

the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, ⁽¹⁾ or in any event by failing to notify the Commission of the adoption of the necessary provisions for transposition of the directive, the Republic of Estonia has failed to fulfil its obligations under Article 54(1) of the directive;

— impose on the Republic of Estonia, for breaching the obligation to notify the measures transposing the directive, in accordance with Article 260(3) TFEU, a penalty payment of EUR 4224 a day from the date of the judgment of the Court of Justice;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 3 March 2011.

⁽¹⁾ OJ 2009 L 211, p. 94.

Action brought on 30 April 2013 — European Commission v Kingdom of Sweden

(Case C-243/13)

(2013/C 189/23)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: J. Enegren and S. Petrova, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10, Sweden has failed to fulfil its obligations under Article 260(1) TFEU;

— Order Sweden to pay to the Commission, into the 'European Union own resources' account, a fine of EUR 14 912 per day for each day that the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10 have not been adopted, with effect from the date on which the judgment in that case was delivered until the date on which the judgment in Case C-607/10 is complied with;

— Order Sweden to pay to the Commission, into the same account, a lump sum of EUR 4 893 per day for each day that the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10 have not been adopted, with effect from the date on which the judgment in that case was delivered until the date on which judgment is given in the present case or the date on which the measures necessary to comply with the judgment in Case C-607/10 are adopted, if that is earlier;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

In its judgment of 29 March 2012 in Case C-607/10 *European Commission v Kingdom of Sweden*, the Court held that '1. ... by failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits issued in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that all existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of that directive, the Kingdom of Sweden has failed to fulfil its obligations under Article 5(1) of that directive.'

The Kingdom of Sweden has not yet adopted any measures to comply with the judgment of the Court of Justice in Case C-607/10. The Commission has therefore brought this action in accordance with Article 260(1) of the Treaty on the Functioning of the European Union and seeks an order imposing economic sanctions on the Kingdom of Sweden.

Reference for a preliminary ruling from High Court of Ireland made on 30 April 2013 — Ewaen Fred Ogieriakhi v Minister for Justice and Equality, Ireland, Attorney General, An Post

(Case C-244/13)

(2013/C 189/24)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Ewaen Fred Ogieriakhi

Defendants: Minister for Justice and Equality, Ireland, Attorney General, An Post

Questions referred

1. Can it be said that the spouse of an EU national who was not at the time himself a national of a Member State has 'legally resided with the Union citizen in the host Member State for a continuous period of five years' for the purposes of Article 16(2) of Directive 2004/38/EC⁽¹⁾, in circumstances where the couple had married in May 1999, where a right of residency was granted in October 1999 and where by early 2002 at the absolute latest the parties had agreed to live apart and where both spouses had commenced residing with entirely different partners by late 2002?
2. If the answer to Question 1 is in the affirmative and bearing in mind that the third country national claiming a right to permanent residence pursuant to Article 16(2) based on five years continuous residence prior to April 2006 must also show that his or her residency was in compliance with, *inter alia*, the requirements of Article 10(3) of Regulation (EEC) No. 1612/68⁽²⁾, does the fact that during the currency of that putative five year period the EU national left the family home and the third country national then commenced to reside with another individual in a new family home which was not supplied or provided for by (erstwhile) the EU national spouse mean that the requirements of Article 10(3) of Regulation 1612/68 are not thereby satisfied?
3. If the answer to Question 1 is in the affirmative and the answer to Question 2 is in the negative, then for the purposes of assessing whether a Member State has wrongfully transposed or otherwise failed properly to apply the requirements of Article 16(2) of the 2004 Directive, is the fact that the national court hearing an action for damages for breach of Union law has found it necessary to make a reference on the substantive question of the plaintiff's entitlement to permanent residence is itself a factor to which that court can have regard in determining whether the breach of Union law was an obvious one?

⁽¹⁾ 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
OJ L 158, p. 77

⁽²⁾ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community
OJ L 257, p. 2

Request for a preliminary ruling from the Tribunal administratif de Pau (France) lodged on 6 May 2013 — Khaled Boudjlida v Préfet des Pyrénées-Atlantiques

(Case C-249/13)

(2013/C 189/25)

Language of the case: French

Referring court

Tribunal administratif de Pau

Parties to the main proceedings

Applicant: Khaled Boudjlida

Defendant: Préfet des Pyrénées-Atlantiques

Questions referred

1. What is the extent of the right to be heard laid down by Article 41 of the Charter of Fundamental Rights of the European Union for an illegally staying third-country national in respect of whom a decision falls to be taken as to whether or not he is to be returned? In particular, does that right include the right to be put in a position to analyse the information relied on against him as regards his right of residence, to express his point of view, in writing or orally, with a sufficient period of reflection, and to enjoy the assistance of counsel of his own choosing?
2. If necessary, must the extent of that right be adjusted or limited in view of the general interest objective of the return policy set out in Directive 2008/115? ⁽¹⁾
3. If so, what adjustments or limitations must be made, and on the basis of what criteria should they be established?

⁽¹⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

Action brought on 7 May 2013 — European Commission v Republic of Bulgaria

(Case C-253/13)

(2013/C 189/26)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: M. Heller, O. Beynet and P. Mihaylova, acting as Agents)

Defendant: Republic of Bulgaria