

JUDGMENT OF THE COURT (Grand Chamber)

16 October 2012 (*)

(Failure of a Member State to fulfil obligations – Article 259 TFEU – Citizenship of the European Union – Article 21 TFEU – Directive 2004/38/EC – Right to move within the territory of the Member States – President of Hungary – Prohibition on entering the territory of the Slovak Republic – Diplomatic relations between Member States)

In Case C-364/10,

ACTION under Article 259 TFEU for failure to fulfil obligations, brought on 8 July 2010,

Hungary, represented by M.Z. Fehér and E. Orgován, acting as Agents,

applicant,

v

Slovak Republic, represented by B. Ricziová, acting as Agent,

defendant,

supported by:

European Commission, represented by A. Tokár, D. Maidani and S. Boelaert, acting as Agents, with an address for service in Luxembourg,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano (Rapporteur), M. Ilešič, J. Malenovský, Presidents of Chambers, A. Borg Barthet, U. Löhmus, J.-C. Bonichot, C. Toader, J.-J. Kasel and M. Safjan, Judges,

Advocate General: Y. Bot,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 1 February 2012,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2012,

gives the following

Judgment

1 By its application, Hungary asks the Court to:

- find that the Slovak Republic failed to fulfil its obligations under 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 (OJ 2004 L 158, p. 77), and Article 21(1) TFEU in that, on 21 August 2009, relying on that directive, but failing to respect its provisions, it did not allow the President of Hungary, Mr Sólyom, to enter its territory;
- declare that the position of the Slovak Republic, which it was still maintaining at the time when the present action was brought, namely, that it is entitled under Directive 2004/38 to prohibit the entry to the territory of the Slovak Republic of a representative of Hungary, such as the President of that State, thereby confirming that such an unlawful attitude may recur, conflicts with the law of the European Union, in particular Article 3(2) TEU and Article 21(1) TFEU;
- declare that the Slovak Republic applied European Union ('EU') law wrongfully in that its authorities did not allow President Sólyom access to its territory on 21 August 2009; and
- in the event that a specific provision of international law may limit the personal scope of Directive 2004/38, define the extent and scope of such derogations.

Legal context

2 Article 5(1) of Directive 2004/38 states:

‘Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

No entry visa or equivalent formality may be imposed on Union citizens.’

3 Chapter VI of that directive, entitled ‘Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health’, contains Article 27, paragraphs 1 and 2 of which provide as follows:

‘1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.’

4 Finally, Article 30 of that directive provides:

‘1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time-limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.’

The facts of the dispute, the pre-litigation procedure and the proceedings before the Court

5 On the invitation of an association based in Slovakia, Mr Sólyom, the President of Hungary, was scheduled to go to the Slovak town of Komárno on 21 August 2009 to take part in the ceremony inaugurating a statue of Saint Stephen.

6 It is apparent from the documents before the Court, first, that 20 August is a national holiday in Hungary, in commemoration of Saint Stephen, the founder and first king of the Hungarian State. Second, 21 August is considered to be a sensitive date in Slovakia, since on 21 August 1968 the armed forces of five Warsaw Pact countries, which included Hungarian troops, invaded the Czechoslovak Socialist Republic.

7 After several diplomatic exchanges between the embassies of the two Member States regarding the President of Hungary’s planned visit, the Ministry of Foreign Affairs of the

Slovak Republic finally sent, on 21 August 2009, a *note verbale* to the Ambassador of Hungary in the Slovak Republic in which it prohibited the President of Hungary from entering Slovak territory. As justification for that prohibition, that note relied on Directive 2004/38 as well as on provisions of domestic law governing, first, the stay of foreign nationals and, second, the national police force.

- 8 President Sólyom was informed of the terms of that note while on his way to the Slovak Republic. He acknowledged receipt of that note at the border and refrained from entering the territory of that Member State.
- 9 By note of 24 August 2009, the Hungarian authorities argued, in particular, that Directive 2004/38 could not form a valid legal basis to justify the refusal of the Slovak Republic to allow the President of Hungary to enter its territory. They also expressed the view that insufficient reasons had been given for that decision to refuse access. For those reasons, they considered that the Slovak Republic had adopted that measure in breach of European Union (EU) law.
- 10 At a meeting held on 10 September 2009 in Szécsény (Hungary), the Hungarian and Slovak Prime Ministers adopted a joint declaration maintaining their respective positions in regard to the legal aspects of the contested decision, while regretting the circumstances surrounding President Sólyom's trip. On that same occasion, a memorandum was adopted with a view to clarifying certain practical arrangements for future official and unofficial visits to the two States at issue.
- 11 By a note of 17 September 2009, the Slovak authorities replied to the note of 24 August 2009, stating that, in view of the circumstances of the incident, the application of Directive 2004/38 had been the 'last chance' to stop the President of Hungary from entering the territory of the Slovak Republic, and that they had not acted in any way contrary to EU law.
- 12 Meanwhile, on 3 September 2009, the Hungarian Minister for Foreign Affairs sent a letter to the Vice-President of the Commission of the European Communities seeking the Commission's opinion on the possible breach of EU law by the Slovak Republic.
- 13 In his reply dated 10 September 2009, the Vice-President of the Commission acknowledged that, in accordance with Directive 2004/38, any restriction of the right to free movement must observe the principle of proportionality, that, under Article 27(2) of that directive, it must be based on the personal conduct of the individual concerned, and that the person concerned must be notified, in the manner prescribed in Article 30, of that restriction and be given a full and precise explanation of the reasons. He also expressed the view that it was for the national courts in the first place to consider whether the rules of that directive had been properly applied. He emphasised that everything possible had to be undertaken in order to avoid any repetition of such situations and stated that he was confident that a constructive bilateral dialogue between the two Member States could resolve the dispute.
- 14 On 12 October 2009, the Hungarian Minister for Foreign Affairs, acting on behalf of the Hungarian Government, addressed a complaint to the President of the Commission,

requesting that the Commission examine whether it was appropriate to initiate infringement proceedings against the Slovak Republic under Article 258 TFEU for breach of Article 21 TFEU and Directive 2004/38.

- 15 In a letter of 11 December 2009, the Commission expressed the view that ‘Union citizens are entitled to move and reside freely within the territory of the Member States pursuant to Article [21 TFEU] and Directive 2004/38’. However, the Commission pointed out that ‘under international law, the Member States reserve the right to control the access of a foreign Head of State to their territory, regardless of whether that Head of State is a Union citizen’.
- 16 The Member States, according to the Commission, continue to arrange official visits through bilateral political channels, with the result that this is not a sphere in which EU law applies. In the Commission’s opinion, while a Head of State may indeed decide to visit another Member State as a private individual under Article 21 TFEU and Directive 2004/38, it is evident from the documents attached to the complaint lodged by the Hungarian Minister for Foreign Affairs that Hungary and the Slovak Republic are in disagreement as to the nature of the proposed visit.
- 17 The Commission concluded, therefore, that it was not in a position to find that the Slovak Republic had failed to observe the provisions of EU law on the free movement of Union citizens, even though that Member State had been wrong, in its *note verbale* of 21 August 2009, to rely on Directive 2004/38 and on the legislation adopted for its implementation in national law.
- 18 On 30 March 2010, Hungary brought the matter before the Commission in accordance with Article 259 TFEU. On 30 April 2010, the Slovak Republic submitted its observations. Finally, on 12 May 2010, the two Member States presented their oral observations at a hearing arranged by the Commission.
- 19 In its reasoned opinion dated 24 June 2010, the Commission expressed the view that Article 21(1) TFEU and Directive 2004/38 do not apply to visits made by the head of one Member State to the territory of another Member State and that, in those circumstances, the alleged infringement was unfounded.
- 20 On 8 July 2010 Hungary brought the present action. The Slovak Republic contends that the Court should dismiss the action and order Hungary to pay the costs.
- 21 By order of the President of the Court of 28 January 2011, the Commission was granted leave to intervene in support of the form of order sought by the Slovak Republic.

The action

Jurisdiction of the Court

Arguments of the parties

22 The Slovak Republic contends that the Court has no jurisdiction to hear and determine the present dispute, on the basis that EU law does not apply to a situation such as that in the present case.

23 By contrast, Hungary, supported by the Commission on this point alone, considers that, as the Member States have undertaken, in accordance with Article 344 TFEU, not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein, the Court of Justice of the European Union has sole jurisdiction to hear and determine a dispute between two Member States concerning the interpretation of EU law. In particular, a Member State which takes the view that another Member State is in breach of EU law may either request the Commission to initiate infringement proceedings under Article 258 TFEU or bring such an action directly before the Court pursuant to Article 259 TFEU.

Findings of the Court

24 In order to rule on the plea of lack of jurisdiction raised by the Slovak Republic, it is sufficient to state that, in the context of the present action, the Court is called upon to rule on the scope of EU law and, in particular, on that of Article 21 TFEU and Directive 2004/38, in order to determine whether, as alleged, there has been a failure by the Slovak Republic to fulfil the obligations imposed on it by that law.

25 The question whether EU law is applicable to the present case is a matter fully within the jurisdiction of the Court, in particular under Article 259 TFEU, to rule on the existence of a possible failure to comply with that law.

26 Consequently, the Court has jurisdiction to rule on the action brought by Hungary and the plea of lack of jurisdiction raised by the Slovak Republic must be rejected.

The first head of complaint

Arguments of the parties

27 By its first head of complaint, Hungary maintains that the Slovak Republic infringed Article 21(1) TFEU and Directive 2004/38 when it refused the President of Hungary entry into its territory.

28 In order to establish, first, the applicability of EU law in the present case, the Hungarian Government claims, in particular, that Directive 2004/38 applies to all citizens of the Union, including Heads of State, and to all types of visits, that is to say, both official and private.

29 It adds that, if the European Parliament and the Council of the European Union had wished to make the exercise of freedom of movement subject to rules of international law, they would have made provision to that end, as they did, for example, in Article 3(2)(f) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44). Moreover, there are

no such rules of international law. In view of the case-law of the Court according to which the EU legislature must respect international law, if such rules existed, Directive 2004/38 would have taken them into account. In any event, even assuming that such rules exist, Hungary considers that their application cannot compromise the effectiveness of EU legislation, such as Directive 2004/38, by introducing a derogation in regard to its personal scope.

- 30 Next, Hungary maintains that the scope of the right of every citizen of the Union to move freely within the European Union cannot be given a restrictive interpretation, with the result that that right may be made subject only to the limitations specified, by way of exception, by Directive 2004/38. However, those limitations may be applied only when the substantive and procedural conditions laid down in that directive have been satisfied.
- 31 With regard to substantive conditions, it argues, Article 27(2) of Directive 2004/38 allows Member States to adopt restrictive public-policy or public-security measures if they are based exclusively on the personal conduct of the individual concerned, while observing the principle of proportionality. Moreover, such restrictions may be applied only if the conduct of the person concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. As regards procedural conditions, Article 30 of Directive 2004/38 mentions the safeguards which all citizens of the Union whose right to freedom of movement is limited must enjoy, and which concern in particular the notification of the grounds for any restrictive measure and of the remedies available to them.
- 32 According to Hungary, the defendant failed to satisfy either the substantive or the procedural conditions laid down in Directive 2004/38 for the purpose of refusing the President of Hungary entry into Slovak territory. First, Mr Sólyom did not represent any threat to any fundamental interest of society and, in any event, it was disproportionate to refuse access. Secondly, no notification was sent to Mr Sólyom to inform him of the grounds for the decision in question and of the remedies available to him.
- 33 Supported by the Commission on this point, the Slovak Republic first of all states that the President of Hungary's planned visit was not a private visit of a Union citizen but the visit of a Head of State to the territory of another Member State. Consequently, the question is whether EU law, and in particular Article 21 TFEU and Directive 2004/38, are applicable to Heads of State of the Member States.
- 34 In this connection, the Slovak Republic submits that, in view of the role of Heads of State, their movements within the European Union fall within the sphere of diplomatic relations between Member States, as governed by customary international law and by international conventions. The principle of the conferral of competences under Article 3 TEU, Article 4(1) TEU and Article 5 TEU excludes bilateral diplomatic relations between Member States from the ambit of EU law. That, it argues, is confirmed, first of all, by the judgment in Case C-437/04 *Commission v Belgium* [2007] ECR I-2513, according to which the Member States retain the right to regulate their diplomatic relations even after acceding to the European Union. Moreover, there is no provision in the Treaties that expressly confers

on the European Union competence to regulate diplomatic relations between Member States.

- 35 Next, as the sovereignty of the State which he represents is vested in the Head of State, he may enter another sovereign State only with the latter's knowledge and consent. In that regard, the Slovak Republic points out that Article 4(2) TEU provides that 'the Union shall respect the equality of Member States before the Treaties as well as their national identities' and that the principle of free movement may not, under any circumstances, lead to a change in the ambit of the EU Treaty or of the provisions of secondary legislation.
- 36 In response to the arguments put forward by Hungary on the applicability of EU law in the present case, the Slovak Republic counters, first, that the fact that Directive 2004/38 does not provide for any derogation concerning the movement of Heads of State does not mean that that directive applies to them, the application of EU law to Heads of State being excluded by the Treaties themselves. Second, the Slovak Republic, like the Commission, challenges the comparison drawn between Directive 2004/38 and Directive 2003/109, in so far as those two texts deal with different subjects, the second relating to better integration of immigrants lawfully present in a State. Third, the judgments in Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019 and in Case C-162/96 *Racke* [1998] ECR I-3655 do not create any obligation requiring the EU legislature to indicate, for any act of secondary legislation, the material and personal scope of the Treaties in the context of international law. Fourth, and lastly, the judgments in Joined Cases C-241/91 P and C-242/91 P *RTE and ITP v Commission* [1995] ECR I-743 and in Case C-301/08 *Bogiatzi* [2009] ECR I-10185 are relevant only if the competence of the Union is not contested, and that is precisely not the position here.
- 37 Moreover, if it were to be accepted that EU law applied in circumstances such as those of the present case, the Head of State of one Member State would enjoy privileges based on that law in another Member State, while at the same time being protected by the immunity provided for by international law against the applicability of administrative decisions taken by that State under EU law. The consequence would be that a Member State could neither deny such a person entry into its territory nor, in view of his immunities, subsequently expel him.
- 38 In any event, even assuming that EU law is applicable in the circumstances of the present case, the Slovak Republic denies having applied that law, and in particular Directive 2004/38. In this connection, it takes the view that the *note verbale* of 21 August 2009 containing the reference to Directive 2004/38 formed part of the diplomatic exchanges concerning the arrangements for the President of Hungary's planned visit, and did not therefore constitute a 'decision' within the meaning of that directive. Moreover; that note was written, not by a police officer in the border control service, but by the Ministry of Foreign Affairs, that is to say, a body which clearly does not have power to adopt a decision at first instance under Directive 2004/38 and the relevant national rules. In addition, far from being addressed to Mr Sólyom, that note was sent by diplomatic channels to Hungary.

39 The Slovak Republic also maintains that the unfortunate wording and the reference to Directive 2004/38 in that note do not determine the material application of that directive to the present case.

Findings of the Court

40 In order to rule on the first head of complaint, it should be stated from the outset that citizenship of the Union is intended to be the fundamental status of nationals of the Member States (see, inter alia, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31; Case C-135/08 *Rottmann* [2010] ECR I-1449, paragraph 43; and Case C-256/11 *Dereci and Others* [2011] ECR I-0000, paragraph 62).

41 To that end, Article 20 TFEU confers the status of citizen of the Union on every person holding the nationality of a Member State (see, inter alia, Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 27; Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 21; and Case C-34/09 *Ruiz Zambrano* [2011] ECR I-0000, paragraph 40).

42 It follows that, since Mr Sólyom is of Hungarian nationality, he unquestionably enjoys that status.

43 It is true, first, that, in accordance with Article 21 TFEU, citizenship of the Union confers on each Union citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and restrictions laid down by the Treaties and the measures adopted for their implementation (Case C-162/09 *Lassal* [2010] ECR I-9217, paragraph 29, and Case C-434/09 *McCarthy* [2011] ECR I-0000, paragraph 27).

44 Second, it is necessary to note that EU law must be interpreted in the light of the relevant rules of international law, since international law is part of the European Union legal order and is binding on the institutions (see, to that effect, *Racke*, paragraphs 45 and 46, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 291).

45 In the present case, it is therefore necessary to establish whether, as the Slovak Republic claims, the fact that Mr Sólyom, while a Union citizen, was carrying out, at the material time, the duties of the Hungarian Head of State is liable to constitute a limitation, on the basis of international law, on the application of the right of free movement conferred on him by Article 21 TFEU.

46 To that end, it should be noted that, on the basis of customary rules of general international law and those of multilateral agreements, the Head of State enjoys a particular status in international relations which entails, inter alia, privileges and immunities.

47 In particular, Article 1 of the New York Convention of 14 December 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, states, inter alia, that every Head of State, while on the territory of a foreign State, enjoys that protection.

- 48 Thus, the presence of a Head of State on the territory of another State imposes on that latter State the obligation to guarantee the protection of the person who carries out that duty, irrespective of the capacity in which his stay is effected.
- 49 The status of Head of State therefore has a specific character, resulting from the fact that it is governed by international law, with the consequence that the conduct of such a person internationally, such as that person's presence in another State, comes under that law, in particular the law governing diplomatic relations.
- 50 Such a specific character is capable of distinguishing the person who enjoys that status from all other Union citizens, with the result that that person's access to the territory of another Member State is not governed by the same conditions as those applicable to other citizens.
- 51 Accordingly, the fact that a Union citizen performs the duties of a Head of State is such as to justify a limitation, based on international law, on the exercise of the right of free movement conferred on that person by Article 21 TFEU.
- 52 In the light of all of the foregoing, it must be held that, in the circumstances of the present case, neither Article 21 TFEU nor, *a fortiori*, Directive 2004/38 obliged the Slovak Republic to guarantee access to its territory to the President of Hungary and that, therefore, the first head of complaint must be rejected as unfounded.

The third head of complaint

Arguments of the parties

- 53 By its third head of complaint, which it is appropriate to examine in the second place, Hungary claims that, by refusing to allow the President of Hungary access to its territory, the Slovak Republic breached Directive 2004/38, and that the very fact of basing the *note verbale* of 21 August 2009 on that directive comes under the concept of the abuse of rights as defined by the Court's case-law (see, inter alia, Case C-110/99 *Emsland-Stärke* [2000] ECR I-11569). In reality, it is claimed, the Slovak Republic invoked that directive in order to pursue political aims.
- 54 According to Hungary, resorting to EU law in order to express political hostility by means of measures restricting the free movement of citizens is contrary to the fundamental values of the European Union. Similarly, the public policy or public security referred to in Directive 2004/38 cannot be invoked in order to pursue political aims. Hungary adds that, if such conduct were to be considered compatible with EU law, there would be nothing to prevent the other Member States from 'settling' their bilateral disputes in the future by invoking EU law, something which would be contrary to the objectives of that law.
- 55 The Slovak Republic replies that there has been no abusive application of EU law, since that law does not apply to the present case, and that, in any event, the conditions laid down by the case-law for the finding of such an abusive application are not met in the present case.

Findings of the Court

- 56 It must be noted that the Slovak Republic was wrong to refer, in its *note verbale* of 21 August 2009, to Directive 2004/38, a matter which that Member State has, moreover, acknowledged.
- 57 However, that fact is not sufficient to prove an abuse of rights by the Slovak Republic.
- 58 The Court has already held that evidence of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the European Union rules, the purpose of those rules has not been achieved, and, second, a subjective element consisting in the intention to obtain an advantage from the European Union rules by creating artificially the conditions laid down for obtaining it (*Emsland-Stärke*, paragraphs 52 and 53, and Case C-515/03 *Eichsfelder Schlachtbetrieb* [2005] ECR I-7355, paragraph 39).
- 59 In the present case, first, the conditions laid down for the application of Directive 2004/38 were not formally complied with. Since the only act making reference to that directive is the *note verbale* of 21 August 2009 from the Ministry of Foreign Affairs of the Slovak Republic to the Ambassador of Hungary in the Slovak Republic, no decision for the purposes of Article 27 of Directive 2004/38 had been adopted by the competent national authorities or, *a fortiori*, notified to Mr Sólyom in accordance with Article 30 of that directive.
- 60 Second, for the same reasons, it is clear from the documents before the Court that the Slovak Republic did not artificially create the conditions required for the application of Directive 2004/38. The mere reference to that directive in that *note verbale* is manifestly not capable of making that directive applicable to a factual situation to which it does not apply.
- 61 In those circumstances, the third head of complaint must also be rejected as unfounded.

The second and fourth heads of complaint

- 62 It is appropriate to examine the second and fourth heads of complaint together.

Arguments of the parties

- 63 By its second head of complaint, Hungary claims that there is a risk that the Slovak Republic may, in the future, repeat the infringement of Article 3 TEU, Article 21 TFEU and Directive 2004/38. In its view, the existence of such a risk is, *inter alia*, confirmed by several statements made by the Slovak authorities to the effect that their conduct in regard to the President of Hungary did not infringe EU law.
- 64 Since it denies any infringement of EU law, essentially on the grounds that EU law is not applicable to the present case, the Slovak Republic takes the view that there is consequently no risk of repetition. In any event, the second head of complaint is, it argues, based purely

on the possible future conduct of the Slovak authorities. Moreover, the evidence invoked by Hungary in support of that head of complaint consists of statements made after the note of 21 August 2009, and to take them into account in the present proceedings would infringe the Slovak Republic's rights of defence. Finally, referring to a marked improvement in relations between the two Member States in the period subsequent to the events in question – evidenced in particular by the meeting of 10 September 2009, referred to at paragraph 10 of this judgment –, the Slovak Republic dismisses the possibility of any similar misunderstanding recurring in the future.

65 By its fourth head of complaint, Hungary maintains that, if the Court were to conclude that it is the rules of international law, and not those of EU law, that apply in the present case, it should then specify the personal scope of those rules in order to clarify the limits to the application of Article 21 TFEU and Directive 2004/38 so far as bilateral relations between Member States are concerned. In particular, the Court should specify whether those limits concern only Heads of State, or whether they also apply to other categories of Union citizens.

66 The Slovak Republic takes the view that the question as to the persons, other than Heads of State, who may avoid the application of Article 21 TFEU and Directive 2004/38 has no bearing on the resolution of the dispute.

Findings of the Court

67 In order to rule on these two heads of complaint, it must be noted that the procedure established under Article 259 TFEU is designed to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct (see, to that effect, Joined Cases 15/76 and 16/76 *France v Commission* [1979] ECR 321, paragraph 27; Case C-456/05 *Commission v Germany* [2007] ECR I-10517, paragraph 25; and Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden and Others v API and Commission* [2010] ECR I-8533, paragraph 119).

68 Thus, as the aim of the Treaty is to achieve the practical elimination of infringements by Member States and the consequences thereof (Case 70/72 *Commission v Germany* [1973] ECR 813, paragraph 13), an action under Article 259 TFEU concerning future possible infringements or limited to seeking an interpretation of EU law is inadmissible.

69 It must be stated that, by its second head of complaint, Hungary, first, merely pleads a risk of future infringements of Article 3 TEU and Article 21 TFEU, as well as of Directive 2004/38, and second, it does not claim that that risk, assuming it to be established, constitutes, in itself, an infringement of EU law.

70 As regards its fourth head of complaint, Hungary does not ask the Court to find that there had been an infringement on the part of the Slovak Republic, but seeks merely an interpretation of EU law. Moreover, that interpretation is allegedly necessary for the application of that law to a situation different to that at issue in the present case. The circumstances surrounding the incident of 21 August 2009 between Hungary and the

Slovak Republic concern solely the President of Hungary and do not concern any other categories of citizens.

- 71 In those circumstances, the second and fourth heads of complaint must be rejected as inadmissible.
- 72 As none of the heads of complaint raised by Hungary has been upheld, the action must be dismissed in its entirety.

Costs

- 73 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Slovak Republic has applied for costs to be awarded against Hungary, and since the latter has been unsuccessful, Hungary must be ordered to pay the costs.
- 74 Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, the Commission, which has intervened in this dispute, must bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Dismisses the action;**
- 2. Orders Hungary to pay the costs;**
- 3. Orders the European Commission to bear its own costs.**

[Signatures]

* Language of the case: Slovak.