

IV. What significance for the answers to the previous questions is to be attached to the fact that the national of the non-member country is a family member of a citizen of the Union who has exercised the right he enjoys under Article 18 of the Treaty establishing the European Community and has returned to the Member State of which he is a national?

2b. Is the reply to Question 2a different if the relaxation concerning the requirement of possession of a temporary residence authorisation was effected not in regard to the regulatory provision itself but in regard to policy and implementing practice?

⁽¹⁾ OJ, English Special Edition 1968(II), p. 475.

⁽²⁾ OJ 1990 L 180, p. 26.

Reference for a preliminary ruling from the Raad van State (Council of State) by order of that court of 19 July 2005 in Minister for immigration and integration v Mr I. Günes

(Case C-296/05)

(2005/C 296/21)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Raad van State (Council of State) of 19 July 2005, received at the Court Registry on 22 July 2005, for a preliminary ruling in the proceedings between the Minister for immigration and integration and Mr I. Günes on the following questions:

1. Must the concept of restriction in Article 41(1) of the additional protocol be interpreted as subsuming within it the requirement of a temporary residence authorisation to be applied for, under Article 3.71, first paragraph, of the Vb 2000, by a foreigner who is a Turkish national in that country or the country of permanent residence and in regard to which he must await a decision prior to coming to the Netherlands in the absence of which his application for leave to remain must be rejected?
- 2a. If the reply to Question 1 is affirmative, must Article 41(1) of the additional protocol then be construed as meaning that a new restriction within the meaning of that provision is also constituted by a tightening of the national rules in regard to the requirement to be in possession of a temporary residence authorisation following a post-January 1973 relaxation of that requirement?

Action brought on 22 July 2005 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-297/05)

(2005/C 296/22)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 22 July 2005 by the Commission of the European Communities, represented by Michel van Beek and Désirée Zijlstra, acting as Agents.

The applicant claims that the Court should:

1. declare that, by requiring motor vehicles which have previously been registered in another Member State to undergo a technical examination before they can be registered in the Netherlands, where no such examination is required in the case where a motor vehicle previously registered in the Netherlands is transferred to the ownership or control of another person established there, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC;
2. order the Kingdom of the Netherlands to pay the costs of the proceedings.

Pleas in law and main arguments

The technical examinations which the Netherlands require motor vehicles previously registered in another Member State to undergo as a precondition of entry in the national vehicle licence plate register cannot be justified in the light of the objectives mentioned in Article 30 EC or for the purpose of meeting any mandatory requirement as recognised in the Court's case-law.