

**Party to the main proceedings**

Skerdjan Celaj

**Question referred**

Do the provisions of Directive 2008/115<sup>(1)</sup> preclude a Member State's legislation which provides for the imposition of a sentence of imprisonment of up to four years on an illegally staying third-country national [**Or.10**] who, having been returned to his country of origin *neither as a criminal law sanction nor as a consequence of a criminal law sanction*, has re-entered the territory of the State in breach of a lawful re-entry ban *but has not been the subject of the coercive measures provided for by Article 8 of Directive 2008/115 with a view to his swift and effective removal?*

<sup>(1)</sup> 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).

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**Action brought on 24 June 2014 — European Commission v Kingdom of Belgium**

(Case C-302/14)

(2014/C 292/23)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: P. Hetsch, O. Beynet, K. Herrmann, acting as Agents)

*Defendant:* Kingdom of Belgium

**Form of order sought**

- declare that, as regards Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings<sup>(1)</sup>, by failing to adopt, for some parts of its territory, the transposition provisions of the definitions in Article 2(2), (7) and (9) and the requirements laid down in Article 8(1), Article 9(1), Article 11(2) to (5), and Article 18 and Annex II or, in any event, by failing to notify those provisions to the Commission, the Kingdom of Belgium has failed to fulfill its obligations under Article 28(1) of the Directive;
- impose upon the Kingdom of Belgium, under Article 260(3) of the TFEU, a daily penalty of EUR 42 178,50 with effect from delivery of the judgment of the Court and payable to the European Union's own resources account, for failure to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure;
- order the Kingdom of Belgium to pay the costs.

**Pleas in law and main arguments**

The period for transposition of Directive 2010/31/EU expired on 9 July 2012.

<sup>(1)</sup> OJ 2010 L 153, p. 13.

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**Request for a preliminary ruling from the Helsingin hovioikeus (Finland) lodged on 30 June 2014 — Nike European Operations Netherlands BV v Sportland Oy, in liquidation**

(Case C-310/14)

(2014/C 292/24)

*Language of the case: Finnish*

**Referring court**

Helsingin hovioikeus

**Parties to the main proceedings**

*Applicant:* Nike European Operations Netherlands BV

*Defendant:* Sportland Oy, in liquidation

**Questions referred**

1. Is Article 13 of the Insolvency Regulation <sup>(1)</sup> to be interpreted to the effect that 'the act in the relevant case' means that the act is not capable of being challenged after taking account of all the circumstances of the case?
2. If the answer to question 1 is affirmative and if the party affected by the application to challenge the act has relied on a provision of the law within the meaning of the first indent of Article 13, according to which the payment of a due debt may be challenged only in the circumstances provided for therein, which are not mentioned in the action based on the law of the State in which the insolvency proceedings are taking place,
  - (i) are there reasons prohibiting an interpretation of Article 13 to the effect that the party seeking to challenge the act must, after becoming aware of that legal provision, plead those circumstances if, in accordance with the national law of the State of the opening of insolvency proceedings, that party has to plead all the circumstances founding the action to challenge the act, or
  - (ii) must the party affected by action to challenge the act show that those circumstances did not exist and that therefore it is not possible to challenge the act under the provision in question, and the party seeking to challenge it does not need to rely specifically on those circumstances?
3. Regardless of the answer to question 2(i), is Article 13 to be interpreted as meaning that
  - (i) the party affected by the action to challenge the act has the burden of proving that the circumstances provided for in the provision do not exist in the specific case, or
  - (ii) may the burden of proof as to the existence of those circumstances be determined in accordance with the law of a Member State other than the State in which the insolvency proceedings were opened that is applicable to the act and which provides that the party challenging the act has the burden of proof, or
  - (iii) may Article 13 be also be interpreted in such a way that the issue of the burden of proof is determined in accordance with the national law of the State of the court seised?
4. Is Article 13 to be interpreted as meaning that 'that law does not allow any means of challenging that act in the relevant case' includes general provisions and principles of the law applicable to the act in addition to the insolvency rules of the law applicable to that act?
5. If the answer to question 4 is affirmative,
  - (i) is Article 13 to be interpreted as meaning that the party affected by the action to challenge the act must show that the law within the meaning of Article 13 does not contain any general or other provisions or principles on the basis of which it would be possible to challenge the act in light of the facts presented, and
  - (ii) under Article 13, may the court, if it considers that this party has adduced sufficient evidence, rule that the other party must establish the existence of a provision or principle of the bankruptcy law or general law of a Member State other than the State of the opening of insolvency proceedings within the meaning of Article 13 which is applicable to the act and on the basis of which that act may indeed be challenged?

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<sup>(1)</sup> Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1)