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OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 2 October 2025 [1]

Case C-446/24

Freie Hansestadt Bremen
v
DT

(Request for a preliminary ruling from the Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, *Land* of Bremen, Germany))

(Reference for a preliminary ruling – Immigration policy – Directive 2008/115/EC – Common standards and procedures in Member States for returning illegally staying third-country nationals – Article 3(6) and Article 11(2) – National legislation which requires, in principle, an indefinite ban on entry and stay in certain categories of cases – Terrorist threat)

[1] Original language: French.

I. Introduction

1. The present request for a preliminary ruling concerns 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. [2]

2. It provides the Court with the opportunity to clarify whether those provisions preclude national legislation providing that an indefinite ban on entry may be imposed on a third-country national on the ground that he or she represents a threat to national security, in particular a terrorist threat.

3. That question is currently relevant to a minority of Member States. [3] Its scope in the future depends on the outcome of the ongoing legislative work to amend EU law in the area, which reflects the majority practice of the Member States. [4]

4. I shall set out the reasons why I propose that the Court should interpret those provisions as meaning that, although they require a period to be determined, they do not lay down any limit where the exceptional conditions for exceeding the period of five years in principle are met. However, they do not exempt the Member States from complying with the substantive and procedural safeguards provided for in Directive 2008/115.

II. Legal framework

A. European Union law

5. Recital 14 of Directive 2008/115 states:

‘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

2 OJ 2008 L 348, p. 98.

3 To my knowledge, the Member States in which it is expressly provided that the length of the entry ban may be indefinite in the event of a serious threat to public policy, public security or national security are the following: the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Republic of Austria and the Kingdom of Sweden. A majority of Member States have opted for a period of more than 5 years, with a time limit of up to 20 years. See the written observations of the Danish Government, the oral observations of the Swedish Government and the Ad Hoc Query on return decisions and entry bans of the European Migration Network of 5 September 2023, available at: https://emnbelgium.be/sites/default/files/publications/2023.29%20-%20AHQ%20on%20return%20decisions%20and%20entry%20bans%20-%20Compilation%20of%20answers%20for%20wider%20dissemination.pdf.

4 See points 28 to 30 of the present Opinion.

to all relevant circumstances of an individual case and should not normally exceed five years. …'

6. 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 [EU] law as well as international law, including refugee protection and human rights obligations.'

7. Article 3(6) of the directive states:

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

…

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;'

8. Article 11 of Directive 2008/115, entitled 'Entry ban', provides in paragraphs 1 to 3:

'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.'

B. German law

9. Paragraph 11 of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, occupational activity and integration of foreign nationals in the Federal territory) [5] of 30 July 2004 [6] ('the AufenthG'), entitled 'Ban on entry and residence', provides, in subparagraphs 4, 5a, third and fourth sentences, and 5b thereof:

'(4) The ban on entry and residence 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 residence 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 expelled from federal territory on the basis of a removal order under Paragraph 58a, a ban on entry and residence of indefinite duration must, in principle, be imposed. … The third and fourth sentences of subparagraph 5a shall apply *mutatis mutandis*.'

10. Paragraph 58a of the AufenthG, entitled 'Removal order', provides in subparagraph 1 thereof:

'The supreme *Land* authority may issue a removal order for a foreign national without a prior expulsion order based on the assessment of facts, in order to avert a particular threat to the security of the Federal Republic of Germany or a terrorist threat. The removal order shall be immediately enforceable; a notice of intention to deport shall not be required. [[7]]'

5 BGBl. 2004 I, p. 1950.

6 In the version published on 25 February 2008 (BGBl. 2008 I, p. 162), as last amended by Article 1 of the Law of 21 February 2024 (BGBl. 2024 I, No 54).

7 The Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, *Land* of Bremen, Germany), which is the referring court, states that 'when the removal order is issued, the foreign national's residence permit expires (Paragraph 51(1)(5a) of the AufenthG), with the result that that foreign national loses his or her right of residence (Paragraph 4(1) of the AufenthG), is obliged to leave the country (Paragraph 50(1) of the AufenthG) and can be removed (Paragraph 58(1) of the AufenthG). According to the case-law of the Bundesverwaltungsgericht [(Federal Administrative Court (Germany)], the removal order is a return decision within the meaning of Article 3(4) of Directive 2008/115 (judgment of the Bundesverwaltungsgericht [(Federal Administrative Court)] of 21 March 2017, 1 VR 1/17 … paragraph 32).'

III. The facts of the dispute in the main proceedings and the question referred for a preliminary ruling

11. DT, the applicant in the main proceedings, is a Russian national who lived in Bremen (Germany) with leave to remain. On 13 March 2017, the Senator für Inneres of the Freie Hansestadt Bremen (Senator for Internal Affairs of the *Land* of Bremen, Germany) issued an order for DT's removal to Russia pursuant to Paragraph 58a of the AufenthG because, according to the intelligence findings of the security authorities, there was a risk that he would commit a terrorist attack in Germany. After unsuccessful appeals to the Bundesverwaltungsgericht (Federal Administrative Court), the Bundesverfassungsgericht (Federal Constitutional Court, Germany) and the European Court of Human Rights, [8] DT was removed to Russia on 4 September 2017, and currently lives there.

12. By a decision of 1 December 2017, the kommunale Ausländerbehörde der Stadtgemeinde Bremen (municipal immigration authority of Bremen, Germany) determined that the effect of removal based on Paragraph 58a of the AufenthG was not limited to a specific period. By a final and binding judgment of 3 December 2021, the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, *Land* of Bremen, Germany) overturned that decision on the ground that no ban on entry and stay had yet been imposed on DT.

13. By a decision of 1 February 2022, [9] the Senator for Internal Affairs of the *Land* of Bremen ordered an indefinite ban on entry into and stay in Germany against DT. In support of his decision, he stated, in essence, that such an indefinite ban 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 the AufenthG. In view of the intelligence findings concerning DT's conduct after his removal and his social and family connections to the Federal Republic of Germany, the Senator for Internal Affairs of the *Land* of Bremen did not consider that there were any reasons to deviate from that rule in DT's case by way of exception. Moreover, in his view, there was an ongoing concern that DT would commit a terrorist attack in Germany were he to enter that Member State.

14. In the action brought before it by DT, the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court, *Land* of Bremen) annulled that decision. It considered that the first sentence of Paragraph 11(5b) of the AufenthG could not be applied, since an indefinite ban on entry and stay was incompatible with Article 3(6) and Article 11(2) of Directive 2008/115.

8 (ECtHR).

9 See, concerning the conformity with EU law of an entry ban imposed after a considerable period of time, on the basis of a return decision that does not grant a period for voluntary departure, judgment of 1 August 2025, *Al Hoceima and Boghni* (C-636/23 and C-637/23, EU:C:2025:603, paragraphs 64 to 67).

15. In order to rule on the appeal brought by the *Land* of Bremen against that decision, the referring court asks whether the German legislation is compatible with those provisions of EU law. Its doubts are prompted by the absence of a decision by the Court and the differences in the analyses of the national courts, the legal literature [10] and the German Government.

16. 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?'

17. DT, the *Land* of Bremen, the German and Danish Governments and the European Commission submitted written observations. At the hearing held on 19 June 2025, DT, the *Land* of Bremen, the German and Swedish Governments and the Commission presented oral argument and replied to questions for oral answer put by the Court.

IV. Analysis

18. In this second case concerning the conformity with Article 11(2) of Directive 2008/115 of German legislation on the length of a ban on entry into the territory of the Member States imposed on a third-country national, the Court must rule on the following new question: must the length of the ban on entry provided for by that provision be expressed as a number of years where, in the event of a serious threat to public order, public security or national security, it may exceed five years?

19. The previous case, which gave rise to the judgment of 19 September 2013, *Filev and Osmani*, [11] concerned the compatibility with EU law of a different subparagraph of Paragraph 11 of the AufenthG from that at issue in the present case. The Court of Justice held that 'Article 11(2) of Directive 2008/115 must be interpreted as *precluding* a provision of national law *such as [Paragraph] 11(1)* of the Aufenth[G], which *makes the limitation of the length of an entry ban subject*

[10] See paragraphs 21 to 25 of the request for a preliminary ruling.

[11] C-297/12, 'the judgment in *Filev and Osmani*', EU:C:2013:569. The decisions taken by the German authorities were not based on offences relating to supporting terrorism. See, in such a case, judgment of 3 June 2021, *Westerwaldkreis* (C-546/19, EU:C:2021:432, paragraph 22). In the case which gave rise to that judgment, the applicable German legislation was not the same (see paragraph 13 of that judgment).

to the making by the third-country national concerned of *an application seeking to obtain the benefit of such a limit*'. [12]

20. To that end, the Court of Justice found 'that it clearly follows from the terms "[t]he length of the entry ban shall be determined" that Member States are under an obligation to limit the effects in time of any entry ban in principle to a maximum of five years independently of an application made for that purpose by the relevant third-country national'. [13] The Court also referred to the 'definition of "entry ban" set out at Article 3(6) of that directive as applying in particular to a decision prohibiting entry into and stay on the territory of the Member States "for a specified period"'. [14]

21. The scope of the judgment in *Filev and Osmani* must be defined in the light of the national legislation at issue and the provision of EU law interpreted. The Court of Justice held that an entry ban cannot be issued without provision being made for its length, which is to be determined with due regard to all relevant circumstances of the individual case and which is not in principle to exceed five years, pursuant to the *first sentence* of Article 11(2) of Directive 2008/115. [15]

22. Thus, the Court of Justice did not rule on the interpretation of the *second sentence* of Article 11(2) of that directive, according to which '[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'.

23. It can therefore only be inferred from the judgment in *Filev and Osmani*, interpreting Article 3(6) and the first sentence of Article 11(2) of Directive 2008/115, that the length of the entry ban is to be determined and that it is not to exceed five years unless that ban has been issued against a third-country nationals who represents a serious threat to public policy, public security or national security. Moreover, it seems to me that no guidance may be obtained from paragraph 44 of that judgment, [16] since it concerns entry bans set without limit in respect of situations which are not those referred to in the second sentence of Article 11(2) of that directive, the content of which the Court merely recalled.

12 The judgment in *Filev and Osmani* (paragraph 34). Emphasis added.

13 The judgment in *Filev and Osmani* (paragraph 27).

14 The judgment in *Filev and Osmani* (paragraph 29).

15 See the judgment in *Filev and Osmani* (paragraphs 25 to 27).

16 That paragraph states that 'Article 11(2) of Directive 2008/115 precludes a continuation of the *effects of entry bans of unlimited length* made before the date on which Directive 2008/115 became applicable, *as is the case for those entry bans at issue in the main proceedings*, beyond the *maximum length of entry ban laid down by that provision, except where* those entry bans were made against third-country nationals constituting a serious threat to public order, public security or national security' (emphasis added).

24. The question remains, therefore, whether the length of an entry ban is to be limited beyond five years or whether it may be unlimited (either for life, or a permanent ban) [17] where that ban concerns a person who constitutes a serious threat to public policy, public security or national security.

25. In the first place, I note that, from a terminological point of view, the word 'specified' may be understood in the sense of 'to define, establish, fix or state'. Since it concerns a person, the limit is therefore that of the person's lifetime. Accordingly, it is my view, and that of the German, Danish and Swedish Governments, that an indefinite period is a specified period within the meaning of Article 3(6) of Directive 2008/115. [18]

26. In the second place, it should be noted that the EU legislature merely specified that an entry ban could extend beyond five years in the event of a serious threat to public policy, public security or national security. It did not choose to provide for a maximum length of entry ban. Furthermore, provisions on the duration of exclusion orders similar to those of Article 32 of Directive 2004/38/EC [19] have not been adopted.

27. That decision not to set a maximum period for the entry ban in circumstances of particular gravity originated in the Commission's proposal, which has remained unchanged. [20] It is only the maximum length of five years in

17 That term is used in Article 22(4) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), from which it follows that a removal decision in respect of a third-country national taken by the second Member State in which he or she has not obtained long-term resident status may be accompanied by a 'permanent ban on residence' on grounds of public policy or public security, as defined in Article 17 of that directive.

18 See also, to that effect, the opinion of the Commission expressed during the legislative process on the deletion of the expression 'for a specified period': 'the Commission underlined that even a lifelong re-entry ban is for a specified time (the lifetime of the person concerned).' See Council documents of 22 November 2006 and 6 December 2006 concerning the outcome of the proceedings of the Working Party on Migration and Expulsion/Mixed Committee (EU-Iceland/Norway/Switzerland) on the Proposal for a European Parliament and Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (documents 14743/06 and 15871/06 respectively), available at: https://data.consilium.europa.eu/doc/document/ST-14743-2006-INIT/en/pdf and https://data.consilium.europa.eu/doc/document/ST-15871-2006-INIT/en/pdf (footnote 7, under Article 3(g), which defines the term 're-entry ban' (entry ban within the meaning of Article 3(6) of Directive 2008/115) (pp. 5 and 4 respectively)).

19 Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34). For the wording of Article 32, see footnote 33 to the present Opinion.

20 See commentary on Article 9 of the Proposal for a European Parliament and Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (COM(2005) 391 final) in the Commission working document annexed to that

principle that has led some Member States to take divergent approaches. In particular, the Federal Republic of Germany has consistently maintained its position that there should be no limit. [21]

28. By contrast, an upper limit on the length of the entry ban, in the event of a risk to security, on grounds, inter alia, of a threat to public policy, public security or national security, is clearly set out in Article 16 of the Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC. [22]

29. Article 16 of that proposal, entitled 'Return of third-country nationals posing security risks', provides, in paragraph 3(a), that, 'by way of derogation from the relevant provisions of this Regulation, third-country nationals falling within the scope of this Article may be … subject to an entry ban issued in accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) *by an additional maximum period of 10 years*'. [23]

30. Under Article 10 of the proposal of 11 March 2025, entitled 'Issuance of an entry ban':

proposal, containing its detailed comments. Article 9 corresponds, in essence, to Article 11 of Directive 2008/115. See also note of 25 March 2008 from the Presidency of the Council of the European Union to delegations on that proposal (document 7774/08), available at: https://data.consilium.europa.eu/doc/document/ST-7774-2008-INIT/en/pdf (p. 18), and the position of the European Parliament adopted at first reading on 18 June 2008, available at: https://www.europarl.europa.eu/doceo/document/TC1-COD-2005-0167_EN.pdf (p. 21).

21 See, inter alia, Council document of 26 July 2006 on the outcome of the proceedings of the Working Party on Migration and Expulsion/Mixed Committee (EU-Iceland/Norway/Switzerland) on the Proposal for a European Parliament and Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (document 11456/06) (footnote 2, p. 2), and the note of 4 March 2008 from the Presidency of the Council to delegations on that proposal (document 6785/08) (footnote 52, p. 21), available at: https://data.consilium.europa.eu/doc/document/ST-11456-2006-INIT/en/pdf and https://data.consilium.europa.eu/doc/document/ST-6785-2008-INIT/en/pdf respectively.

22 Proposal submitted by the Commission on 11 March 2025 (COM(2025) 101 final). It replaces the Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, submitted by the Commission on 12 September 2018 (COM(2018) 634 final). The latter proposal did not contain any changes to the length of entry bans. On the determination of security risks, see the proposal submitted on 11 March 2025, explanations at p. 13 and the list of risks in Article 16.

23 Emphasis added. Those periods are the indicative periods given in the annex to 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), in particular pp. 126 to 127. I note, moreover, that they correspond to the information provided by the majority of the Member States. See the summary of the Ad Hoc Query cited in footnote 3 to the present Opinion, available at: https://emnbelgium.be/publication/ad-hoc-query-return-decisions-and-entry-bans.

‘1. Return decisions shall be accompanied by an entry ban when:

a. the third-country national is subject to removal in accordance with Article 12;

b. the obligation to return has not been complied with within the time limits set in accordance with Article 13;

c. the third-country national poses a security risk in accordance with Article 16.

…

6. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case *for a maximum of 10 years*.

7. The duration of the entry ban pursuant to paragraph 6 *may be extended by successive periods of a maximum of 5 years*. Such extension shall be based on an individual assessment with due regard to all relevant circumstances and in particular any duly substantiated reasons of competent authorities why it is necessary to further prevent the third-country national from entering the territory of the Member States.’ [24]

31. In my view, that proposal confirms that, as the law stands, the Commission cannot argue that ‘Member States have the possibility of extending the corresponding entry ban, adopted pursuant to Directive [2008/115], before it expires, if the serious threat persists and subject to compliance with the safeguards provided for in [that] directive’. In that regard, it should also be noted that, contrary to what is provided for in Regulation (EU) 2018/1861, [25] no provision of Directive 2008/115 imposes on Member States an obligation to carry out an automatic review.

32. I therefore propose that the Court rule that Article 3(6) and the second sentence of Article 11(2) of Directive 2008/115 are to be interpreted as not precluding an entry ban of indefinite duration from being issued against a third-country national whose right to stay has been terminated and against whom a return decision has been issued because that person constitutes a terrorist threat.

24 Emphasis added.

25 Regulation of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ 2018 L 312, p. 14). See Article 39 of that regulation. On expiry of the review period provided for therein and in the absence of any clarification from the Member State concerned as to the extension of the alerts, they are to be deleted automatically.

33. However, the laying down of a general rule, such as that set out in the first sentence of Paragraph 11(5b) of the AufenthG, [26] for at least one of the grounds referred to in the second sentence of Article 11(2) of Directive 2008/115, merits detailed examination in the light of the first sentence of Article 11(2) of that directive, which provides that 'the length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case'. That principle of proportionality is also recalled in recital 14 of the directive. In addition, the Court has held that the obligation to take account of the best interests of the child, family life and the state of health of the third-country national concerned, laid down in Article 5 of Directive 2008/115, is binding on the Member States when they contemplate adopting an entry ban decision, within the meaning of Article 11 of that directive. [27]

34. I therefore share the Commission's view that *a full examination of the situation of the person concerned,* in other words on a case-by-case basis, cannot constitute merely an exception. [28] That discretion on the part of the competent authorities, provided for by EU law, must be preserved, even if, in accordance with national law, it is 'circumscribed', according to the expression used by the German Government at the hearing, in the event of a finding of conduct constituting a serious threat to national security. In that regard, the fact that it is for the Member States to define their essential security interests and to adopt appropriate measures to ensure their internal and external security is irrelevant. [29]

35. Consequently, I propose to the Court an interpretation which should be supplemented by a reminder of the essential safeguards to be provided for by the

26 I refer to the expression 'is *generally* to be issued with an entry ban of indefinite duration' used by the referring court in its question referred for a preliminary ruling (emphasis added), which is similar to that in the first sentence of Paragraph 11(5b) of the AufenthG: 'a ban on entry and residence of indefinite duration must, *in principle*, be imposed' (emphasis added). Both the referring court and the German Government explained at the hearing that, under administrative law, if the circumstances referred to in the first sentence of Paragraph 58a(1) of the AufenthG are met, the competent authority is obliged to issue an entry ban of indefinite duration. The basic rule may be departed from only in exceptional and atypical circumstances.

27 See judgment of 27 April 2023, *M.D. (Ban on entering Hungary)* (C-528/21, EU:C:2023:341, paragraphs 89 and 91).

28 See, to that effect, judgment of 27 April 2023, *M.D. (Ban on entering Hungary)* (C-528/21, EU:C:2023:341, paragraph 92, second indent). See also the annex to the Commission Recommendation cited in footnote 23 to the present Opinion, in particular pp. 126 and 127.

29 According to the settled case-law of the Court, the mere fact that a national measure has been taken for the purpose of protecting national security, which remains the sole responsibility of each Member State, under Article 4(2) TEU, cannot render EU law inapplicable and exempt the Member States from their obligation to comply with that law. See judgment of 6 October 2020, *Privacy International* (C-623/17, EU:C:2020:790, paragraph 44 and the case-law cited).

national legislation where the situation at issue falls within the scope of Directive 2008/115. [30]

36. First, the overall individual assessment of the situation and conduct of the person concerned, required by the first sentence of Article 11(2) of Directive 2008/115, must result in an obligation incumbent on the competent authority to take a reasoned decision [31] subject to judicial review. [32]

37. Second, it must be possible to withdraw or suspend the entry ban, as provided for in the third and fourth subparagraphs of Article 11(3) of Directive 2008/115, a fortiori if it is of indefinite length. On that basis, it would also be possible, in my view, for a decision to be taken reducing the length of the ban.

38. That power to issue such decisions at a later stage may be compared with the obligations set out either in Directive 2004/38 [33] or in Regulation 2018/1861. [34]

39. The general requirements, to which I have just referred, also follow from the case-law of the European Court of Human Rights, according to which measures to control the entry of aliens into their territory by States Parties, which violate a right protected by Article 8(1) of the Convention for the Protection of

30 On the value of considering, in the light of the aim and the general scheme of Directive 2008/115, that that directive applies to an entry ban decision since, under that directive, the Member States are subject to substantive and procedural safeguards for the protection of the fundamental rights of third-country nationals, see judgment of 27 April 2023, *M.D. (Ban on entering Hungary)* (C-528/21, EU:C:2023:341, paragraphs 77, 83 and 84). In my view, the intention of the EU legislature in that regard must be emphasised, since the case of a serious threat to national security is specifically referred to in Directive 2008/115, in the second sentence of Article 11(2).

31 See, in that regard, Article 12(1) of Directive 2008/115. See also, on the requirements relating to the proportionality of the measure, points 39 to 41 of the present Opinion on the case-law of the ECtHR.

32 See Article 13 of Directive 2008/115. See also, by way of comparison in relation to the right to an effective remedy and the examination of the proportionality of the measure at issue, Articles 30 and 31 of Directive 2004/38 and Article 24(4) of Regulation 2018/1861. See also judgment of 4 October 2012, *Byankov* (C-249/11, EU:C:2012:608, paragraphs 37, 40 to 42, 44 and 79). See, lastly, on the relevance of the comparison with Directive 2004/38 when Member States exercise the option of drawing inspiration from the provisions of Directive 2008/115 to designate the competent authorities and to define the procedure applicable to the adoption of a decision ordering the return of an EU citizen, if that is not precluded by any provisions of EU law, judgment of 14 September 2017, *Petrea* (C-184/16, EU:C:2017:684, paragraph 52).

33 See Article 32 of Directive 2004/38, entitled ‘Duration of exclusion orders’, paragraph 1 of which provides that ‘persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order’.

34 The obligation to review, laid down in Article 39 of that regulation, is correlated with the absence of a fixed time limit in the event of an alert for refusal of entry or stay being entered.

Human Rights and Fundamental Freedoms, [35] must be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. [36]

40. The European Court of Human Rights has listed the criteria for assessing the necessity and proportionality of expulsion or exclusion orders, [37] which are, in the majority of cases, issued following criminal convictions for offences of which some were such as to constitute a serious threat to public order. [38]

41. The European Court of Human Rights also stresses that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in its case-law, that court would require strong reasons to substitute its view for that of the domestic courts. [39] It therefore ensures that national decisions, at all levels of jurisdiction, contain an explicit and thorough assessment of those various criteria. [40] In particular, the European Court of Human Rights recalls its case-law on assessing the proportionality of a re-entry ban of unlimited duration on the basis of the seriousness of the threat posed to public order by the person concerned. [41] Such a threat may sometimes be sufficient in itself to justify such a re-entry ban decision, regardless of whether its duration is limited or permanent. [42] That is clearly the case when the indefinite nature of a ban is based on a terrorist threat, with the European Court of Human Rights declaring applications relying on failure to

35 Signed in Rome on 4 November 1950.

36 See judgment of the ECtHR of 18 October 2006, *Üner v. the Netherlands* (CE:ECHR:2006:1018JUD004641099, § 54 and the case-law cited).

37 See judgment of the ECtHR of 18 October 2006, *Üner v. the Netherlands* (CE:ECHR:2006:1018JUD004641099, §§ 57 to 60 and the case-law cited).

38 See, inter alia, judgment of the ECtHR of 30 November 2021, *Avci v. Denmark* (CE:ECHR:2021:1130JUD004024019, § 37 and the case-law cited). See, in particular, on the risk that the person concerned would continue to commit offences, § 30 of that judgment.

39 See, inter alia, judgment of the ECtHR of 30 November 2021, *Avci v. Denmark* (CE:ECHR:2021:1130JUD004024019, § 38 and the case-law cited).

40 See, in particular, with regard to a permanent re-entry ban imposed on a third-country national who had lawfully spent most of his youth since the age of three in Denmark, the analysis of the ECtHR in the judgment of 5 September 2023, *Al-Masudi v. Denmark* (CE:ECHR:2023:0905JUD003574021, §§ 25 to 35).

41 See, inter alia, judgment of 5 September 2023, *Al-Masudi v. Denmark* (CE:ECHR:2023:0905JUD003574021, §§ 33 and 34).

42 See, with regard to the same German legislation as that examined by the Court of Justice in the judgment in *Filev and Osmani*, judgment of the ECtHR of 25 March 2010, *Mutlag v. Germany* (CE:ECHR:2010:0325JUD004060105, § 61 and the case-law cited).

respect Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms to be manifestly unfounded. [43]

42. In addition, the European Court of Human Rights attaches particular importance to the possibility afforded to the persons concerned of requesting a posteriori that the length of the ban be limited, while ascertaining *specifically* whether the person concerned is likely to obtain a positive response to his or her request for a reduction in the length of the entry ban. [44]

43. As regards all those requirements, I observe in the present case, first, that, according to the referring court, the competent authority took into account the intelligence findings concerning DT's conduct after his removal and his social and family connections to the Federal Republic of Germany. [45] Next, according to the written observations of the German Government set out in detail at the hearing, the German legislation at issue provides for a gradation of the length of the entry ban according to the seriousness of the situation. [46] Lastly, the competent authority may, on a case-by-case basis, allow the ban to be reduced in length or lifted, by way of exception. [47] In that regard, it would appear, in the absence of details of the applicable legislation being provided in the written observations or at the hearing, that no reasonable period [48] for submitting such a request to reduce or lift the ban has been laid down. Moreover, I note that no reference has been made to any alternative claim to that effect made by DT in the main proceedings.

43 See judgments of the ECtHR of 7 February 2017, *K2 v. United Kingdom*, (CE:ECHR:2017:0207DEC004238713, § 66); of 1 February 2022, *Johansen v. Denmark* (CE:ECHR:2022:0201DEC002780119, §§ 80 to 84); and of 22 March 2022, *Laraba v. Denmark* (CE:ECHR:2022:0322DEC002678119, §§ 31 to 34). In the cases which gave rise to those judgments, the entry bans were linked to the deprivation of citizenship of the dual nationals concerned. In the latter two judgments, the ECtHR sets out in detail the balancing of the various interests involved by the national authorities.

44 See, on the purely theoretical nature of the prospect of return, in the case of an entry ban limited in time, judgments of the ECtHR of 12 November 2024, *Sharafane v. Denmark* (CE:ECHR:2024:1112JUD000519923, § 72), and of 12 November 2024, *Al-Habeeb v. Denmark* (CE:ECHR:2024:1112JUD001417123, § 71). See also, in the case of a ban of unlimited duration, judgment of the ECtHR of 28 June 2007, *Kaya v. Germany* (CE:ECHR:2007:0628JUD003175302, § 69). See, with regard to the possibility of returning to the territory of the State concerned for a short period, at least for family reasons, inter alia, judgment of the ECtHR of 15 July 2025, *Miari v. Denmark* (CE:ECHR:2025:0715JUD000285224, § 45 and the case-law cited).

45 See point 13 of the present Opinion.

46 See Paragraph 11(5a) and (5b) of the AufenthG, which gives the competent authorities, in the event of a terrorist threat, a margin of discretion in determining the length of the entry ban (20 years or unlimited), depending on the circumstances.

47 See Paragraph 11(5a), third and fourth sentences, of the AufenthG, cited in point 9 of the present Opinion.

48 See, by way of comparison, Article 32 of Directive 2004/38.

44. Those findings support my view that an entry ban of indefinite duration may be issued, in particular in the event of a serious threat to national security, provided that the substantive and procedural safeguards set out in Directive 2008/115 are complied with.

V. Conclusion

45. In the light of all of the foregoing considerations, I propose that the Court of Justice answer the question referred for a preliminary ruling by the Oberverwaltungsgericht der Freien Hansestadt Bremen (Higher Administrative Court, *Land* of Bremen, Germany) as follows:

Article 3(6) and the second sentence of 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 an entry ban of indefinite duration from being issued against a third-country national whose right to stay has been terminated and against whom a return decision has been issued because that person constitutes a terrorist threat.

Such an entry ban must, first, be issued taking into account all the specific circumstances of each case and in the light of the obligations set out in Article 5 of that directive. Second, the person concerned must be able to request, within a reasonable period of time, that such a measure be lifted or that its length be reduced.