

European Union, CJEU, Arslan, Judgement of 30 May 2013

Deciding bodies and decisions

CJEU, Case C-534/11, Arslan, ECLI:EU:C:2013:343

Area of law

EU asylum law

Subject matter

Czech Supreme Administrative Court referral - Detention of a third country national asylum seeker – Applicability of Return Directive 2008/115/EC to asylum cases

Summary Facts Of The Case

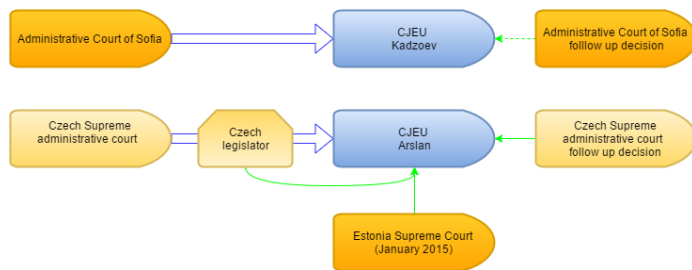
Mr Arslan is a Turkish national arrested and detained in the Czech Republic with a view to removal. He lodged an asylum application while in detention under the domestic legislation implementing the Return Directive. His detention was extended to 60 days due to a presumption he will obstruct the enforcement of removal in light of his past conduct: irregular entry, evading border controls, irregular stay in Austria and Czech Republic, in spite of having been already returned by Greece to Turkey he returned to the EU.

Although he lodged an asylum application, Mr Arslan's detention was extended to a further 120 days on grounds based within the removal procedure. He challenged this extension as unlawful, since he argued there is no reasonable prospect of enforcing his removal due to the fact that he will take advantage of all available remedies. In support of his claim he relied on Article 15(1) and (4) RD and ECtHR jurisprudence.

Relation to the scope of the Charter

Although the CJEU does not explicitly mention the EU Charter, under Article 51(1) therein the EU Charter is applicable to the case at hand, as it involves a national act implementing a EU secondary law provision at national level. Hence, the national court would have to consider in the follow-up decision the limitation of applicant's right to liberty and security as enshrined under Article 6 of the EU Charter.

Diagram



Vertical external judicial cooperation by way of preliminary ruling
Spill-over effect in other judicial systems

Impact on Jurisprudence

The CJEU ruling in *Arslan* has also had an important impact on national case law beyond the country of origin of the referral.

In this sense, the Court of Rome adopted a noteworthy judgment giving effect to the principles set out in the *Arslan* case (Case-number: 5107/2014). In this case, the TCN, who came from Nigeria, was rescued at sea when trying to reach the Italian territory without a travel document or visa. He was immediately issued a return decision based on Article 10(2)(b) of the Consolidated Text on Immigration and was subsequently detained in an Identification and Expulsion Centre, even if he asked for international protection at the very moment of the entry. Although due to his asylum application, he was not supposed to be detained in an Identification and Expulsion Centre, but in an Accommodation Centre for asylum seekers (so-called CARA, under Art. 20 (2)(d), d.lgs. n° 25/2008 of transposition of Directive 2005/85/EC), the Justice of the Peace validated his detention.

However, as a result of his asylum application, the Civil Court became competent for deciding on the extension of his detention, which led to a more rigorous examination of the lawfulness of continuing detention. The Civil Court thus decided—also by referring to *Arslan*—that the detention could not be prolonged. The judge based the decision on two main arguments: first, the application for international protection had not been made after the detention order but at the moment of entry and therefore, it could not be considered as made only to delay the enforcement of the return decision; and second, the request of renewal submitted by the Questore (the Police Commissioner) lacked any of the criteria set out by the CJEU in *Arslan*.

Impact on Legislation / Policy

30 days before the CJEU delivered its judgment in *Arslan*, the Czech legislator seems to have found a solution for *Arslan* type of cases, by providing in Law No. 103/2013, that if a TCN - who is detained under Aliens Act - lodges an application for international protection, the Police must issue a new detention order within 5 days if it intends to prolong the detention measure. Once this new 'asylum detention' order is issued, the initial 'pre-return detention' order becomes automatically void.

Sources - CJEU Case Law

- CJEU, Kadzoev, C-357/09 PPU [2009] ECR I-11189, ECLI:EU:C:2009:741
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Comments

CJEU judgment in Arslan case establishes several principles Member States have to comply with in cases of asylum seekers detention:

- Excluding detention for the sole reason of having applied for asylum;
 - asylum application made while the applicant is subject to removal procedure does not amount to a presumption that he is jeopardising the return procedure. There needs to be an individual assessment of all the relevant circumstances that leads to the conclusion that ‘the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.’(para 63)
 - An asylum application made while the applicant is subject to removal procedure does not amount to a presumption that he is jeopardising the return procedure. There needs to be an individual assessment of all the relevant circumstances that leads to the conclusion that ‘the application was made solely to delay or jeopardise the enforcement of the return decision and it is objectively necessary to maintain detention so as to prevent the person concerned from permanently evading his return.’ (para 63)
 - Respect of human rights of migrants;
 - As a final conclusion, the CJEU confirmed that the Return Directive does not preclude detention of a TCN who has applied for international protection under the Qualification Directive from ‘being kept in detention on the basis of a provision of national law, where it appears, following the aforementioned individual assessment that he made the application solely to delay or jeopardise the enforcement of the return decision and it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.’ (para. 63)
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