Judgment of the Court (Seventh Chamber) of 13 December 2007 — Commission v Luxembourg

(Case C-294/07)

Failure of a Member State to fulfil obligations — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Failure to transpose into national law within the prescribed period

1. *Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 9)*

2. *Member States — Obligations — Implementation of directives — Failure to fulfil obligations — National system pleaded as justification — Not permissible (Art. 226 EC) (see para. 10)*

Re

FAILURE of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with 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 corrigenda — OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

Operative part

The Court:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with 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, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

Judgment of the Court (Eighth Chamber) of 18 December 2007 — Commission v Greece

(Case C-481/06)

Failure of a Member State to fulfil obligations — Public procurement — Infringement of Article 6(3) of Directive 93/36/EC — General principles of the Treaty — Principle of equal treatment and obligation of transparency — National rules allowing use of the negotiated procedure for public supply contracts relating to certain medical equipment

Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 15)

Re:

FAILURE of a Member State to fulfil obligations — Infringement of Article 6(3) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and of the obligation to ensure effective and fair competition — National provision placing all material for medical use into categories and setting a specific maximum price for each category —