

Reference for a preliminary ruling from the Tribunal Superior de Justicia Murcia (Spain) lodged on 30 July 2008 — Aurelio Choque Cabrera v Delegación del Gobierno en Murcia

(Case C-348/08)

(2008/C 260/17)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia Murcia

Parties to the main proceedings

Applicant: Aurelio Choque Cabrera

Defendant: Delegación del Gobierno en Murcia

Question referred

Should Article 62(1) and (2)(a) of the Treaty Establishing the European Community and Articles 5, 11 and 13 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾ be interpreted as precluding national legislation, and the case-law which interprets it, which permits the substitution of the expulsion of any 'third country national' who does not have documentation authorising him to enter and remain in the territory of the European Union by the imposition of a fine?

⁽¹⁾ OJ 2006 L 105, p. 1.

Appeal brought on 30 July 2008 by WWF-UK Ltd against the order of the Court of First Instance (Eighth Chamber) delivered on 2 June 2008 in Case T-91/07, WWF-UK Ltd v Council of the European Union

(Case C-355/08 P)

(2008/C 260/18)

Language of the case: English

Parties

Appellant: WWF-UK Ltd (represented by: R. Stein, Solicitor, P. Sands and J. Simor, Barristers)

Other parties to the proceedings: Council of the European Union, Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- quash the Order of 5 June 2008 and declare WWF's application to the Court of First Instance ('CFI') admissible;
- order the Council and Commission to pay WWF's costs before this Court and the Court of First Instance.

Pleas in law and main arguments

- 1) The CFI wrongly held that WWF's entitlement as a member of the RAC to be involved in the decision making procedure and the obligation on the Council to consider its views prior to adoption of the relevant measures were not sufficient to distinguish it 'individually' for the purposes of Article 230 EC Treaty. The CFI wrongly considered that WWF did not have procedural rights, holding that these belonged solely to the RAC and not to its members.
- 2) The CFI erroneously considered that even assuming 'standing', judicial protection would not be aimed at safeguarding WWF's procedural rights and did not therefore require judicial protection. That is an incorrect approach to the question of standing. Providing 'direct and individual' concern can be shown, the Applicant is entitled to challenge the 'legality of the relevant measure', which is what WWF seeks to do in this case. WWF is not confined to challenging a failure in the procedure, as the CFI suggest.
- 3) The CFI's decision is vitiated by procedural unfairness. The CFI closed the proceedings after receiving the intervention of the Commission dated 21 November 2007, despite having agreed on 27 September 2007 that WWF should have the opportunity to respond to any Commission observations. WWF was refused permission to send observations in response. WWF nevertheless sent in submissions but these were not considered by CFI prior to it reaching its determination, which makes no reference to WWF's submissions in response to the Commission. Accordingly, there has been a serious breach of natural justice and fair procedure by CFI.