

- d. Article 8 of Directive 2001/37/EC is invalid by reason of the principles referred to in questions 2(a), 2(c) or 2(h) are those principles to be interpreted as also prohibiting the national measure in question?

- (1) Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products — Commission statement, OJ L 194, 18.7.2001, p. 26-35.
- (2) Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products, OJ L 359, 8.12.1989, p. 1-4.

Reference for a preliminary ruling by the Rechtbank 's-Gravenhage by judgment of that Court of 12 May 2003 in the proceedings between Salah Oulane and Minister voor Vreemdelingenzaken en Integratie

(Case C-215/03)

(2003/C 171/21)

Reference has been made to the Court of Justice of the European Communities by judgment of the Rechtbank 's-Gravenhage (District Court, The Hague) of 12 May 2003, received at the Court Registry on 19 May 2003, for a preliminary ruling in the proceedings between Salah Oulane and Minister voor Vreemdelingenzaken en Integratie (Minister responsible for foreign nationals and Integration) on the following questions:

As regards the first proceedings:

1. As a consequence of the abolition of entry controls at internal borders, must the third paragraph of Article 4(2) of Directive 73/148/EEC (OJ 1973 L 172) be interpreted as meaning that the right of residence granted therein of a person who claims to be a national of another Member State and a tourist has to be recognised by the authorities of the Member State in which that person invokes his right of residence only from such time as he has presented his valid identity card or passport?
2.
 - a. If the answer to Question 1 is in the affirmative, does Community law as it stands at present, in particular in regard to the principle of non-discrimination and the freedom to provide services, provide grounds for making an exception thereto with the result that the authorities of a Member State must still afford to that person the opportunity to present his valid identity card or passport?
 - b. Is it material to the answer to Question 2a that the national law of the Member State in which that person invokes his right of residence imposes on its own nationals no general duty to provide evidence of identity?
3.
 - a. If the answer to Question 1 is in the negative, as Community law stands at present, is freedom to provide services impeded where a detention order with a view to deportation under Article 59 of the Vw 2000 is, in the interest of public policy, imposed on a person claiming to be a national of another Member State and a tourist for as long as he does not demonstrate his right of residence by presenting a valid identity card or passport, even where there is no obvious present and serious danger to public policy?
 - b. If that freedom is impeded in the manner described in Question 3a, is the period within which that Member State afforded an opportunity still to present a valid identity card or passport material for the purposes of establishing whether or not the impediment is justified?
 - c. If that freedom is impeded in the manner described in Question 3a is it relevant, for the purposes of establishing whether that impediment is justified, whether or not the Member State subsequently pays compensation in respect of the period during which the person was detained pending production of proof of nationality by means of a valid passport or identity card, as is customary in that Member State in the case of unlawful detention as an illegal alien?
4. Where a Member State itself lays down no general duty to provide evidence of identity, does Community law as it stands at present preclude, in particular in light of the prohibition on discrimination, a Member State from imposing, in connection with the internal control of aliens, a measure such as detention as an illegal alien with a view to deportation under Article 59 of the Vw in respect of a person who claims to be a tourist for as long as that person does not demonstrate his alleged right of residence by presenting a valid identity card or passport?

- c. If the answer to Question 2a is in the affirmative, does Community law as it stands at present lay down any requirements in regard to the period within which that Member State must afford the opportunity for the person concerned still to present a valid identity card or passport before it imposes an administrative penalty in the form of an order in respect of the presumed unlawful residence?

- d. Does an administrative penalty in the form of an order, as referred to in Question 2c, namely the imposition of a detention order with a view to deportation pursuant to Article 59 of the Vw 2000 before the period referred to in Question 2c has elapsed constitute a penalty which impinges disproportionately on freedom to provide services?

As regards the second proceedings

5. So long as a national of a Member State does not himself invoke the right of residence as the recipient of services *vis-à-vis* the Member State in whose territory he is residing, does Community law as it stands at present preclude that Member State from not regarding that person as a national protected by a right of residence under Community law?
6. Is the term 'recipient of services' in the context of freedom to provide services to be construed as meaning that, even where a person stays in another Member State for a long period, possibly longer than six months, is arrested there for an offence, is unable to give a fixed abode or residence and, furthermore, has no money or luggage, residence in another Member State itself provides sufficient grounds for having to assume that tourist and other services associated with short-term residence are received such as, for example, accommodation and the consumption of meals?

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Action brought on 22 May 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-221/03)

(2003/C 171/22)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 22 May 2003 by the Commission of the European Communities, represented by G. Valero Jordana, acting as Agent, assisted by M. van der Woode and T. Cellingsworth, lawyers, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

- declare that the Kingdom of Belgium has not complied with its obligations under Directive 91/676/EEC⁽¹⁾:
 - as regards the Flemish Region, by failing to adopt the laws, regulations or administrative provisions and to take the measures necessary fully to transpose and implement Articles 3(1) and (2), 4, 5 and 10 of Directive 91/676/EEC;

- as regards the Walloon Region, by failing to adopt the laws, regulations or administrative provisions and to take the measures necessary fully to transpose and implement Articles 3(1) and (2) and 5 of Directive 91/676/EEC;
- order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

Directive 91/676/EEC lays down a progressive procedure which the Member State are required to follow in order to reduce and prevent water pollution caused or induced by nitrates from agricultural sources. To that end, they are to establish which groundwaters, surface freshwaters and coastal waters in their territory are affected by pollution by nitrates from agricultural sources or which could be so affected (Article 3(1)). Once those waters have been defined, Member State must designate 'vulnerable zones' (Article 3(2)). They must then establish a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis (Article 4). Finally, Member States are to establish action programmes in respect of all vulnerable zones, which must consist of several measures laid down in the directive (Article 5). The directive provides that Member States are to submit a report to the Commission every four years (Article 10).

According to the Commission, Belgium appears to consider that the transposition and implementation of the directive in Belgian law come under the competence of the regions. According to the Belgian authorities, the federal authority is competent only to designate the coastal and marine waters referred to in Article 3(1) and in paragraph A(3) of Annex I to the directive. That argument is not relevant in Community law. It is for the competent authorities of each Member State to ensure the full transposition of the directive. Moreover, as regards the federal authority, the Commission does not have knowledge of any measure designating marine or coastal waters. As regards the legislation of the Flemish Region and the Walloon Region relating to transposition of the directive, the Commission notes that:

- the Flemish Region has not adopted any provision which designates waters affected by pollution or which could be so affected, in breach of Article 3(1) of the directive. As for vulnerable zones, it has not taken account of the procedure and criteria laid down in Article 3 for their designation in its territory. Moreover, the Flemish Code of Good Agricultural Practice does not satisfy the requirements of Article 4 and of Annex II to the directive, nor does the Flemish action programme satisfy the requirements of Article 5 and of Annex III to the directive, since it does not apply to all the vulnerable zones