

Pleas in law and main arguments

In the applicant's submission, the Republic of Poland has hitherto not adopted national measures correctly transposing Directive 2003/98 into national law. The Ustawa z 6 września 2001 r. o dostępie do informacji publicznej (Law of 6 September 2001 on access to public information), which was notified to the Commission, does not relate to the re-use of public sector information, because it does not even contain a definition of 're-use'. For that reason alone, the rights and obligations resulting from that Law cannot constitute a correct transposition of Directive 2003/98.

(¹) OJ 2003 L 345, p. 90.

Action brought on 8 July 2010 — Republic of Hungary v Slovak Republic

(Case C-364/10)

(2010/C 301/07)

Language of the case: Slovak

Parties

Applicant: Republic of Hungary (represented by: M. Fehér and E. Orgován, acting as Agents)

Defendant: Slovak Republic

Form of order sought

- declare that, by failing to comply with the provisions of Directive 2004/38/EC 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 (¹) ('Directive 2004/38'), in that on 21 August 2009, relying on that directive, it did not allow the President of the Republic of Hungary, László Sólyom, to enter the territory of the Slovak Republic, the Slovak Republic has failed to fulfil its obligations under Directive 2004/38 and Article 18(1) EC;
- further declare that the position of the Slovak Republic, which it still maintained at the time of bringing the action, namely that it is entitled under Directive 2004/38 to prohibit the entry to the territory of the Slovak Republic of the representative of the Republic of Hungary, that is, its President, thereby confirming that such an infringement

may recur, conflicts with the law of the European Union, in particular Article 3(2) TEU and Article 21(1) TFEU;

- declare that the Slovak Republic applied European Union law incorrectly in that the State authorities on the basis of Directive 2004/38 did not allow the President of the Republic, László Sólyom, access to the territory of the Slovak Republic;
- in the event that the Court of Justice should find, contrary to the view taken by Hungary which forms the basis of the claims set out above, that a specific provision of international law may limit the personal scope of Directive 2004/38, a position with which the Republic of Hungary does not agree, define in the event of such derogations the extent and scope of such derogations;
- order the Slovak Republic to pay the costs.

Pleas in law and main arguments

On 21 August 2009 the Minister for Foreign Affairs of the Slovak Republic informed the Minister for Foreign Affairs of the Republic of Hungary by a verbal note, in connection with the visit which the President of the Republic of Hungary, László Sólyom, was making on that date, that the competent authorities of the Slovak Republic had decided to forbid the President of the Republic of Hungary entry to the territory of the Slovak Republic.

The Hungarian Government submits that, by refusing President László Sólyom entry, the Slovak Republic breached Article 18 of the EC Treaty as well as Directive 2004/38. The Republic of Hungary takes the view that the personal conduct of the President of the Republic, László Sólyom, whether in general or in connection with the specific visit, did not represent a real, direct and sufficiently serious risk threatening a fundamental interest of society which could be a ground for adopting any restrictive measure. The Hungarian Government considers that, even if such a ground justifying restrictive measures existed, which it does not accept, the measure whereby in the particular case the entry of the President of the Republic was prohibited does not comply with the requirement of proportionality and goes beyond the aim pursued, which could equally have been attained by other less restrictive measures on the part of the Slovak Republic.

The Slovak Republic likewise failed to comply with the procedural rules of Directive 2004/38, since the prohibition of the entry of President László Sólyom was not adopted on the basis of a decision in accordance with the directive and was not served on him; the verbal note communicated the decision to refuse entry but did not contain adequate reasoning, and did not state from which administrative or judicial body a remedy could be sought, or the time limit for seeking it.

According to the Hungarian Government, there is a risk that the Slovak Republic will repeat the infringement, since it still maintains that the prohibition of the entry of President László Sólyom to its territory was lawful.

The Hungarian Government submits that not only is the application of the law by the Slovak authorities in itself an infringement of Directive 2004/38, the very reliance on the directive was also unlawful, since the Slovak authorities did not pursue the aims of the directive, but intended by relying on the directive to pursue only purely political aims. On the basis of the statements of the Slovak Government, it may be concluded that the prohibition of the entry of President László Sólyom to the territory of the Slovak Republic was not justified by the Slovak Government on grounds of public safety or public order in accordance with European Union law, namely Directive 2004/38, but on purely political grounds, primarily of foreign policy.

According to the Hungarian Government, the European Commission incorrectly stated in the proceedings that the provisions of national law, not European Union law, should apply to official visits of heads of state of the Member States. The Hungarian Government considers that any group of persons and any kind of visit, whether official or private, definitely calls for the application of Directive 2004/38. That directive generally and in relation to all inhabitants of the European Union recognises the fundamental right of entry to the territory of any Member State which, for a citizen of the Union personally, derives from primary law. Directive 2004/38 also generally and exhaustively lists the cases in which it is possible to restrict the freedom of movement of a Union citizen. The directive does not mention a derogation from the basic principle under which it is possible to exclude heads of state, or another category of citizens of the Member States, from its scope. If the Council and the European Parliament had wished to make the exercise of freedom of movement conditional on a rule of international law, including customary international law, they would certainly have done so when adopting the directive.

The Hungarian Government submits that neither in codified international law nor in customary international law can there be found a valid legal provision which could apply in the present case. Even if such rules of international law existed, the Member States by acceding to the Union recognised its power to lay down rules on the freedom of movement of persons and agreed that the powers which were left to them in that field would be exercised in compliance with the legal acts of the Union and the law of the Union. If in the case of the entry of a citizen of a Member State to another Member State a provision of international law could restrict the personal scope of Directive 2004/38, it would be necessary for the Court of Justice to define the extent of that restriction plainly, in view of the fact that Directive 2004/38 does not contain such an exception or derogation.

Action brought on 29 July 2010 — Commission v Italian Republic

(Case C-379/10)

(2010/C 301/08)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Pignatoro and M. Nolin, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by excluding any liability on the part of the Italian State for damage caused to individuals by an infringement of European Union law attributable to a national court adjudicating at last instance where such an infringement results from interpretation of provisions of law or assessment of facts or evidence carried out by that court and limiting such liability to cases of intentional fault and serious misconduct, pursuant to Article 2(1) and (2) of Law No 117 of 13 April 1988, the Italian Republic has failed to fulfil its obligations in connection with the general principle of the liability of Member States, laid down by the Court in its case-law, for breach of European Union law by one of its courts adjudicating at last instance, which is a principle established by the Court of Justice of the European Union.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Law No 117 of 13 April 1988 on compensation for damage caused in the exercise of judicial functions and the civil liability of judges excludes any liability on the part of the Italian State for damage caused to individuals by an infringement of European Union law attributable to a national court adjudicating at last instance where such an infringement results from interpretation of provisions of law or assessment of facts or evidence carried out by that court. Moreover, that law restricts liability to cases of intentional fault and serious misconduct.

⁽¹⁾ OJ 2004 L 158, p. 77.

In its judgment in Case C-173/03 *Traghtetti del Mediterraneo v Italy*, ⁽¹⁾ the Court ruled as follows: