

Judgment of the Court (First Chamber) of 14 May 2020 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-276/19) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Common system of value added tax (VAT) — Directive 2006/112/EC — Derogations — Simplification measures and measures to prevent tax evasion or avoidance — Article 395(2) — Obligation incumbent on Member States to notify the European Commission of special measures intended to simplify the procedure for charging VAT — Substantial amendment of the measure initially notified)

(2020/C 240/34)

Language of the case: English

Parties

Applicant: European Commission (represented by: X. Lewis and J. Jokubauskaitė, acting as Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: F. Shibli, acting as Agent, O. Thomas QC and R. Hill, Barrister)

Operative part of the judgment

The Court:

1. Declares that by introducing new simplification measures that extend the zero-rating and the exception to the normal requirement to keep value added tax records which were provided for in the Value Added Tax (Terminal Markets) Order 1973, as amended by the Value Added Tax (Terminal Markets) (Amendment) Order 1975, without submitting an application to the European Commission with a view to seeking the authorisation of the Council of the European Union, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 395(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

⁽¹⁾ OJ C 206, 17.6.2019.

Judgment of the Court (Grand Chamber) of 14 May 2020 (requests for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság — Hungary) — FMS, FNZ (C-924/19 PPU), SA and SA junior (C-925/19 PPU) v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, Országos Idegenrendészeti Főigazgatóság,

(Joined Cases C-924/19 PPU and C-925/19 PPU) ⁽¹⁾

(Reference for a preliminary ruling — Asylum and immigration policy — Directive 2013/32/EU — Application for international protection — Article 33(2) — Grounds of inadmissibility — Article 40 — Subsequent applications — Article 43 — Border procedures — Directive 2013/33/EU — Article 2(h) and Articles 8 and 9 — Detention — Whether lawful — Directive 2008/115/EU — Article 13 — Effective remedies — Article 15 — Detention — Whether lawful — Right to an effective remedy — Article 47 of the Charter of Fundamental Rights of the European Union — Principle of primacy of EU law)

(2020/C 240/35)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicants: FMS, FNZ (C-924/19 PPU), SA and SA junior (C-925/19 PPU)

Defendants: Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, Országos Idegenrendészeti Főigazgatóság

Operative part of the judgment

1. Article 13 of 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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of a Member State under which the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the third-country national concerned only by means of an appeal brought before an administrative authority, without a subsequent judicial review of the decision of that authority being guaranteed. In such a situation, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights, must be interpreted as requiring the national court seised of an action contesting the legality, under EU law, of the return decision consisting in such an amendment of the country of destination to declare that it has jurisdiction to hear that action;
2. Article 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person is not exposed to persecution or a risk of serious harm, within the meaning of the national provision transposing Article 15 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, or in which a sufficient degree of protection is guaranteed;
3. Directive 2013/32, read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union and the principle of sincere cooperation arising under Article 4(3) TEU must be interpreted as meaning that, when an application for asylum has been the subject of a rejection decision that was confirmed by a judicial decision that became final before the incompatibility of that rejection decision with EU law was found, the determining authority, within the meaning of Article 2(f) of Directive 2013/32, is not required to re-examine that application of its own motion. Article 33(2)(d) of Directive 2013/32 must be interpreted as meaning that the existence of a judgment of the Court finding that national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which he or she is not exposed to persecution or to a risk of serious harm or in which a sufficient degree of protection is guaranteed is incompatible with EU law constitutes a new element relating to the examination of an application for international protection, within the meaning of that provision. Furthermore, that provision is not applicable to a subsequent application, within the meaning of Article 2(q) of that directive, where the determining authority finds that the definitive rejection of the earlier application is contrary to EU law. Such a finding must necessarily be made by that authority when that incompatibility arises from a judgment of the Court or was established, as an ancillary finding, by a national court;
4. Directive 2008/115 and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as meaning that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by 'detention' within the meaning of those directives;
5. Article 43 of Directive 2013/32 must be interpreted as not authorising the detention of an applicant for international protection in a transit zone for a period of more than four weeks;
6. Articles 8 and 9 of Directive 2013/33 must be interpreted as precluding, first, an applicant for international protection being detained on the sole ground that he or she is unable to provide for his or her needs, secondly, such detention taking place without a reasoned decision ordering the detention having first been adopted and without the necessity and proportionality of such a measure having been examined and, thirdly, there being no judicial review of the lawfulness of the administrative decision ordering the detention of that applicant. By contrast, Article 9 of that directive must be interpreted as not requiring Member States to set a maximum period for continuing detention provided that their national law guarantees that the detention lasts only so long as the ground on which it was ordered continues to apply and that the administrative procedures linked with that ground are carried out diligently;

7. Article 15 of Directive 2008/115 must be interpreted as precluding, first, a third-country national being detained for the sole reason that he or she is the subject of a return decision and is unable to provide for his or her needs, secondly, such detention taking place without a reasoned decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined, thirdly, there being no judicial review of the lawfulness of the administrative decision ordering detention and, fourthly, such detention being capable of exceeding 18 months and being maintained when the removal arrangements are no longer in progress or are no longer being executed with due diligence;
8. The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the lawfulness of an administrative decision ordering the detention of applicants for international protection or of third-country nationals whose applications for asylum have been rejected, to declare that it has jurisdiction to rule on the legality of such detention and permitting that court to release the persons concerned immediately if it considers that such detention constitutes detention contrary to EU law;

Article 26 of Directive 2013/33 must be interpreted as requiring that an applicant for international protection whose detention, which is held to be illegal, has come to an end may rely, before the court with jurisdiction under national law, on his or her right to receive either a financial allowance enabling that applicant to house himself or herself, or housing in kind, as that court has, under EU law, the possibility to grant interim relief pending its final decision;

The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the right to housing, within the meaning of Article 17 of Directive 2013/33, to declare that it has jurisdiction to hear the action seeking to guarantee such a right.

(¹) OJ C 161, 11.5.2020.