

Appeal brought on 30 May 2011 by the European Commission against the judgment delivered by the General Court (Third Chamber) on 22 March 2011 in Case T-369/07 Republic of Latvia v European Commission

(Case C-267/11 P)

(2011/C 226/32)

Language of the case: Latvian

Parties

Appellant: European Commission (represented by: E. White and I. Rubene)

Other parties to the proceedings: Republic of Latvia, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

Form of order sought

— Set aside the judgment under appeal.

— Order the Republic of Latvia to pay the costs.

Grounds of appeal and main arguments

The single ground of appeal is based on a failure to respect the three-month time-limit laid down in Article 9(3) of Directive 2003/87/EC. ⁽¹⁾

The Commission considers that, in its analysis, the General Court treated the first and second sentences of Article 9(3) as one and, consequently, that its interpretation is not in line with the objectives laid down in that paragraph.

That interpretation of Article 9(3) of the directive is contrary to the interpretation which the General Court adopted in another case, in which it rightly considered that the second sentence of Article 9(3) constituted a separate legal basis.

In its interpretation of Article 9(3) of the directive, the Commission relies on the literal wording of the provision, which is fully in line with the objective pursued by that provision. Consequently, if the Commission rejects the national allocation plan notified by a Member State, the latter will be required to amend that plan taking account of the Commission's objections and will not be able to execute the plan until the Commission has approved the amendments, for which there is no time-limit.

The Commission notes that the contested decision was a decision on the amendments to the national allocation plan and not on the notified national allocation plan itself.

However, given that the General Court did not consider that the second sentence of Article 9(3) of the directive established a

different procedure, it found itself required to consider the notified amendments as notification of a new national allocation plan and, as a result, required to apply the three-month time-limit incorrectly.

⁽¹⁾ OJ 2003 L 275, p. 32.

Action brought on 31 May 2011 — European Commission v Kingdom of Sweden

(Case C-270/11)

(2011/C 226/33)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: C. Tufvesson and F. Coudert, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that Sweden failed to fulfil its obligations under Article 260(1) TFEU in that it has not adopted the measures necessary to comply with the judgment of the Court of Justice in Case C-185/09;

— Order Sweden to pay the Commission, to the account 'European Union own resources', a daily penalty of EUR 40 947,20 for each day that the necessary measures are not taken to comply with the judgment of the Court in Case C-185/09, from the day on which the judgment in the present case is delivered until the day on which the judgment in Case C-185/09 is complied with inclusive;

— Order Sweden to pay the Commission, to the same account, a fixed daily amount of EUR 9 597 for each day that the necessary measures are not taken to comply with the judgment of the Court in Case C-185/09, from the day on which the judgment in Case C-185/09 was delivered until the day on which judgment is delivered in the present case or until the day on which the measures necessary to comply with that judgment in Case C-185/09 are taken, if that is earlier; and

— Order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

In the judgment of the Court of 4 February 2010 (Case C-185/09 *Commission v Kingdom of Sweden*), the Court held:

'By failing, within the period prescribed, to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Kingdom of Sweden has failed to fulfil its obligations under that directive.'

The Kingdom of Sweden has still not adopted any measures to comply with the judgment of the Court in Case C-185/09. The Commission has therefore brought proceedings in accordance with Article 260(2) of the Treaty on the Functioning of the European Union and claims that the Kingdom of Sweden should pay financial penalties.

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 6 June 2011 — MM v Minister for Justice, Equality and Law Reform, Ireland, Attorney General

(Case C-277/11)

(2011/C 226/34)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: MM

Defendants: Minister for Justice, Equality and Law Reform, Ireland, Attorney General

Question referred

1. In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of Council Directive 2004/83/EC ⁽¹⁾ require the administrative authorities of the Member State in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her to address those aspects of the proposed decision which suggest a negative result?

⁽¹⁾ OJ L 304, p. 12

Action brought on 1 June 2011 — European Commission v Ireland

(Case C-279/11)

(2011/C 226/35)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Oliver, Agent)

Defendant: Ireland

The applicant claims that the Court should:

- declare that, by failing to take the necessary measures to comply with the judgment of this Court in Case C-66/06 Commission v Ireland, Ireland has failed to fulfil its obligations under Article 260 TFEU;
- order Ireland to pay to the Commission a lump sum of EUR 4 174,8 multiplied by the number of days between the ruling in Case C-66/06 and either compliance by Ireland with that ruling or the judgment in the present proceedings, whichever is the sooner;
- order Ireland to pay to the Commission a penalty payment of EUR 33 080,32 from the date of the judgment in the present proceedings to the date of compliance by Ireland with the ruling in Case C-66/06; and
- order Ireland to pay the costs.

Pleas in law and main arguments

Some two and a half years after the Court's judgment of 20 November 2008, in case C-66/06, declaring that Ireland had not adopted measures fully transposing articles 2(1) and 4(2) to (4) of Council directive 85/337/EEC ⁽¹⁾, Ireland has still failed to take the measures necessary to comply with that judgment. Therefore, the Commission proposes that Ireland should be ordered to pay a fine and a periodic penalty payment to reflect the serious nature of that infringement and its impact on the pursuit of the objectives pursued by the Community legislature.

⁽¹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment
OJ L 175, p. 40