

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

Form of order sought

The Commission claims that the Court should:

- Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 3(3) of Directive 2009/73/EC⁽¹⁾ of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and with the second subparagraph of point 1(a) and points 1(b), (d), (f), (h) and (i) of Annex I to that directive, or in any event by failing to notify the Commission of the adoption of those measures, the Republic of Bulgaria has failed to fulfil its obligations under Article 54(1) of that directive;
- Order the Republic of Bulgaria, under Article 260(3) TFEU, to pay a penalty payment in the amount of EUR 8 448 per day as of the day of delivery of the judgment in the present case, for infringement of the duty to notify the Commission of the measures adopted to comply with Directive 2009/73/EC;
- Order the Republic of Bulgaria to pay the costs.

Pleas in law and main arguments

The period for the adoption of measures to comply with the Directive expired on 3 March 2011.

⁽¹⁾ OJ 2009 L 211, p. 94.

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 13 May 2013 — Peter Flood v Health Service Executive

(Case C-255/13)

(2013/C 189/27)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Peter Flood

Defendant: Health Service Executive

Question referred

Is an insured citizen of a Member State ('the First Member State') who has been gravely ill for eleven years as a result of a serious medical condition which first manifested itself while

that person was resident in the First Member State but was on holidays in another Member State ('the Second Member State') to be regarded as 'staying' in that Second Member State for that period for the purpose of either Article 19(1) or, alternatively, Article 20(1) and Article 20(2) of Regulation No 883/2004⁽¹⁾ where the person in question has been effectively compelled by reason of his acute medical illness and the convenient proximity to specialist medical care physically to remain in that Member State for that period?

⁽¹⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
OJ L 166, p. 1

Request for a preliminary ruling from the Verwaltungsgerichts Sigmaringen (Germany) lodged on 13 May 2013 — Sevda Aykul v Land Baden-Württemberg

(Case C-260/13)

(2013/C 189/28)

Language of the case: German

Referring court

Verwaltungsgerichts Sigmaringen

Parties to the main proceedings

Applicant: Sevda Aykul

Defendant: Land Baden-Württemberg

Questions referred

1. Does the obligation concerning the mutual recognition of driving licences issued by Member States which is laid down in Article 2(1) of Directive 2006/126/EC preclude national legislation of the Federal Republic of Germany under which the right to use a foreign driving licence in Germany must be revoked *ex post facto* by the administrative authorities if the holder of the foreign driving licence drives a motor vehicle on that licence in Germany while under the influence of illegal drugs and thereafter under the relevant German provisions is no longer fit to drive?
2. If the answer to question 1 is in the affirmative, is this also the case where the issuing State is aware of the person in question driving while under the influence of drugs but takes no action and the risk represented by the holder of the foreign driving licence therefore persists?