



Reports of Cases

Case C-288/12

European Commission v Hungary

(Failure of a Member State to fulfil obligations — Directive 95/46/EC — Protection of individuals with regard to the processing of personal data and the free movement of such data — Article 28(1) — National supervisory authorities — Independence — National legislation prematurely bringing to an end the term served by the supervisory authority — Creation of a new supervisory authority and appointment of another person as head of that authority)

Summary — Judgment of the Court (Grand Chamber), 8 April 2014

1. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion — Action against national legislation prematurely bringing to an end the unexpired term served by the personal data supervisory authority — Admissibility*

(Art. 258, second para. TFEU; European Parliament and Council Directive 95/46, Art. 28(1) and (2))

2. *Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification based on the internal legal system, including the constitutional system — Not permissible*

(Art. 258 TFEU; European Parliament and Council Directive 95/46, Art. 28(1) and (2))

3. *Approximation of laws — Protection of individuals with regard to the processing of personal data — Directive 95/46 — National supervisory authorities — National legislation prematurely bringing to an end the term served by the supervisory authority — Infringement the requirement of independence — Failure to fulfil obligations*

(European Parliament and Council Directive 95/46, Art. 28(1))

1. An action for failure to fulfil obligations is inadmissible if, after expiry of the period laid down in the reasoned opinion, the alleged infringement does not continue to produce effects. That is not the case, and the action is, accordingly, admissible, where the infringement alleged by the Commission resides in the fact that the Data Protection Supervisor was prevented from serving his full term and it is common ground that the term of office had not expired by the date specified in the reasoned opinion.

(see paras 29-31)

2. A Member State cannot plead provisions prevailing in its domestic legal system, even its constitutional system, to justify failure to observe obligations arising under EU law.

(see para. 35)

3. A Member State which prematurely brings to an end the term served by the supervisory authority for the protection of personal data, has failed to fulfil its obligations under Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The supervisory authorities responsible for supervising the processing of personal data must enjoy an independence allowing them to perform their duties free from external influence in whatever form, whether direct or indirect, which may have an effect on their decisions and which could call into question the performance by those authorities of their task of striking a fair balance between the protection of the right to private life and the free movement of personal data.

However, operational independence is not sufficient in itself to protect supervisory authorities from all external influence. In that regard, the mere risk that the State scrutinising authorities could exercise a political influence over the decisions of the supervisory authorities is enough to hinder the latter in the independent performance of their tasks. If it were permissible for every Member State to compel a supervisory authority to vacate office before serving its full term, in contravention of the rules and safeguards established in that regard by the legislation applicable, the threat of such premature termination to which that authority would be exposed throughout its term of office could lead it to enter into a form of prior compliance with the political authority, which is incompatible with the requirement of independence. Moreover, in such a situation, the supervisory authority cannot be regarded as being able, in all circumstances, to operate above all suspicion of partiality.

(see paras 51-55, 62, operative part 1)