

The Netherlands
Raad van State, Administrative Jurisdiction Division
21 March 2011
201100307/1/V3

Subject

Expulsion of a third country national – return decision – direct effect of a Directive

Parties

I. Josef against Minister for Immigration and Asylum

Summary

1. Josef, an alien from Sudan, had been put into custody in order to be expelled. He claims that the district court should have ruled on the lawfulness of the return decision because that forms the basis of the custody. The alien refers to Directive 2008/115/EC on returning illegally staying third-country nationals.
2. The Administrative Jurisdiction Division considers (paras. 2.1.6.-2.1.7.) that the deadline for the implementation of Directive 2008/115 had not yet passed at the moment (the start) of the custody. Therefore a possible direct effect was not in question and the minister was not bound by the Directive to take a return decision in order to adopt a custody decision.
3. Neither was the minister obliged after the deadline had passed to take a return decision to enable him to continue the custody. After all the return decision is, according to the Directive, the first step of a sequence of various acts and reversing that sequence by taking the first step afterwards is not in conformity with the directive.