

Strategy 6: Judgments of the EU Court of Justice prior to 2004 should be translated into all languages

Citizens and their advisers need to be able to rely on the relevant judgments of the EU Court of Justice in all EU official languages irrespective of when the judgment may have been issued.

When citizens face obstacles to free movement in the EU, this can often be the result of a lack of awareness of public authorities¹. In order to surmount this obstacle, citizens who seek to exercise their EU rights – and their advisers – will want to cite the relevant provisions of Directive 2004/38 and possibly also the national provisions that give it effect as well as other official sources of information.

This becomes more difficult when citizen are faced by an implementation gap, namely a situation where there is a significant difference between the EU legal framework and the way it is implemented and applied in practice by the Member States.

This is particularly the case of rights, which are not contained in Directive 2004/38 but result from case law of the EU Court of Justice. These cover the right of EU citizens to return home after exercising free movement rights in another EU country², the right of non-EU carers of EU minors³, the right of non-EU carers of children of former EU workers⁴ as well as the right of non-EU carers of EU minors to live in the minor's home country⁵.

In such circumstances, citizens and their advisers need to be able to cite the relevant judgments of the EU Court of Justice. However, given that a fair number of these important judgments were handed down by the Court before “Big-Bang Accession” in 2004, it is not possible at present to cite these cases in the official language of any of the new Member States, with the exception of Cyprus and Malta, which are lucky enough to share an official language with an older Member State.

By way of example, it is not currently possible for a Polish citizen who is married to a Kenyan national to cite the *Surinder Singh* case⁶ in the Polish language as a way to persuade the Polish authorities that her husband should be able to reside with her in Poland on the basis of Directive 2004/38 following her exercise of free movement rights with her husband in another EU country.

¹ Citizenship Report 2013 *EU citizens: your rights, your future*, cited above.

² This was first espoused by the EU Court of Justice as regards workers who return home to work in *Surinder Singh* (Case C-370/90), then extended to workers who return home without intending to work there in *Eind* (C-291/05) and finally recognised as being a right applicable to all EU citizens who have previously resided in another EU country for over 3 months in *O & B* (C-456/12).

³ This was recognised in *Chen* (C-200/02).

⁴ This was first articulated in *Baumbast* (C-413/99) on the basis of Regulation 1612/68 (now Regulation 492/2011) and later clarified in *Ibrahim* (C-310/08) and *Teixeira* (C-480/08).

⁵ The Court first recognised this right in *Zambrano* (C-34/09) on the basis of Article 20 TFEU on EU Citizenship.

⁶ Case C-370/90.

This problem is not limited to the free movement of persons, but also affects other important case law that established the principles of supremacy of EU law⁷ or the liability of EU Member States for serious breaches of EU law⁸.

Case study: Some important rulings of the Court of Justice

*In case C-370/90 **Surinder Singh**, the EU Court of Justice ruled that an EU citizen who goes to work in another EU country has a right to return home with their non-EU spouse. While the judgment was handed down in 1992, it has yet to be translated into the twelve official languages of the Member States that have joined the EU since 2004.*

*Likewise, important cases such as Case 26/62 **Van Gend & Loos** relating to the direct effect of EU law and Joined Case C-6/90 and 9/90 **Francovic** on the liability of Member States for breaches of EU law, are not currently available in the official languages of these newer Member States.*

This hampers the ability of individuals and civil society to play their part in upholding their EU rights before the national administrative and judicial authorities.

Under EU law, the principle of legal certainty requires that the effect of EU law must be clear and predictable for those who are subject to it, which presupposes that EU law should first be made public⁹. Given the central role which the EU Court of Justice plays in the interpretation of EU law, it is implicit in this principle that judgments of the Luxembourg Court should be accessible to all of the EU's citizenry in all official languages of the EU¹⁰.

The Publications Office of the European Union and the EU Court of Justice should therefore urgently embark on a process of translating seminal judgments of the Court into all the official languages of the Member States that have joined the EU since 2004.

These recommendations were formulated by the EU Rights Clinic's Legal Supervisor, Anthony Valcke, at the occasion of the [2014 conference of the Fédération Internationale du Droit Européen](#) which focused on EU citizenship and the final conference of the [EUCROSS](#) project that examines the relationship between cross-border activities of EU residents and their collective identities.

© 2014 Anthony Valcke, Legal Supervisor, EU Rights Clinic – all rights reserved

⁷ These would include *Van Gend & Loos*, cited above, and *Simmenthal* ([Case 106/77](#)).

⁸ The principle was first laid down in *Francovich* (Joined Cases [C-6/90 and C-9/90](#)) and further explained in *Brasserie du Pêcheur and Factortame* (Joined Cases [C-46/93 and C-48/93](#)) and *Köbler* (C-224/01) among other cases.

⁹ *Salumi and Divella* (Joined Cases [212 to 217/80](#))

¹⁰ Article 40 of the [Rules of Procedure of the Court of Justice](#) requires all court publications to be published in all the EU official languages specified in Article 1 of [Regulation 1/1958](#) determining the languages to be used by the European Union. For further discussion of the rules relating to the use of languages in the EU, see *Italy v Commission* ([T-185/05](#)) in which the Court of First Instance held that it would be discriminatory for the European Commission to restrict publication of recruitment notices for senior officials to the three working languages of the Commission, namely English, French and German.