



HUMAN DIGNITY AND TREATMENT OF THIRD COUNTRY NATIONALS, WHO ARE IN AN IRREGULAR SITUATION AND PENDING RETURN, WITHIN EUROPEAN UNION LAW

Directive 2008/115 is certainly the most salient regulatory example/case of the EU's return policy. Art. 9, para 2., establishes that “Member States may postpone the removal of an irregularly staying migrant for an appropriate period of time, by taking into account the specific circumstances of the individual case at issue. More specifically, Member States shall take the following circumstances into account: (a) the third-country national’s physical state or mental capacity; (b) technical reasons, [...] or failure of the removal due to lack of identification”.

While Directive 2008/115 does not define the legal treatment of those people, it is likely to operate, to some extent, in the above-mentioned circumstances, by means of art. 14.

In the context of the present discussion, it is useful to briefly recall the rulings of the Court of Justice in the *Abdida* case, and in particular the opinion of Advocate General Bot. Advocate General Bot’s opinion read as follows: “the respect for human dignity and the right to life, integrity and health enshrined in Articles 1, 2, 3 and 35 of the Charter respectively, as well as the prohibition of inhuman or degrading treatment contained in Article 4 of that Charter, mean that, in a situation such as that in the main proceedings, an illegally staying third-country national whose removal has been *de facto* suspended must not be deprived of the means necessary to meet his basic needs pending the examination of his appeal. To have one’s most basic needs catered for is, in my opinion, an essential right which cannot depend on the legal status of the person concerned. 157. Although the extent of the provision for basic needs must be determined by each of the Member States [...] it seems to me that such provision must be sufficient to ensure the subsistence needs of the person concerned [...]”.

In this statement, the attention is focused not on the status of the migrant in an irregular condition, but on the individual, who, as such, is deserving of a “dignified standard of living”. In effect, basic essential needs are independent of the possible irregular status. The reference to human dignity in the interpretation of art. 14 of Directive 2008/115 appears consistent with the provisions of art. 1 of the same directive: this latter is aimed at defining a return policy that must not only be effective, but also in compliance with the values contained in the Charter.