declared admissible on 22 December 2016 and B. accordingly became eligible for social assistance from the Centre public d'action sociale de Liège (Public Centre for Social Welfare, Liège) ('the CPAS').

3 Under Article 9b of the Law on the entry, residence, establishment and removal of foreign nationals of 15 December 1980.

13. By decision of 28 September 2017, of which B. was given notification on 23 October 2017, the application for leave to reside submitted by B. was rejected and the competent authority issued her with an order to leave Belgian territory. [4]

14. On 28 November 2017, B. brought an action for annulment and suspension of those decisions before the conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium).

15. By two decisions of 28 November 2017, the CPAS withdrew B.'s entitlement to social assistance with effect from 23 October 2017. On the other hand, she was granted emergency medical assistance on 1 November 2017.

16. On 28 December 2017, B. brought an action against the decisions of the CPAS withdrawing social assistance before the tribunal du travail de Liège (Labour Court, Liège, Belgium) and requested that her entitlement to social assistance be reinstated with effect from 23 October 2017.

17. By judgment of 15 March 2018, the tribunal du travail de Liège (Labour Court, Liège) dismissed that action, in so far as it concerned social assistance.

18. On 16 April 2018, B. brought an appeal against that judgment before the referring court.

19. The referring court notes that, in the light of the date of notification of the order to leave Belgian territory and following a new decision adopted by the CPAS, the period covered by the appeal is from 23 October 2017 to 31 January 2018 and that, during that period, B. did not have a residence permit. [5]

20. After ruling out the possibility of granting B. social assistance because it might be impossible for her to return on medical grounds, under Belgian social assistance legislation, the referring court states that the outcome of the main proceedings depends on the lessons to be drawn from the solution adopted by the Court in its judgment in *Abdida*. [6]

21. The referring court considers that it should uphold the applicant's appeal if the action for annulment and suspension that she brought before the conseil du contentieux des étrangers (Council for asylum and immigration proceedings) should be endowed with suspensive effect. The referring court notes that, in accordance with Belgian law, that action does not have suspensive effect but that it might be necessary, pursuant to the *Abdida* judgment, [7] to endow it with suspensive effect. Nevertheless, the referring court takes the view that it is difficult to determine under what conditions a social court must decide that such an action has suspensive effect, a question in respect of which the Belgian courts have adopted divergent decisions and which could be answered in at least three different ways, each with its own advantages and disadvantages.

4 Within 30 days following notification.

5 The referring court also notes that the fresh application for social assistance submitted by B. on 1 February 2018 was refused by decision of the CPAS of 20 February 2018 and that that refusal was the subject of a new action, with the result that the period at issue in the dispute is limited to that running from 23 October 2017 to 31 January 2018.

6 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

7 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

22. It is in those circumstances that the cour du travail de Liège (Higher Labour Court, Liège) decided, by decision of 11 March 2019, received at the Court on 18 March 2019, to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Articles 5 and 13 of Directive [2008/115], read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union [('the Charter')], and Article 14(1)(b) of that directive, read in the light of the [*Abdida* judgment],[8] be interpreted as endowing with suspensive effect an appeal brought against a decision ordering a third-country national suffering from a serious illness to leave the territory of a Member State, in the case where the appellant claims that the enforcement of that decision is liable to expose him to a serious risk of grave and irreversible deterioration in his state of health:

– without it being necessary to examine the appeal, its mere introduction being sufficient to suspend the enforcement of the decision ordering the third-country national to leave the territory of that Member State; or

– following a marginal review as to whether there is an arguable complaint, lack of grounds for inadmissibility or whether the action brought before the Conseil du contentieux des étrangers is manifestly unfounded; or

– following a full and comprehensive judicial review carried out by the labour courts in order to determine whether the enforcement of that decision is indeed liable to expose the appellant to a serious risk of grave and irreversible deterioration in his state of health?'

23. Written observations were submitted by the parties in the main proceedings, the Belgian, Netherlands and Czech Governments and the European Commission. At the hearing on 22 January 2020, the interested parties, with the exception of the Czech Government, made oral submissions.

Analysis

24. The present case is set against the backdrop of the *Abdida* judgment[9] and its interpretation by the Belgian courts at national level. In the first place, I will suggest that the Court limits the scope of the question referred, before going on to analyse that question in the light of Directive 2008/115 and, lastly, I will set out, for the sake of completeness, a few brief observations on the conditions under which an appeal lodged against a return decision may be endowed with suspensive effect.

Scope of the question referred

25. The question, as raised, must, in my opinion, be reformulated so as to provide the referring court with a useful answer enabling it to resolve the dispute before it.

26. I will briefly recall the facts and the central issues of the present case.

27. B., a third-country national, had her application for leave to reside rejected and, at the same time, was issued with an order to leave Belgian territory. B. brought an action for annulment and suspension of those decisions before the competent *administrative* court. At the same time, the Public Social Welfare Centre withdrew B.'s entitlement to social assistance, whilst at the same time granting her emergency medical assistance. B. brought an action against those decisions before the competent *social* court.

8 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

9 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

28. It is precisely the *social* court of second instance which has asked the Court for a preliminary ruling. Asked to determine whether B. is entitled to social assistance, that court considers that it needs guidance on the conditions under which the appeal brought against the decision ordering B. to leave Belgian territory may be endowed with suspensive effect.

29. With the best of intentions and the best will in the world, I do not see how the Court's answer to the question referred would provide the referring court with guidance in the light of the specific problem before it. Since the referring court has no jurisdiction to rule on the lawfulness of the return decision or on the suspensive effect that proceedings brought against such a decision would have, I believe that it is unnecessary to consider such suspensive effect. Only the issue of whether B. is entitled to the social assistance in question is relevant for the purposes of the referring court.

30. In that regard, it is not therefore for the Court to carry out an assessment of Belgian rules of procedure relating to appeals against return decisions and it is certainly not within the jurisdiction of the Court to settle the debate on how to interpret national law which appears to be contentious at national level.[10]

31. It would obviously be different if the view were taken that the organisation of the judicial system of the Kingdom of Belgium *in itself*, with its division between the administrative courts, with jurisdiction to adjudicate on the lawfulness of residence, and social courts, with jurisdiction in social matters, is contrary to Directive 2008/115. I do not see anything to suggest that this is the case. On the contrary, that division seems to be perfectly in harmony with the standard organisation of the judicial system at national level.

32. Lastly, I do not believe that that conclusion is contrary to the findings in *Abdida*.[11] It should be recalled that, in that case, which also concerned Belgian law and the factual situation of which is largely comparable to that of the present case, the Court answered questions referred by a social court which concerned both the suspensive effect of an administrative appeal and issues of a social nature. Nevertheless, unlike the case in the main proceedings, it can be argued that, in the case giving rise to the judgment in *Abdida*,[12] the Court's answer concerning suspensive effect may have helped to resolve the situation of the person concerned. However, that does not seem to me to be the case here. In the present case, it is already established, as a result of the judgment in *Abdida*,[13] that, in order to oppose the decision ordering her to leave Belgian territory, B.'s appeal must have suspensive effect.

33. I therefore propose to understand the question referred by the national court in the following sense: do the provisions of Directive 2008/115, in particular Articles 5, 13 and 14(1)(b), preclude the legislation of a Member State under which the social assistance received by a third-country national who is the subject of a return decision against which an appeal has been lodged and who is suffering from a serious illness is limited to urgent medical assistance?

34. In other words, the question therefore arises as to what social rights may or may not be granted to B. under Belgian law. In order to answer that question, it is necessary to determine the social rights to which B. is entitled under Directive 2008/115.

10 See, to that effect, judgments of 17 December 2015, *Tall* (C-239/14, EU:C:2015:824, paragraph 35), and of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465, paragraph 34). See also my Opinion in *JZ (Custodial sentence in the event of an entry ban)* (C-806/18, EU:C:2020:307, point 36).

11 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

12 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

13 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

The requirements arising from Directive 2008/115

35. The purpose of Directive 2008/115, as stated in Article 1 thereof, is to set out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights and international law. It is apparent from recital 4 that the directive seeks to establish clear, transparent and fair rules to provide for an effective return policy as a necessary element of a well-managed migration policy. Directive 2008/115 therefore establishes a complete system in order to make sure that an illegally staying third-country national leaves the territory of the European Union.[14] Where (i) a third-country national falls within the scope of Directive 2008/115, that is to say he or she is staying illegally in the territory of a Member State,[15] (ii) that Member State has not decided not to apply the directive on the grounds exhaustively listed therein[16] and (iii) he or she does not enjoy the right of free movement,[17] as defined in Article 2(5) of Regulation (EU) 2016/399,[18] then the third-country national must be returned. That applies, without prejudice, of course, to the exceptions set out in Article 6(2) to (5) of Directive 2008/115.

36. The return procedure consists of several stages, set out in Chapter II of Directive 2008/115. In the first place, a Member State issues a return decision to any third-country national staying illegally on their territory.[19] The return decision normally provides for an appropriate period for the voluntary departure of the person concerned,[20] although there are exceptions to this rule,[21] in particular with regard to the risk of the party concerned absconding. Then, if no period for voluntary departure has been granted in accordance with Directive 2008/115 or if the obligation to return has not been complied with within the period for voluntary departure granted, Member States may take all necessary measures to enforce the return decision,[22] namely the physical transportation out of the Member State.[23] That enforcement of the obligation to return is called 'removal'.

37. It should be noted that, under the terms of Directive 2008/115,[24] Member States *may* adopt (and are not therefore obliged to do so) a separate administrative or judicial decision or act ordering removal.

38. Under the return procedure, Member States are, of course, required to guarantee the fundamental rights of the third-country national in question.[25] This follows, in general, from Article 1 of Directive 2008/115[26] and, specifically, from a wide range of provisions set out in that directive.

14 See, also, my Opinion in *JZ (Custodial sentence in the event of an entry ban)* (C-806/18, EU:C:2020:307, point 26).

15 See Article 2(1) of Directive 2008/115.

16 Article 2(2) of Directive 2008/115.

17 Article 2(3) of Directive 2008/115.

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

19 See Article 6(1) of Directive 2008/115. That provision states that this applies without prejudice to the exceptions referred to in paragraphs 2 to 5.

20 See Article 7(1) of Directive 2008/115.

21 See Article 7(4) of Directive 2008/115.

22 See Article 8(1) of Directive 2008/115.

23 See Article 3(5) of Directive 2008/115.

24 See Article 8(3) of Directive 2008/115.

25 Respect for fundamental rights has been described, rightly in my opinion, by academic legal writing as a 'cardinal principle for the interpretation of the directive', see Lutz, F., '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', in Hailbronner, K., and Thym, D. (ed.), EU immigration and asylum law — a commentary, 2nd edition, 2016, C.H. Beck, Hart, Nomos, Munich, Oxford, Baden-Baden, Article 1(19), p. 667 and 668.

26 Under which that directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of EU law as well as international law, including refugee protection and human rights obligations.

39. In addition, as the Court has previously stated, the provisions of Directive 2008/115 are to be interpreted, as stated in recital 2 thereof, with full respect for the fundamental rights and dignity of the persons concerned. [27]

40. Therefore, while the fundamental rights of the persons concerned must be respected by the Member States, this must still be so in the case of the return procedure. The fundamental rights of the persons concerned may be material, for example taking account of their state of health, [28] or procedural, such as the form of return decisions [29] or even the availability of a legal remedy. [30]

41. So far as concerns the state of health [31] of the person concerned, it is clear from the judgment in *Abdida* [32] that 'Article 14(1)(b) of Directive 2008/115 must be interpreted as precluding national legislation which does not make provision, in so far as possible, for the basic needs of a third-country national suffering from a serious illness to be met, in order to ensure that such a person may in fact avail himself of emergency health care and essential treatment for illness during the period in which the Member State concerned is required to postpone removal of the third country national following the lodging of an appeal against a decision ordering that person's return'. [33] Furthermore, the Court also stated in that judgment that the Member State concerned is required to make such provision 'where [the person concerned] lacks the means to make such provision for himself'. [34]

42. I infer from that passage taken from the judgment in *Abdida* [35] that the basic assistance in question is justified *only* by the beneficiary's needs.

43. This is a matter for factual examination, which must be carried out by the referring court in its capacity as a social court.

44. As to the remainder, as stated in recital 12 of Directive 2008/115, the basic needs of third-country nationals are defined according to national legislation. [36]

45. It should be noted that it is not at all clear from Directive 2008/115 that the third-country national concerned must enjoy the same level of social assistance as that granted to other persons, such as legally resident third-country nationals or EU citizens. It is for each Member State to determine the level of assistance, as long as the person concerned can in fact avail himself of emergency health care and essential treatment for illness.

46. Consequently, as the Commission rightly points out, from an EU law point of view, whether or not Belgian law considers the stay of B. to be lawful has no bearing on B.'s entitlement, under Directive 2008/115, to financial assistance, in addition to emergency medical assistance to cover her basic needs.

47. In the same vein, I note that, under that directive, it is not necessary for a stay to be classified as a 'legal stay' for the purpose of determining whether the refusal to grant social assistance is lawful.

27 See judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 42).

28 See Article 5(c) of Directive 2008/115.

29 See Article 12 of Directive 2008/115.

30 See Article 13 of Directive 2008/115.

31 A person suffering from an illness is not, as such, a 'vulnerable person' within the meaning of Article 3(9) of Directive 2008/115, under which 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

32 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

33 See judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 62 and operative part).

34 See judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 59).

35 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

36 See, also, judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 54).

48. In the light of the foregoing considerations, it must be concluded that, where emergency health care and essential treatment for illness, which covers basic needs, are provided to an illegally staying third-country national where the third-country national in question lacks the means to make such provision for himself, the requirements of Directive 2008/115 are met.

B.'s situation

49. In the light of the above foregoing considerations, it is possible to draw the following conclusions in respect of the present case.

50. In the first place, the situation of the applicant in the main proceedings falls within the scope of Directive 2008/115: a return decision was adopted in respect of the applicant and she lodged an appeal against that decision. In that regard, if it transpires that she lacks the means to provide for herself, the Kingdom of Belgium is required, under Article 14(2)(b) of Directive 2008/115, to provide her with social assistance covering her basic needs.

51. In the second place, that conclusion is independent of the conditions attached to the suspensive effect of proceedings before administrative courts. Directive 2008/115 does not require the referring court to examine whether the person concerned is staying lawfully.

52. I therefore suggest that the answer to the question referred for a preliminary ruling is that the provisions of Directive 2008/115, in particular Articles 5, 13 and 14(1)(b), preclude the legislation of a Member State under which the social assistance received by a third-country national who is the subject of a return decision against which an appeal has been lodged and who is suffering from a serious illness is limited to urgent medical assistance, if (i) that assistance does not cover his basic needs by guaranteeing that he may in fact avail himself of emergency health care and essential treatment for illness and (ii) the national concerned lacks the means to provide for himself.

The suspensive effect

53. Lastly, for the sake of completeness, I would like to make the following observations with regard to suspensive effect in connection with administrative proceedings.

54. I would point out that these considerations relate only to a situation such as that at issue in the main proceedings, in which a person suffering from a serious illness would be exposed to a serious risk of grave and irreparable deterioration in his state of health if the return decision adopted in respect of that person were enforced.

55. The return decision provided for in Article 6 of Directive 2008/115 forms the regulatory cornerstone of that directive. In addition, the obligations incumbent on Member States under Article 6 et seq. of Directive 2008/115 are permanent, continuous and apply without interruption, in the sense that they arise automatically as soon as the conditions laid down in these articles are fulfilled.[37] As stated above, the return procedure itself begins following the adoption of the return decision.

56. I take the view that this means that a system of administrative remedies under which only an appeal against a removal order, not an appeal against a return decision, is endowed with suspensive effect, is not in line with the judgment in *Abdida*.[38] In that regard, I would point out that, in that judgment, the Court held that 'Articles 5 and 13 of Directive 2008/115, taken in conjunction with

37 See my Opinion in *JZ (Custodial sentence in the event of an entry ban)* (C-806/18, EU:C:2020:307, point 26).
38 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

Articles 19(2) and 47 of the Charter, must be interpreted as precluding national legislation which does not make provision for a remedy with suspensive effect in respect of a *return decision* whose *enforcement* may expose the third country national concerned to a serious risk of grave and irreversible deterioration in his state of health'.[39] Contrary to what the Belgian Government stated in its observations, it cannot in any circumstances be inferred from the clear wording of that passage taken from the judgment in *Abdida*[40] that the Court was referring only to a removal order.

57. With regard to the conditions attached to suspensive effect, I would point out that the Court held, in its judgment in *Gnandi*,[41] that 'an appeal brought against a return decision within the meaning of Article 6 of Directive 2008/115 must, in order to ensure, as regards the third-country national concerned, compliance with the requirements arising from the principle of *non-refoulement* and Article 47 of the Charter, enable *automatic suspensory effect*, since that decision may expose the person concerned to a real risk of being subjected to treatment contrary to Article 18 of the Charter, read in conjunction with Article 33 of the …Convention [relating to the Status of Refugees, which was signed in Geneva on 28 July 1951,[42] as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967], or contrary to Article 19(2) of the Charter'.[43]

58. A situation such as that at issue in the main proceedings must be treated in the same way.

59. In any event, a Member State must be able to provide, in order to prevent abuse, that the substance of the arguments put forward in the course of an administrative appeal are assessed prima facie by a judge carrying out a summary examination. Nevertheless, such an assessment should be carried out *ex post* so as not to preclude the action from having suspensive effect.

Conclusion

60. In the light of the foregoing considerations, I propose that the Court should answer the question referred for a preliminary ruling by the cour du travail de Liège (Higher Labour Court, Liège, Belgium) as follows:

The provisions 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, in particular Articles 5, 13 and 14(1)(b), preclude the legislation of a Member State under which the social assistance received by a third-country national who is the subject of a return decision against which an appeal has been lodged and who is suffering from a serious illness is limited to urgent medical assistance, if (i) that assistance does not cover his basic needs by guaranteeing that he may in fact avail himself of emergency health care and essential treatment for illness and (ii) the national in question lacks the means to provide for himself.

39 See judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 53 and operative part). The emphasis is mine.

40 Judgment of 18 December 2014 (C-562/13, EU:C:2014:2453).

41 Judgment of 19 June 2018 (C-181/16, EU:C:2018:465).

42 *United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954).

43 See judgment of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465, paragraph 56). The emphasis is mine.