

Provisional text

## JUDGMENT OF THE COURT (Fifth Chamber)

23 April 2026 (\*)

( Reference for a preliminary ruling – Area of freedom, security and justice – Directive 2008/115/EC – Return of illegally staying third-country nationals – Article 11(2) – Entry ban – Duration – National legislation which requires, in principle, an indefinite ban on entry and stay in certain cases – Terrorist threat )

In Case C-446/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, Land of Bremen, Germany), made by decision of 17 June 2024, received at the Court on 25 June 2024, in the proceedings

**Freie Hansestadt Bremen**

v

**DT,**

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer, E. Regan (Rapporteur), D. Gratsias and B. Smulders, Judges,

Advocate General: J. Richard de la Tour,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 19 June 2025,

after considering the observations submitted on behalf of:

- the Freie Hansestadt Bremen, by F. Müller, acting as Agent,
- DT, by C. Graebisch, Professor,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the Danish Government, by D. Elkan, M. Jespersen and C.A.-S. Maertens, acting as Agents,
- the Swedish Government, by J. Olsson, acting as Agent,
- the European Commission, by A. Katsimerou and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 October 2025,

makes the following

### Judgment

1 This request for a preliminary ruling concerns the interpretation of the Article 3(6) and Article 11(2) of 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).

2 The request has been made in proceedings between the Freie Hansestadt Bremen (Land of Bremen, Germany) ('Land of Bremen') and DT concerning a ban on entry and stay in Germany made against DT.

### ***The legal framework***

#### *European Union law*

3 Recitals 2, 6 and 14 of Directive 2008/115 state:

'(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

...

(6) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect that principle and fully comply with all applicable provisions of this Directive.

...

(14) The effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all the Member States. The length of the entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed five years. ...'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.'

5 Article 3 of that directive, entitled 'Definitions', provides:

'For the purpose of this Directive the following definitions shall apply:

...

(4) "return decision" means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

...

(6) "entry ban" means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;

...'

6 Under Article 11 of that directive, entitled ‘Entry ban’:

- ‘1. Return decisions shall be accompanied by an entry ban:
- (a) if no period for voluntary departure has been granted, or
  - (b) if the obligation to return has not been complied with.

In other cases return decisions may be accompanied by an entry ban.

2. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious threat to public policy, public security or national security.

3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

...

Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

...’

*German law*

7 Paragraph 11 of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the stay, gainful employment and integration of foreign nationals in the Federal territory) of 30 July 2004 (BGBl. 2004 I, p. 1950), in the version applicable to the dispute in the main proceedings (‘the AufenthG’), entitled ‘Ban on entry and stay’, provides the following:

‘...

- (4) The ban on entry and stay may be lifted, or its length reduced, in order to safeguard the interests of the foreign national which are worthy of protection, or in so far as the purpose of that ban no longer requires it. ...

...

- (5a) ... The ban on entry and stay cannot, in principle, be reduced or lifted. The supreme Land authority may authorise exceptions to that principle on a case-by-case basis.

(5b) If the foreign national is removed from the federal territory on the basis of a removal decision adopted in accordance with Paragraph 58a, a ban on entry and stay for an indefinite period must, in principle, be imposed. In the cases referred to in subparagraph 5a, or if the foreign national has been expelled on one of the grounds for expulsion referred to in Paragraph 54(1)(1), (2) or (2a), a ban on entry and stay for an indefinite period may be adopted on a case-by-case basis. The third and fourth sentences of subparagraph 5a shall apply *mutatis mutandis*.

...’

8 Paragraph 58a of the AufenthG, entitled ‘Removal decision’, provides, in subparagraph 1 thereof:

‘The supreme Land authority may issue a removal decision against a foreign national, relying on a fact-based prognosis, without a prior expulsion order, in order to avert a particular danger to the security of the Federal Republic of Germany or a terrorist threat. The removal decision shall be immediately enforceable; a notice of intention to remove shall be required.

...’

***The dispute in the main proceedings and the question referred for a preliminary ruling***

9 The applicant in the main proceedings is a Russian national who lived in Bremen (Germany) while holding a residence permit.

10 On 13 March 2017, the Senator für Inneres (Senator for Internal Affairs) of the Land of Bremen (‘the Senator for Internal Affairs’) issued an order for the applicant’s removal to the Russian Federation pursuant to Paragraph 58a of the AufenthG because, according to the intelligence findings of the competent security services, there was a risk that he may commit a terrorist attack in Germany.

11 After unsuccessful actions before the Bundesverwaltungsgericht (Federal Administrative Court, Germany), the Bundesverfassungsgericht (Federal Constitutional Court, Germany) and the European Court of Human Rights, the applicant was removed to the Russian Federation on 4 September 2017. He currently lives in that third country.

12 By a decision of 1 December 2017, the kommunale Ausländerbehörde der Stadtgemeinde Bremen (Municipal Immigration Service of Bremen, Germany) declared that the effect of the removal ordered on the basis of Paragraph 58a of the AufenthG was not limited to a specific period.

13 By a final and binding judgment of 3 December 2021, the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, Land of Bremen, Germany) annulled that decision on the ground that a ban on entry and stay in the territory of the Member States had not yet been imposed on the applicant.

14 By an administrative decision of 1 February 2022, the Senator for Internal Affairs ordered a ban on entry and stay in Germany for an indefinite period against the applicant in the main proceedings. In support of that decision, he stated, in essence, that such a ban for an indefinite period should generally be imposed, pursuant to the first sentence of Paragraph 11(5b) of the AufenthG, on persons removed on the basis of a removal order pursuant to Paragraph 58a of that law. The Senator for Internal Affairs maintained that there were no reasons to depart from that rule, by way of exception, in the case of the applicant, in view of the intelligence findings of the security services concerned regarding the applicant’s conduct after his removal and his social and family connections to Germany. The Senator for Internal Affairs submitted that there is an ongoing concern that, if he enters the territory of the Federal Republic of Germany, the applicant might commit a terrorist attack on that territory.

15 Hearing the action brought by the applicant in the main proceedings against that decision of 1 February 2022, the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, Land of Bremen) annulled that decision on the ground that the first sentence of Paragraph 11(5b) of the AufenthG could not be applied, since the adoption of a ban on entry and stay in the territory of the Member States for an indefinite period does not comply with Article 3(6) and Article 11(2) of Directive 2008/115.

16 The Land of Bremen brought an appeal against the judgment of the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, Land of Bremen) before the Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, Land of Bremen, Germany), which is the referring court.

- 17 That court notes that a ban on entry and stay in Germany for an indefinite period was imposed on the applicant in the main proceedings on the basis of the first sentence of Paragraph 11(5b) of the AufenthG. Under Article 3(6) of Directive 2008/115, however, ‘entry ban’ is defined as an administrative or judicial decision or act ‘prohibiting’ entry into and stay on the territory of the Member States ‘for a specified period’, and, according to Article 11(2) of that directive, the ‘length’ of the entry ban must be determined. The question therefore arises as to whether the above provisions of that directive must be interpreted as precluding a ban on entering the territory of the Member States for an indefinite period, such as the one provided for as a general rule in the first sentence of Paragraph 11(5b) of the AufenthG, from being adopted in respect of foreign nationals whose stay has been terminated in order to avert a terrorist threat in accordance with Paragraph 58a of the AufenthG.
- 18 The referring court considers that a reference for a preliminary ruling is necessary because the Court of Justice has not yet ruled on that issue and that the national courts, the German Government and German legal literature have answered that question in different ways.
- 19 In particular, part of the German legal literature approves the judgment of the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, Land of Bremen). According to that part of the legal literature, the Court has already held in the judgment of 19 September 2013, *Filev and Osmani* (C-297/12, EU:C:2013:569, paragraph 27), that it clearly follows from the words ‘the length of the entry ban shall be determined’ in the first sentence of Article 11(2) of Directive 2008/115 that Member States are under an obligation to limit the effects in time of any ban on entering their territory regardless of any application made for that purpose by the relevant third-country national. That interpretation is supported by the definition of the concept of ‘entry ban’ in Article 3(6) of that directive. Furthermore, there is nothing to support a contrary conclusion in the Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common ‘Return Handbook’ to be used by Member States’ competent authorities when carrying out return-related tasks (OJ 2017 L 339, p. 83), which states in particular: ‘No unlimited entry bans: the length of the entry ban is a key element of the entry ban decision’.
- 20 However, according to another part of German legal literature, the ban on entry and stay provided for in the first sentence of Paragraph 11(5b) of the AufenthG is compatible with Article 3(6) and Article 11(2) of Directive 2008/115. Some authors supporting that interpretation are of the opinion that, in the Return Handbook created by that recommendation, the European Commission considered that the ‘systematic issuing of life-long entry bans ..., without taking into account the [relevant] circumstances of the individual case’, is contrary to that directive. In their view, the first sentence of Paragraph 11(5b) of the AufenthG is compatible with that directive in so far as it relates only to the situations referred to in Paragraph 58a of that law, including those concerning persons who represent a terrorist threat. Lastly, paragraph 27 of the judgment of 19 September 2013, *Filev and Osmani* (C-297/12, EU:C:2013:569), should be placed in the context of the question referred to the Court for a preliminary ruling in the case giving rise to that judgment. That question related only to whether a national provision that makes the limitation of the length of an entry ban subject to the submission, by the third-country national concerned, of an application seeking to benefit from such a limitation is compatible with EU law.
- 21 In those circumstances, the Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, Land of Bremen) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 3(6) and Article 11(2) of Directive [2008/115] be interpreted as precluding a national provision under which a person, whose right to stay has been terminated and against whom a return decision has been issued because that person constitutes a terrorist threat, is generally to be issued with an entry ban of indefinite duration?’

### ***Consideration of the question referred***

#### ***Preliminary observations***

- 22 The applicant in the main proceedings submits that, in view of the time that elapsed between the adoption of the return decision at issue in the main proceedings on 13 March 2017 and the adoption of the entry ban concerning him on 1 February 2022, that ban cannot be regarded as being linked to that return decision, as required by Directive 2008/115. By his line of argument, the applicant in the main proceedings thus disputes the applicability of that directive to a situation such as the one at issue in the main proceedings.
- 23 In that regard, it should be noted that Article 3(6) of Directive 2008/115 defines an ‘entry ban’ as an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period ‘accompanying a return decision’, the latter decision being defined in Article 3(4) of that directive as an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
- 24 Furthermore, in accordance with Article 11(1) of that directive, return decisions must be ‘accompanied’ by an entry ban if no period for voluntary departure has been granted or if the obligation to return has not been complied with. In other cases, return decisions may be ‘accompanied’ by an ‘entry ban’.
- 25 It follows from the matters set out in paragraphs 23 and 24 above that an ‘entry ban’ within the meaning of Directive 2008/115 is intended to supplement a return decision by prohibiting the person concerned, for a specified period following his or her ‘return’, as defined in Article 3(3) of that directive, and therefore after that person has left the territory of the Member States, from again entering and staying in that territory. Consequently, an entry ban produces its effects only from the point in time at which the person concerned actually leaves the territory of the Member States (judgment of 3 June 2021, *Westerwaldkreis*, C-546/19, EU:C:2021:432, paragraph 52 and the case-law cited).
- 26 However, as is apparent from the case-law, an entry ban does not necessarily have to be adopted simultaneously with a return decision, nor even be adopted shortly after the adoption of such a decision (see, to that effect, judgment of 1 August 2025, *Al Hoceima and Boghni*, C-636/23 and C-637/23, EU:C:2025:603, paragraph 66). It is therefore sufficient that that ‘entry ban’ was adopted as an extension of the decision by which the host Member State withdrew from the third-country national concerned, on an identical ground, his or her right to stay in its territory (see, by analogy, judgment of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 80).
- 27 In the present case, it is apparent from the order for reference that the decision to prohibit the applicant in the main proceedings from entering Germany is ‘linked’ to the decision, adopted on an identical ground, to withdraw his right to stay in Germany and to remove him, namely on the ground that, according to the competent security services, there was a risk that the applicant in the main proceedings might commit a terrorist attack in Germany.
- 28 In addition, it appears – albeit this is a matter for the referring court to ascertain – that the return decision at issue in the main proceedings was adopted without any provision having been made for a period for voluntary departure, with the result that, as is apparent from paragraph 24 above, in accordance with Article 11(1) of Directive 2008/115, the competent German authority was required to adopt an entry ban in respect of the applicant in the main proceedings.
- 29 In those circumstances, the view cannot be taken that the period of time that elapsed between the adoption of the return decision and the entry ban at issue in the main proceedings has the effect of removing that ban from the scope of Directive 2008/115.

### *Substance*

- 30 By its question, the referring court asks, in essence, whether Article 3(6) and Article 11(2) of Directive 2008/115 must be interpreted as precluding national legislation under which the adoption of an indefinite ban on entering the territory of the Member States in respect of an illegally staying third-country national who is the subject of a return decision is required, in principle, where that decision is based on the existence of a terrorist threat.

- 31 According to settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (judgment of 13 February 2025, *Latvijas Sabiedriskais Autobuss*, C-684/23, EU:C:2025:90, paragraph 48 and the case-law cited).
- 32 First of all, as regards the wording of Article 3(6) and Article 11(2) of Directive 2008/115, it should be recalled that the first provision defines an ‘entry ban’ as an administrative or judicial decision or act accompanying a return decision and prohibiting entry into and stay on the territory of the Member States ‘for a specified period’. For its part, Article 11(2) of that directive provides, in its first sentence, that the length of the entry ban is to be determined with due regard to ‘all relevant circumstances of the individual case’ and must not in principle exceed five years, while its second sentence stipulates that the length of the entry ban ‘may however exceed five years’ if the third-country national represents a serious threat to public policy, public security or national security.
- 33 In the first place, it is apparent from the actual wording of the first sentence of Article 11(2) that the length of the entry ban must be limited, in principle, to five years.
- 34 By contrast, no maximum time limit is expressly laid down for the case where the third-country national constitutes a serious threat to public policy, public security or national security, since the second sentence of Article 11(2) of Directive 2008/115 merely provides that the length of the entry ban ‘may however exceed five years’ in such a case. The express reference to a maximum period of time ‘in principle’ limited to five years in the first sentence of that paragraph suggests that, if the EU legislature had also intended to impose a maximum period in the event that the third-country national constitutes a serious threat to public policy, public security or national security, it would have expressly done so (see, by analogy, judgment of 19 September 2013, *Filev and Osmani*, C-297/12, EU:C:2013:569, paragraph 30).
- 35 From that point of view, the reference in Article 3(6) of Directive 2008/115 to the fact that an entry ban prohibits entry into and stay on the territory of the Member States for a ‘specified’ period does not necessarily have to be understood as requiring the national authorities to provide, in each case, that the length of the entry ban adopted is limited in time, but may also be interpreted, as the Danish and Swedish Governments have argued and as the Advocate General observed in point 25 of his Opinion, as implying that, in each case, the competent national authorities are required to ‘determine’, in the decision by which they adopt such a ban, the length of that ban in a precise and reasoned manner, whether limited or unlimited.
- 36 In the second place, it is apparent from the actual wording of the first sentence of Article 11(2) of Directive 2008/115 that the length of the entry ban must be determined with due regard to all relevant circumstances of an individual case. Although, as is apparent from paragraph 34 above, the second sentence of that paragraph makes provision for the possibility for Member States to exceed the general five-year period provided for in that first sentence in the event of a serious threat to public policy, public security or national security, that second sentence, by contrast, does not make provision for any exception, even in such a case, to the obligation for those Member States to pay due regard to all the relevant circumstances of the case in question.
- 37 Next, as regards the context of Article 3(6) and Article 11(2) of Directive 2008/115, it should be recalled, in the first place, that Article 11(3) of Directive 2008/115 lays down the circumstances in which Member States, on the one hand, are obliged to consider withdrawing or suspending an entry ban and, on the other, may refrain from issuing, withdraw or suspend such a ban. Those obligations and options make it possible, where appropriate, to ensure compliance with the substantive and procedural safeguards laid down in that directive and the fact that an indefinite ban does not continue to produce effects beyond the point at which it may no longer be regarded as necessary and proportionate to the objective which it pursues.
- 38 In the second place, recital 6 of Directive 2008/115 states that decisions taken under that directive should be adopted ‘on a case-by-case basis’, while recital 14 of that directive, which underpins the first sentence of Article 11(2) thereof, states that the length of the entry ban should be determined ‘with due regard to all

relevant circumstances of an individual case’, thus corroborating the interpretation of the latter provision according to which, even where there is a terrorist threat, the decision on the length of an entry ban, like any decision taken under that directive, must have regard to all the specific circumstances of the particular case.

- 39 Lastly, as regards the objectives pursued by Article 3(6) and Article 11(2) of Directive 2008/115 and, more generally, by that directive, it should be recalled that the objective of Article 11(2) of that directive consists, inter alia, in ensuring that the length of an entry ban does not exceed five years, except if the person concerned constitutes a serious threat to public policy, public security or national security (judgment of 19 September 2013, *Filev and Osmani*, C-297/12, EU:C:2013:569, paragraph 32).
- 40 Furthermore, the Court has already held that an entry ban constitutes a means of increasing the effectiveness of the European Union’s return policy by ensuring that, for a certain period after the removal of an illegally staying third-country national who was staying illegally, that person can no longer lawfully return to the territory of the Member States. Thus, that tool forms part of the objective of Directive 2008/115 itself which, as is clear from recital 2 thereof, calls for the establishment of an effective removal and repatriation policy, based on common standards, for the persons concerned to be returned in a humane manner and with full respect for their fundamental rights and their dignity (see, to that effect, judgment of 27 April 2023, *M.D. (Ban on entering Hungary)*, C-528/21, EU:C:2023:341, paragraphs 72 and 77 and the case-law cited).
- 41 The actual purpose of Directive 2008/115, as is apparent from Article 1 thereof, is to set out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of EU law as well as international law, including refugee protection and human rights obligations.
- 42 Interpreting Article 3(6) and Article 11(2) of Directive 2008/115 as allowing the competent national authorities the possibility to decide, with due regard to all the circumstances of the particular case, that the existence of a terrorist threat justifies the adoption of an entry ban for an indefinite period in respect of the third-country national concerned does not in any way undermine the objective of those provisions recalled in paragraph 39 above. On the contrary, that interpretation makes it possible to ensure that the Member States are able to rely fully on the effective tool constituted by the entry ban in order to ensure the security of their respective territory, while guaranteeing that the period of validity of that tool is justified in the light of the specific circumstances of the particular case, in compliance with the fundamental rights of the persons concerned.
- 43 That interpretation is borne out by the case-law of the European Court of Human Rights, according to which the fact that a third-country national constitutes a serious threat to public policy, such as a terrorist threat, may in itself be sufficient for the view to be taken that the competent national authorities are entitled, in the light of an examination of all the relevant circumstances characterising that person’s situation, to adopt not only a measure to expel that third-country national from the national territory, but also a re-entry ban of unlimited duration against him or her, without it being possible to criticise them for having thus violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, concerning the right to respect for private and family life (see, to that effect, ECtHR, 25 March 2010, *Mutlag v. Germany*, CE:ECHR:2010:0325JUD004060105, §§ 60 to 63; ECtHR, 30 November 2021, *Avci v. Denmark*, CE:ECHR:2021:1130JUD004024019, §§ 35 to 39; ECtHR, 22 March 2022, *Laraba v. Denmark*, CE:ECHR:2022:0322DEC002678119, §§ 32 to 35; and ECtHR, 5 September 2023, *Al-Masudi v. Denmark*, CE:ECHR:2023:0905JUD003574021, §§ 33 to 36).
- 44 In the present case, the Land of Bremen and the German Government emphasise, first, that the rule at issue in the main proceedings itself makes it possible to have regard to the relevant circumstances of an individual case, since, by drawing a distinction according to the seriousness of the offences and the nature and seriousness of the risks to be prevented, the national legislature introduced standardised rules for certain categories of situations, without, however, providing for the issuing of entry bans for an indefinite period in all cases.



- 45 Second, it is apparent from the information submitted to the Court that there are exceptions to the ‘in principle’ rule at issue in the main proceedings, since certain exceptional and atypical circumstances make it possible to depart from that rule on a case-by-case basis. In particular, it is apparent from the request for a preliminary ruling that, in the present case, the Senator for Internal Affairs stated that there were no reasons for departing from that rule in the case of the applicant in the main proceedings, in view of the intelligence findings of the competent security services concerning the applicant’s conduct after his removal, and his social and family connections to Germany. Consequently, it should be noted that, even though there is a general rule applicable to situations such as the one at issue in the main proceedings, the possibility of departing from that rule implies, at the very least, that account should be taken of the specific circumstances of the particular case.
- 46 Third, the Land of Bremen and the German Government emphasise that it is possible to ascertain whether the particular circumstances that led to the adoption of an entry ban for an indefinite period still remain. In the event of a lasting change in the conduct of the third-country national, the provisions of Paragraph 11(4) and (5b) of the AufenthG expressly provide that it is possible to lift or shorten the ban on entry and stay at a later stage.
- 47 It is ultimately for the referring court to ascertain whether the German legislation at issue in the main proceedings allows all the relevant circumstances of each particular case to be taken into account effectively so as to justify not only the finding that there is a terrorist threat, but also the applicability of the rule imposing, in principle, a ban on entering the territory of the Member States for an indefinite period on account of the adoption of a return decision based on the existence of such a threat.
- 48 In the light of all the foregoing, the answer to the question referred is that Article 3(6) and Article 11(2) of Directive 2008/115 must be interpreted as not precluding national legislation under which the adoption of an indefinite ban on entering the territory of the Member States in respect of an illegally staying third-country national who is the subject of a return decision is required, in principle, where that decision is based on the existence of a terrorist threat, provided that the competent national authority is able to have due regard to all the relevant circumstances of the individual case in order to justify a finding that such a threat exists and the applicability of that legislation in the particular case concerned.

### Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

**Article 3(6) and Article 11(2) of 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**

**must be interpreted as not precluding national legislation under which the adoption of an indefinite ban on entering the territory of the Member States in respect of an illegally staying third-country national who is the subject of a return decision is required, in principle, where that decision is based on the existence of a terrorist threat, provided that the competent national authority is able to have due regard to all the relevant circumstances of the individual case in order to justify a finding that such a threat exists and the applicability of that legislation in the particular case concerned.**

[Signatures]

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— Language of the case: German.