

## Estonia, Supreme Court, case no 3-3-1-32-15, Judgement of 15 September 2015

### Deciding bodies and decisions

- Supreme Court of Estonia (Riigikohus), case no 3-3-1-32-15, of 15 September 2015

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### Area of law

Asylum and immigration

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### Subject matter

Immigration policy - right to liberty and security

The case concerned issues of detaining a citizen of Russian Federation who contested the precept to leave Estonia. The Supreme Court had to decide whether it was allowed to detain a person when the execution of the precept of his leave he was issued was suspended.

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### Summary Facts Of The Case

The complainant is a citizen of Russian Federation who came to live in Estonia when he was 4 years old. He has served several prison sentences in Estonia. The Police and Border Guard annulled his long-time residence permit and on 18 December 2014 issued him a precept to leave the country. He contested the precept to leave Estonia. On 18 December 2014 the Police and Border Guard applied for the permission to place the complainant to the detention centre. The complainant contested the ruling of the Administrative Court and the Circuit Court settled his appeal. According to the ruling of the Circuit Court there was a need to release the complainant because the court had suspended the execution of his precept to leave. Police and Border Guard Board lodged an appeal to the Supreme Court claiming that according to the Directive 2008/115/EC Art. 15(1) the detention of a third-country national who is the subject of return procedures is allowed in order to prepare the return and/or carry out the removal process. The detention of the complainant is necessary because there is a risk of absconding and it is required because of a protection of public order.

The Court explained the effect of the suspensive measure applied by the court in the case where the complainant contested the precept to leave. Court did not suspend in that case the validity of the precept but only the execution. The compulsory execution (removal) was also only suspended and not terminated. It is a temporary measure. The detention is not an inevitable part of the execution of the removal but a measure with the purpose to assure the removal.

The court did not suspend the execution of the precept on the purpose to preclude the placement on the complainant to the detention centre. It suspended the execution of the precept in the aim of precluding the removal of the complainant to Russia during the court proceedings. The suspension of the contested precept to leave shall not make it terminally impossible to execute the administrative act.

The Court referred that also the CJEU does not preclude the detention of a person during the time when the precept to leave is contested and the removal is suspended. According to the CJEU Case C-357/09 PPU, Kadzoev 30 November 2009 the Articles 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

The Court concluded that the suspension of the precept to leave did not forbid the detention of the person.

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## Relation to the scope of the Charter

- Art. 6 EU Charter - Right to liberty and security

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## Impact on Jurisprudence

The Supreme Court indicates that the detention of a person is allowed in order to protect the public order and in the case of a risk of absconding, even when the execution of the precept to leave issued to a person is suspended by court.

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## Sources - EU and national law

### National law

- Obligation to leave and Prohibition on Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus) of 1998, Art. 4, Art. 5, Art. 10(1), Art. 15 (2)(1), Art. 15(2)(2), Art. 15(2)(3), Art. 23(1),(1<sup>1</sup>)

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## Sources - CJEU Case Law

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