

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 4 October 2019 — KM v Subdelegación del Gobierno en Albacete

(Case C-731/19)

(2019/C 432/34)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: KM

Defendant: Subdelegación del Gobierno en Albacete

Question referred

Is an interpretation of the judgment of the Court of Justice of 23 April 2015 (Case C-38/14, *Zaizoune*)⁽¹⁾ as meaning the Spanish authorities and courts can directly apply Directive 2008/115/EC⁽²⁾ to the detriment of the third-country national, thereby ignoring and disapplying more advantageous national penalty provisions, aggravating that national's liability to a penalty and possibly disregarding the principle that criminal penalties must be defined by law, compatible with the case-law of the Court of Justice on the limits on the direct effect of directives, and should the fact that the Spanish legislation is not in conformity with that directive be resolved not in that way but by legislative reform or by the remedies provided by EU law whereby a State can be required properly to transpose directives?

⁽¹⁾ EU:C:2015:260.

⁽²⁾ 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 23 October 2019 — European Commission v Kingdom of Spain

(Case C-788/19)

(2019/C 432/35)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: N. Gossement and C. Perrin, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that

— by establishing consequences of the failure to fulfil the obligation to provide information in respect of overseas assets and rights or the late submission of 'Modelo 720' ('Form 720'), which include the classification of those assets as unjustified capital gains which are not subject to the statute of limitation;

- by automatically imposing a fixed penalty payment of 150 % applicable in the event of the failure to fulfil the obligation to provide information in respect of overseas assets and rights or the late submission of 'Modelo 720'; and
- by applying fixed penalty payments in respect of the failure to fulfil the obligation to provide information in respect of overseas assets and rights or the late submission of 'Modelo 720', the level of which is higher than that of the penalties laid down by the general rules on similar infringements;
- the Kingdom of Spain has failed to fulfil its obligations under Articles 21, 45, 56 and 63 TFEU, and Articles 28, 31, 36 and 40 of the EEA Agreement;
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Spanish tax legislation imposes an obligation on tax residents in Spain to declare certain overseas assets and rights by means of a tax declaration form ('Modelo 720'). Specific penalty provisions are to be applied if that obligation is not fulfilled or is fulfilled improperly.

The Commission concludes that penalties involving the classification of such assets as capital gains, the non-application of the normal rules on limitation periods and fixed penalty payments constitute a restriction of the fundamental freedoms under the TFEU and the EEA. Although in principle those measures may be appropriate for the purposes of achieving the aims pursued — which are to prevent and counter tax avoidance and tax evasion — they are disproportionate.

Action brought on 29 October 2019 — European Commission v Republic of Austria

(Case C-796/19)

(2019/C 432/36)

Language of the case: German

Parties

Applicant: European Commission (represented by: Walter Mölls, Cécile Vrignon)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should,

- declare that the Republic of Austria has failed to fulfil its obligations under Article 3(a) of Directive 2007/59/EC, ⁽¹⁾ in that it designated as the competent authority for the purposes of that directive a different authority than the safety authority referred to in Article 16 of Directive 2004/49/EC; ⁽²⁾
- order the Republic of Austria to pay the costs.