

European Union, CJEU, Boudjlida, Judgment of 11 December 2014

Deciding bodies and decisions

The Court of Justice of the EU, Fifth Chamber, Case C-249/13, ECLI:EU:C:2014:2431

Area of law

EU asylum law

Subject matter

Interpretation of Article 41 of EU Charter (right to be heard) in the context of a return decision to be issued by competent authorities against an illegally staying third-country national

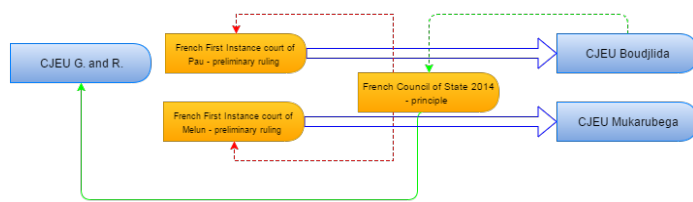
Summary Facts Of The Case

After having stayed legally in France for the duration of his studies, at the end of 2012, Mr Khaled Boudjlida became an illegally staying person, since he had not applied for the renewal of his last residence permit. In early 2013, after he made an application for registration as a self-employed businessman, Mr Boudjlida was invited by the police to discuss that application, the circumstances of his arrival in France, the conditions of his residence as a student, details of his family and the possibility of his departure from France. On the same date, the Prefect of Pyrénées-Atlantiques issued a decision imposing on Mr Boudjlida the obligation to leave France, granting him a period of 30 days for his voluntary return to Algeria. Mr Boudjlida challenged that decision before the French courts. Mr Boudjlida claims that he did not, before the adoption of the return decision, have the right to be heard effectively. He claims that he was not in a position to analyse all the information relied on against him, since the French authorities did not disclose that information to him beforehand and did not allow him an adequate period for reflection before the hearing. Further, the length of his interview by the police (30 minutes) was much too short, the more so when he did not have the benefit of legal assistance.

Relation to the scope of the Charter

The case falls within the material scope of the Charter for the purpose of Article 51(1) therein, as it dealt with a EU secondary act implementation at the national level, namely the Return Directive (Directive 2008/115/EC). More specifically, the case engaged with the interpretation of Article 41 EU Charter (right to be heard) in the context of a return decision to be issued by competent authorities against an illegally staying third-country national.

Diagram



Vertical (French Administrative Tribunal - CJEU)

Sources - EU and national law

- Article 41 - Right to good administration

Sources - CJEU Case Law

- CJEU, Case C-166/11, *Mukarubega*, EU:C:2014:2336

Comments

The CJEU arrives to the following conclusions in *Boudjlida* case:

- EU law does not specify whether, and under what conditions, observance of the right to be heard (which is inherent in the general principle of respect for the rights of the defence) is to be ensured, nor does it specify the consequences of an infringement of that right;
- Once the competent national authorities have determined that a third-country national is staying illegally in the national territory, they have to rely on provisions in national law explicitly providing for an obligation to leave the national territory and ensure that the person concerned is properly heard within the procedure relating to his/her residence application or, as the case may be, on the illegality of his/her stay;
- The purpose of the right to be heard before the adoption of a return decision is to enable the person concerned to express his point of view on the legality of his stay and on whether any of the exceptions to the general rule (issuance of a return decision) are applicable. Similarly, under EU law, national authorities must take due account of the best interests of the child, family life and the state of health of the third-country national concerned and respect the principle of *non-refoulement*.
- Last, it implies that the competent national authorities are under an obligation to enable the person concerned to express his point of view on the detailed arrangements for his return (such as the period allowed for departure and whether return is to be voluntary or coerced), with the possibility that the period for voluntary departure may be extended according to the specific circumstances of the individual case (such as the length of stay, the existence of children attending school and other family and social links).
- Where the national authorities are contemplating the simultaneous adoption of a decision determining a stay to be illegal and a return decision, those authorities need not necessarily hear the person concerned specifically on the return decision, since that person had the opportunity effectively to present his/her point of view on the question of whether the stay was illegal and whether there were grounds which could, under national law, entitle those

authorities to refrain from adopting a return decision;

- A competent national authority is not required to warn a third-country national that it is contemplating adopting a return decision with respect to him, or to disclose to him the information which it intends to rely on to justify that decision, or to allow him a period of reflection before seeking his observations. EU law does not establish any such detailed arrangements for an adversarial procedure.
 - It is therefore sufficient if the person concerned has the opportunity effectively to submit his point of view on the subject of the illegality of his stay and reasons which might justify the non-adoption of a return decision. An exception must however be admitted where a third-country national could not reasonably suspect what evidence might be relied on against him or would objectively only be able to respond to it after certain checks or steps were taken with a view, in particular, to obtaining supporting documents. Further, the Court states that return decisions may always be challenged by legal action, so that the protection and defence of the person concerned against a decision which adversely affects him is ensured.
-