
The CJEU-judgments in the cases of LM, B and TQ – effective remedies and the Return Directive

FRICoRe-Online-Workshop , 4 March 2021

Vice-President Michael Hoppe,
Administrative Court of Karlsruhe, Germany



iarmj

International Association of Refugee and Migration Judges

The relevant cases

■ CJEU:

■ 30 September 2020 – C-402/19 – LM /CPAS de Seraing

- automatic suspensive effect against return decisions and not only against removal orders when return poses the applicant to a real risk of being subjected to treatment contrary to Article 19(2) of the Charter (para. 35)

■ 30 September 2020 – C-233/19 – B

- if national legislation does not offer a remedy with automatic suspensive effect against the return decision, governed by clear, precise and foreseeable rules → national court has to apply the law in a way that is compatible with EU Law

■ 14 January 2021 – C-441/19 – TQ

- before issuing a return decision against an unaccompanied minor, the Member State concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child.
- Member State may not issue a return decision against an unaccompanied minor without subsequently removing that minor until he or she reaches the age of 18 years.



iarmj

International Association of Refugee and Migration Judges

Article 5 Directive 2008/115/EC

‘When implementing this Directive, Member States shall take due account of:

- (a) the best interests of the child;
- (b) family life;
- (c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.’



iarmj

International Association of Refugee and Migration Judges

Article 47 EU-Charter and the judgments in the cases of LM, B and TQ

- ❑ Article 5 Dir 2008/115/EC shall be read: When issuing a return decision...
- ❑ It is for the national courts to “reconstruct” national procedures in the light of Article 47 EU-Charter if a remedy against a return decision has no (full) automatic suspensive effect according to (pure) national law
- ❑ A close temporal connection between return decision and actual deportation may ensure a closer and reliable scrutiny on the compliance of the removal with fundamental rights



The judgments in the cases of LM, B and TQ and judicial dialogue

- sometimes CJEU's preliminary rulings influence EU Law and its national implementation through the backdoor
 - here: references by labour courts on social assistance
 - → makes it more difficult for national judges in other Member States to properly assess the judgment and to transfer the main thoughts into their own national law.
- the less harmonised a field of law is, the more difficult it is for the national judges to find a common language in which to conduct a horizontal judicial dialogue



The CJEU-judgments in the cases of LM, B and TQ – effective remedies and the Return Directive

FRICoRe-Online-Workshop , 4 March 2021

Vice-President Michael Hoppe,
Administrative Court of Karlsruhe, Germany



iarmj

International Association of Refugee and Migration Judges