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# 2.4.10. Return of rejected applicants for international protection

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icon case law on rejected applicants for international protection
The CJEU held in *BZ* v *Westerwaldkreis (Germany)* (C-546/19) that it is contrary to the Return Directive to grant an intermediate status to a third-country national without a right to stay in a Member State and who may be subject to an entry ban in the absence of a valid return decision. In this situation, the Member State must determine whether it should issue a new residence permit, or if not, issue a return decision in accordance with the Return Directive, Article 11(1). The court further noted that the principle of *non-refoulement*, which precludes the removal of third-country nationals staying illegally in a Member State, does not justify the failure to issue a return decision. It should only be applied to postpone a removal pursuant to a return decision.

Furthermore, in *VT* v *Centre public d'action sociale de Liège (CPAS)* (C-641/20), the CJEU ruled on the suspensive effect of an appeal lodged against a return decision and the related provisional right of residence and basic needs until an appeal decision is taken. The Return Directive, Articles 5 and 13 must be interpreted as precluding national legislation which does not confer an automatic suspensive effect on an appeal against a return decision issued following the withdrawal of refugee status and, correspondingly, a provisional right of residence and basic needs. The court noted that the national court must consider that the appeal has an automatic suspensive effect.

*M.A.* v *Belgium* (C-112/20) concerned the assessment of the best interests of the child when deciding on the return of the child's father, who was considered a threat to public order. The CJEU held that the Return Directive, Article 5, which requires Member States to consider the best interests of the child, cannot be interpreted restrictively. Member States are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even when the person is not a minor but the parent.

In *TQ* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (C-441/19), the CJEU examined whether the distinction made by the Netherlands between unaccompanied minors under the age of 15 when their asylum application is lodged and unaccompanied minors aged 15 or older was compatible with the Return Directive. For the first group, an investigation on the availability of adequate reception facilities in the state of return is carried out before a decision on the application is taken, and the minors are granted an ordinary

residence permit if adequate reception facilities are not available. For unaccompanied minors aged 15 years or older, which was the case of the applicant, an investigation is not carried out and the authorities wait for the person to turn 18 years to implement the return decision. In the meantime, the minor is in an irregular situation and tolerated.

The CJEU states that, before issuing a return decision for an unaccompanied minor, Member States must confirm that there are adequate reception facilities for minors in the state of return, that Member States may not distinguish between unaccompanied minors solely on the basis of their age when assessing adequate reception facilities in the return state, and finally, that a general and in-depth assessment of the situation of the minor, including the best interests of the child, must be taken into account at all the stages of the procedure. Regarding the Dutch tolerated status for unaccompanied minors who are at least 15 years old, the court noted that the Return Directive precludes Member States from refraining from removing them until the age of 18, after a return decision was adopted and reception conditions were ascertained as adequate in the state of return.
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