

Parties to the main proceedings

Applicant: David Smith

Defendants: Patrick Meade, Philip Meade, FBD Insurance plc, Ireland, Attorney General

Operative part of the judgment

EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it is unable to interpret the provisions of its national law that are contrary to a provision of a directive that satisfies all the conditions required for it to produce direct effect in a manner that is compatible with that provision, is not obliged, solely on the basis of EU law, to disapply those provisions of national law and a clause to be found, as a consequence of those provisions of national law, in an insurance contract.

In a situation such as that at issue in the main proceedings, a party adversely affected by the incompatibility of national law with EU law or a person subrogated to the rights of that party could however rely on the case-law arising from the judgment of 19 November 1991, Francovich and Others (C 6/90 and C 9/90, EU:C:1991:428), in order to obtain from the Member State, if justified, compensation for any loss sustained.

⁽¹⁾ OJ C 151, 15.5.2017.

Judgment of the Court (First Chamber) of 7 August 2018 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Nefiye Yön v Landeshauptstadt Stuttgart

(Case C-123/17) ⁽¹⁾

(Reference for a preliminary ruling — EEC-Turkey Association — Decision No 2/76 — Article 7 — Standstill clause — Right of residence of family members of a Turkish worker — Visa requirement for admission to the territory of a Member State)

(2018/C 352/12)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Nefiye Yön

Defendant: Landeshauptstadt Stuttgart

Interveners: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

Article 7 of Decision No 2/76 of 20 December 1976 adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a national measure, such as that at issue in the main proceedings, taken during the period from 20 December 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of that provision. Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.

⁽¹⁾ OJ C 318, 25.9.2017.

Judgment of the Court (Second Chamber) of 7 August 2018 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Land Nordrhein-Westfalen v Dirk Renckhoff

(Case C-161/17) ⁽¹⁾

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Information society — Harmonisation of certain aspects of copyright and related rights — Article 3(1) — Communication to the public — Concept — Publication online, without the consent of the rightholder, of a photograph previously published on another website without any restrictions and with the consent of the rightholder — New public)

(2018/C 352/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Land Nordrhein-Westfalen

Respondent in the appeal on a point of law: Dirk Renckhoff

Operative part of the judgment

The concept of 'communication to the public', within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that it covers the posting on one website of a photograph previously posted, without any restriction preventing it from being downloaded and with the consent of the copyright holder, on another website.

⁽¹⁾ OJ C 231, 17.7.2017.