

4. Does the answer to the third question differ in circumstances where the structure of the transactions chosen by the company in question means that the benefit of the election cannot be enjoyed?

⁽¹⁾ Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital
OJ L 249, p. 25

⁽²⁾ Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital
OJ L 46, p. 11

Action brought on 14 November 2016 — European Commission v Czech Republic

(Case C-575/16)

(2017/C 022/23)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: H. Støvlbæk and K. Walkerová, acting as Agents)

Defendant: Czech Republic

Form of order sought

- declare that, by laying down a condition of nationality for the exercise of the profession of notary, the Czech Republic has failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union; and
- order the Czech Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the condition of nationality laid down for the exercise of the profession of notary in the Czech legal system is discriminatory and constitutes a disproportionate restriction of the freedom of establishment. The Czech Republic has therefore failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union.

The Commission considers that the functions entrusted to notaries by the legislation of the Czech Republic are not by their nature linked to the exercise of public powers, so that the condition of nationality laid down for access to the profession of notary in the Czech legal system cannot be justified by the exception laid down in Article 51 of the Treaty on the Functioning of the European Union.

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 17 November 2016 — C. K., H. F., A. S. v Republic of Slovenia

(Case C-578/16)

(2017/C 022/24)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellants: C. K., H. F., A. S.

Respondent: Republic of Slovenia

Questions referred

1. Is the interpretation of the rules relating to the application of the discretionary clause under Article 17(1) of the Dublin III Regulation, having regard to the nature of that provision, ultimately a matter for the courts and tribunals of the Member State, and do those rules release the courts and tribunals against whose decisions there is no judicial remedy from the obligation to refer the case to the Court of Justice under the third paragraph of Article 267 of the Treaty on the Functioning of the European Union?

In the alternative, if the answer to the above question is in the negative:

2. Is the assessment of circumstances under Article 3(2) of the Dublin III Regulation (in a case such as the one forming the subject matter of the present reference for a preliminary ruling) sufficient to satisfy the requirements of Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union, in conjunction with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 33 of the Geneva Convention?

and, in connection with that question:

3. Does it follow from the interpretation of Article 17(1) of the Dublin III Regulation that the application of the discretionary clause by the Member State is mandatory for the purposes of ensuring effective protection against an infringement of the rights under Article 4 of the Charter of Fundamental Rights of the European Union in cases such as the one forming the subject matter of the present reference for a preliminary ruling, and that such application prohibits the transfer of the applicant for international protection to a competent Member State which has accepted its competence in accordance with that regulation?

If the answer to the above question is in the affirmative:

4. Can the discretionary clause under Article 17(1) of the Dublin III Regulation be used as a basis permitting an applicant for international protection, or another person, in a transfer procedure under that regulation, to make a claim that that provision should be applied, which the competent authorities and courts and tribunals of the Member State must assess, or are those administrative authorities and courts and tribunals required to establish the circumstances cited of their own motion?
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