

Estonia, Riigikohus Supreme Court, Case no 3-3-1-14-16, Judgement of 3 March 2016

Deciding bodies and decisions

Supreme Court of Estonia (Riigikohus), Case no 3-3-1-14-16 3 March 2016

Area of law

Asylum and Immigration

Subject matter

Asylum – right to liberty and security – right to an effective remedy

The case concerned issues of detaining an asylum seeker. In Estonia the length of the detention of asylum seekers is problematic. In this case the Supreme Court had to give his opinion whether the period of detaining an applicant who lodged an appeal in this case was been detained longer time as it is permitted and proportionate.

Summary Facts Of The Case

The applicant is a national of the Republic of Iraq who had a residence permit to live with his wife in Estonia but this permit was not extended. On the 4 August 2014 he was detained by Police and Border Guard Board for 48 hours and he was filed a precept to leave the country. After that he was placed in the detention centre where he applied for an asylum on 25 August 2014 and his detention was registered as a detention under the Act on Granting International Protection to Aliens. Court repeatedly extended the period of his detention. On 14 May 2015 Police and Border Guard Board rejected his application for an asylum and for a residence permit. In the case 3-3-1-14-16 Police and Border Guard lodged on 7 December 2015 a new application to court for extending the period of the detention of the person. According to the application the person does not have a valid travel document and he has done everything to preclude his removal from Estonia. There are no alternative measures which could secure the availability of the person until the end of the removal proceedings. Administrative Court settled the Police and Border Guard Board request and Circuit Court rejected the applicants appeal. In the appeal to the Supreme Court the person claims that he has been in the detention centre 18 months which is the upper limit of detention according to Obligation to leave and Prohibition on Entry Act.

The Supreme Court indicated that the appellant has been kept in the detention centre on two different acts in different purposes – on the ground of Art. 23 and Art. 25 of the Obligation to Leave and Prohibition on Entry Act from 4 August 2014 until 27 August 2014 for the purpose of

expulsion; and on the ground of Art 36¹(2)(5) of the Act of Granting International Protection to Aliens from 27 August 2014 for the purpose of securing the accessibility of a person for the expulsion proceedings in the case of the rejection of his asylum application. These periods cannot be summed up. The period when a person was detained on the grounds of the Act on Granting International Protection to Aliens is not considered as the detention for the purpose of expulsion. The CJEU stated in its case C-357/09 PPU of 30 November 2009 that Art. 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately even on the ground that his conduct is aggressive. Taking into consideration this ruling and the date fixed in the Art. 15(6) of the Directive 2008/115/EC and the Articles 15(6) and 25(2) of the Obligation to Leave and Prohibition on Entry Act the Supreme Court stated that the detention on the grounds of Art. 36¹ of the Act on Granting International Protection to Aliens shall not last longer than 18 months.

The Court concluded that the detention of an asylum seeker which lasts over 18 months is in any ways disproportionate.

Relation to the scope of the Charter

- Art. 6 - Right to liberty and security
- Art. 47 - Right to an effective remedy

Sources - EU and national law

EU Law:

- Directive 2008/115/EC Art. 15(4),(6)

National Law:

- Act on Granting International Protection to Aliens (Välismaalasele rahvusvahelise kaitse andmise seadus) of 2005, Art. 36¹
- Obligation to Leave and Prohibition on Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus) of 1998, Art. 25(2)

Sources - CJEU Case Law

- CJEU Case C-357/09, PPU, 30 November 2009
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