

- maintain the effects of Regulation (EU) No 1385/2013 until the entry into force of a new regulation based on appropriate legal bases.
- order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission seeks annulment of Regulation (EU) No 1385/2013 that the Council adopted on the legal basis of Article 349 TFEU.

The Commission alleges that the Council adopted that regulation although the Commission had proposed that the act be based on sector-specific legal bases, namely Article 43(2) and Article 168(4)(b) TFEU.

It submits that, in accordance with the purpose and aim of the contested regulation, Article 349 TFEU cannot legitimately be used as a legal basis. Article 349 TFEU can be applied only when it involves derogation from the principle of application of primary law to the outermost regions, as established in Article 355(1) TFEU. However, the regulation at issue, without derogating from the Treaties, merely adapts secondary law to respond to the situation created by the change of the status of Mayotte. That interpretation is supported not only by the wording of Article 349 TFEU, but also by the system of legal bases of the Treaty, as well as by the historical origins of that article.

⁽¹⁾ OJ 2013 L 354, p. 86.

Action brought on 21 March 2014 — European Parliament v Council of the European Union
(Case C-136/14)
(2014/C 175/34)
Language of the case: French

Parties

Applicant: European Parliament (represented by: J. Rodrigues and L. Visaggio, acting as Agents)

Defendant: Council of the European Union

Form of order sought

- annul Council Directive 2013/64/EU of 17 December 2013 amending Council Directives 91/271/EEC and 1999/74/EC, and Directives 2000/60/EC, 2006/7/EC, 2006/25/EC and 2011/24/EU of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union. ⁽¹⁾
- order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The European Parliament seeks annulment of Directive 2013/64/EU which the Council adopted on the legal basis of Article 349 TFEU.

According to the Parliament, the legal basis chosen by the Council is incorrect, on the ground that the measures provided for in the contested directive come under the responsibilities of the European Union pursuant to various common policies. Those measures should therefore have been adopted under sector-specific legal bases concerning the areas of environment, agriculture, social policy and public health, namely Articles 43(2), 114, 153(2), 168 and 192(1) TFEU and not on the basis of Article 349 TFEU.

For the Parliament, measures which are not designed to deal with the economic or social constraints which an outermost region is facing by means of derogation from the full application of EU law in the region concerned cannot legitimately be based on the legal basis of Article 349 TFEU. Accordingly, measures which merely seek to postpone the application of certain provisions of EU law to an outermost region do not fall within the scope of that Article.

⁽¹⁾ OJ 2013 L 353, p. 8.

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 28 March 2014 — Direktsia 'Migratsia' pri Ministerstvo na vatrešnite raboti v Bashir Mohamed Ali Mahdi

(Case C-146/14)

(2014/C 175/35)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Direktsia 'Migratsia' pri Ministerstvo na vatrešnite raboti

Defendant: Bashir Mohamed Ali Mahdi

Questions referred

1. Is Article 15(3) and (6) of Directive 2008/115/EC ⁽¹⁾ 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, in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union and the right to a judicial review and effective [legal protection], to be interpreted as meaning that:
 - a) where an administrative authority is obliged under the national law of a Member State to conduct a monthly review of detention without there being an express obligation to take administrative action and where it has to submit to the court ex officio a list of third-country nationals detained beyond the statutorily prescribed maximum length of the initial detention due to obstacles to removal, the administrative authority is obliged, on the expiry of the period laid down in the individual decision to detain for the first time, to either pronounce an express detention review measure having regard to the grounds for an extension of detention provided for under European ('EU') law or to release the person in question?
 - b) where the national law of the Member State provides for the courts to have the power, on the expiry of the maximum period for initial detention laid down under national law, to order an extension of the period of detention for removal purposes, to replace the same with a less coercive measure or to order the release of the third-country national, the court is obliged in a situation such as that in the main proceedings to examine the legality of a detention review measure that gives the legal and factual reasons for the need to extend the period of detention and the length thereof by deciding on the merits on the continuation of detention, its replacement or the release of the person in question?
 - c) it permits the court, having regard to the grounds for an extension of detention provided for under EU law, to examine the legality of a detention review measure that only gives reasons for which the decision to remove a third-country national cannot be implemented, by deciding the merits of the dispute in a decision on the continuation of detention, its replacement or the release of the person in question solely on the basis of facts stated and evidence adduced by the administrative authority and facts and objections stated by the third-country national?