



Co-funded by the
European Union



Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.

Case no. 1

Mr. and Mrs. Trust are successful property developers, building blocks of apartments and selling each of the apartments. To verify their tax files, the accounting treatment of their activities with regard to property transactions, a tax inspection was ordered covering the period from 1 January 2015 to 31 December 2020.

As the number of sales was significant (53 contracts of sale) and considering that the transactions had a permanent character, on 1 April 2021, the Department of Public Finances issued two decisions imposing on each spouse additional VAT in the amount of 114 000 EUR, 100 000 EUR by way of default interest and the amount of 1 700 EUR by way of late-payment penalty.

Mr. and Mrs. Trust challenged the decisions before the national court submitting that those decisions were null and void on the grounds that their rights of defence had not been respected during the preliminary administrative procedure. According to the applicants, the Department of Public Finances ought to have given them access of its own motion to all the relevant information based on which it adopted the two tax decisions, so that they would subsequently be in a position to challenge them. They invoked Article 41 (Right to good administration), Article 47 (Right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union.

The Department of Public Finances underlines that the EU Charter as invoked by the applicant is not applicable in the present case, as it is a pure internal situation with no close or sufficient connection with any other provisions of EU law as it was already stated by ECJ in Judgment of 24 October 2019, joined Cases C-469/18, IN and C-470/18, JM. Additionally, no provisions from the Charter impose such a procedural requirement for an administrative body to provide information on which the authorities intend to base their decision during a preliminary phase of the decision process

The Department of Public Finances asked the applicants to identify the documents which, according to them, should have been communicated to them. Additionally, as the inspection activity took place during the restrictions caused by Covid- 19, it was not possible to invite Ms. And Mr. Trust to physically study the administrative file. Moreover, in their capacity as sellers of the contracts, the applicants are surely aware of the contracts concluded, so there is no need to communicate to them the content of the administrative file which is not public.

In analyzing both parties 'arguments, the national court has some doubts as to the applicability in the present case of the general principle of EU of defence right, of the content of such rights during the administrative phase and Covid – 19 period when in general face to face activities were restricted.

Discuss the possible line of action for the national court in the present case, giving a short reply to both parties' arguments. If you consider that a request or a preliminary ruling is admissible, draft the content of the question(s) submitted to the Court of Justice of European Union.



Co-funded by the
European Union



Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.

Case no. 2

Mr. Klump, a professor, who is a national of Member State A, carries out his professional activities almost equally during the year in two Member States of EU (A and B), teaching at two different universities. He has his domicile in Member State B. Since his private life and professional life take place both in Member State A, each year, he is obliged to declare his residence in this Member State and, on that basis, he receives a temporary identity card. However, that category of card is not a document that enables him to travel abroad.

Mr. Klump applied to the administrative body competent for personal records in Member State A to be issued with an identity card or an electronic identity card. His application was rejected on the grounds that he had not established his domicile in Member State A. For travel purposes, he is allowed to request an electronic simple passport as his domicile is in Member State B.

His complaint before the Administrative Tribunal of Member State A seeking an order requiring the administrative body to issue him with the identity card was dismissed. The Court stated that under the national legislation an identity card is issued only to nationals domiciled in Member State A¹. Such law is not contrary to EU law, since Directive 2004/38 does not impose an obligation on Member States to issue identity cards to their own nationals. In addition, it found that the applicant had not suffered any discrimination, since the national authorities issued him with an electronic passport, which constitutes a travel document enabling him to travel abroad.

¹ According to the Civil Code of Member State A, the domicile is an essential element of the national's identity. The proof of domicile is provided by the information on the identity card. From an administrative point of view, the address of domicile is established by a deed of ownership, a lease or proof of accommodation in a dwelling in Member State A, according to law.

Mr. Klump appealed this solution before the Supreme Administrative Court of Member State A. As he alleges that EU provisions were infringed in his case, he asks the court to submit a request for a preliminary ruling before ECJ for the interpretation of Article 4 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States² and Article 45(1) of the Charter. He argues that the criterion of domicile for the issuance of an identity card is discriminatory, and no objective grounds was put forward by the administrative body to justify the refusal to grant to a national (having his domicile in another Member State of the European Union) the right to have a national identity card.

The defendant is of the opinion that such a request is inadmissible and must be rejected as such. The provision of the Charter as invoked by the applicant is not applicable in the present case, according to Article 51 of the Charter. Firstly, the refusal to issue a national identity card does not equal *to implementing EU law* in a case concerning a national citizen. Secondly, Article 4 par. 3 of Directive 2004/38/EC does not impose a specific obligation pertaining to EU law on Member States leaving in the power and at the discretion of the Member State to institute conditions for issuing a national identity card. Thirdly, as a passport was issued to Mr. Klump, no other fundamental rights from the Treaty FEU, for example, freedom to movement, are affected.

Discuss the possible line of action for the national court in the present case, giving a short reply to both parties' arguments. If you consider that a request or a preliminary ruling is admissible, draft the content of the question(s) submitted to the Court of Justice of European Union.

Article 4 of Directive 2004/38, entitled 'Right of exit', reads as follows:

1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid

² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

passport shall have the right to leave the territory of a Member State to travel to another Member State.

2. No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.

3. Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.

4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.



Co-funded by the
European Union



Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.

Case no. 3

The applicant, who is a judge in Member State A, brought an action against the Superior Council of Magistracy for the payment of a compensatory sum equal to the value of the net salaries to be paid for the vacant posts at the level of her court. In essence, she claims that due to chronic vacancies in her court (from 15 judges foreseen, in practice, only 5 judges activate effectively), she was forced to do extra work - more specifically, to resolve the cases that could have been tried by the other judges, if all the posts in the section had been occupied.

Obviously, she was forced to work long hours after normal working hours and during weekends. As the Superior Council for Magistracy did not implement specific actions to bring more judges at her court, as a judge she had to bear an overwhelming workload which caused problems at personal level (burn out, chronic stress, illness, negative effects on family and personal life, etc.) and at professional level (disciplinary complaints for excessive length of proceedings, professional liability for the solutions, etc.).

All this extra work was never compensated as the specific legislation for the payment of judges' salaries in Member State A does not provide for this possibility as established by the common rules in Labor Code.

Additionally, judge Judy underlined that during the last 3 years she was not able to take all her annual leave entirely. For example, in 2020 out of 30 days of legal annual leave she was able to take only 12 days of rest, in 2021 she took only 13 days of leave in 2021, in 2022, only 7 days. Due to the overwhelming workload, it has been practically impossible for years to even benefit from the annual rest leave provided for by law. This objective impossibility to benefit from the annual leave entirely, was never compensated as the specific legislation for the payment of judges' salaries in Member State A does not provide for such a possibility as established by the common rules in Labor Code.

Judge Judy invoked as a legal basis Articles 31, 32 of the Charter of fundamental rights of European Union, Article 7 of the Community Charter of the Fundamental Social Rights of Workers and Articles 3, 5, 6 and 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time. She referred also to the Judgment of the Grand Chamber of the Court of Justice of the European Union of 27 February 2018 in Case C-64/16, Associação Sindical dos Juizes Portugueses dos Juizes Portugueses as the factual situation is similar.

The defendant stated that the claim is inadmissible, the national legislation applicable to the payment of judges' salaries does not provide for such pecuniary compensation for the annual leave not taken by the applicant and for the extra work done claimed by the applicant. In fact, this claim is submitted *pro causa* as a series of disciplinary actions were taken by Judicial Inspection against the applicant for not solving the allocated files in reasonable lengths, for unjustified delays for reasoning the judicial decisions. Judge Judy is well known at the domestic level as being a very active representative of a judges' association, *Fiat Justitia*, submitting many Reports to international entities as to the situation of the judiciary in Member State A. There are some indicators that all these international Memoires and Amicus Curiae submitted even to the Court of Justice of the European Union are done during her working hours and not in her free time.

Judge Judy replied that the inadmissibility of her claim as invoked by the defendants infringes Article 47 of the Charter and asked the Court to submit a preliminary ruling to the Court of Justice of the European Union with the following content:

Article 19(1), second subparagraph, TEU, with reference to Article 2(5) TEU and Articles 31, 32, 47 of the Charter of fundamental rights of European Union and Articles 3, 5, 6 and 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding a provision of the national law prohibiting the compensation by payment of the overtime worked by a judge as a result of staff shortages in the court in which she is sitting and the pecuniary compensation of the untaken days of the statutory annual leave?

The defendant contests the admissibility of the preliminary ruling, as none of the EU provisions invoked by the applicant is applicable in the present case. The principle of independence of the judiciary as interpreted by the Court of Justice of the

European Union has a different meaning than the one invoked by the applicant (see Case C-64/16, Associação Sindical dos Juizes Portugueses dos Juizes Portugueses).

Discuss the possible line of action for the national court in the present case, giving a short reply to both parties' arguments. If you consider that a request or a preliminary ruling is admissible, draft the content of the question(s) submitted to the Court of Justice of European Union.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

Article 3 Daily rest

Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.

Article 5 Weekly rest period

Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3.

If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied.

Article 6 - Maximum weekly working time

Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:

(a) the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;

(b) the average working time for each seven-day period, including overtime, does not exceed 48 hours.

Article 7 Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions

for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

*Beatrice Ramascanu, Judge, Trainer at the National Institute of Magistracy,
Bucharest*