

Request for a preliminary ruling from the Eparkhiako Dikastirio Larnakas (Cyprus) lodged on 18 August 2014 — Astinomikos Diefthintis Larnakas v Masoud Mehrabipari

(Case C-390/14)

Language of the case: Greek

Referring court

Eparkhiako Dikastirio Larnakas

Parties to the main proceedings

Prosecutor: Astinomikos Diefthintis Larnakas

Defendant: Masoud Mehrabipari

Questions referred

Having regard to the principle of sincere cooperation, the principle of effectiveness with a view to achieving the objectives of directives and the principle that penalties must be proportionate, appropriate and reasonable, can Articles 15 and 16 of Directive 2008/115/EC ¹ be interpreted as permitting criminal proceedings to be brought on the basis of national legislation that existed before harmonisation (Article 19(1)(f) and (i) of the [Aliens and Immigration Law ('Chapter 105')]) against an illegally staying third-country national upon whom unsuccessful coercive removal measures have been imposed and who has remained in detention for a period greater than 18 months, because he does not have a passport in his possession and does not cooperate with the authorities for the purpose of issue of such a passport through his embassy, pleading fear that he will be persecuted by the Iranian authorities?

If the above question is answered in the affirmative, can the criminal proceedings in question be brought immediately after the maximum period of 18 months' detention for the purposes of deportation has been completed, with the result that the illegally staying third-country national is not released, but can continue to be detained because the criminal proceedings against him are pending if the court considers that necessary because of the risk of absconding?

What is the meaning of a 'lack of cooperation' by the third-country national in Article 15(6)(a) of Directive 2008/115/EC and, in particular, is it permissible for its meaning to coincide with the provisions of national law (Article 19(1)(f) and (i) of the [Aliens and Immigration Law ('Chapter 105')]) which criminalise any refusal to 'produce to the Director any document that the Director might request' and any 'defi[ance] or hind[rance], whether actively or passively, [of] any Director in the performance of his duties' on account of failure to produce the passport, whilst, at the same time, no evidence is adduced relating to the actions which the authorities have taken vis-à-vis the country of origin for the successful removal of the third-country national?

¹ 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 (OJ 2008 L 348, p. 98).