Questions referred

1. Do the rules contained in Article 57 of the Workers' Statute in conjunction with Article 116(2) of the Recast Text of the Law on Employment Procedure, which provide for the practice operated by the Kingdom of Spain of paying directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought before the competent court, fall within the scope of Directive 2008/94/EC [1] of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, in particular Articles 1(1), 2(3), 2(4), 3, 5 and 11 thereof?

2. If the reply is in the affirmative, would the practice operated by the Kingdom of Spain of paying directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought, but of doing so only in the case of dismissals which have been declared by a court to be unfair and not in the case of dismissals which have been declared by a court to be null and void, be regarded as being contrary to Article 20 of the Charter of Fundamental Rights of the European Union [2] and, in any event, the general principle of equality and non-discrimination under European Union law?

3. In connection with the foregoing question, may a court such as the referring court refrain from applying a provision which permits the Kingdom of Spain to pay directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought, but only in the case of dismissals which have been declared by a court to be unfair and not in the case of dismissals which have been declared by a court to be null and void, in circumstances where there do not appear to be any objective differences between the two types of dismissal within the context at issue ('salarios de tramitación')?

[1] OJ 2008 L 283, p. 36.
[2] OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 17 April 2013 — Johan Deckmyn, Vrijheidsfonds VZW v Helena Vandersteen and Others

(Case C-201/13)

(2013/C 189/11)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicants: Johan Deckmyn, Vrijheidsfonds VZW

Defendants: Helena Vandersteen, Christiane Vandersteen, Liliana Vandersteen, Isabelle Vandersteen, Rita Dupont, Amoras II CVOH, WPG Uitgevers België

Questions referred

1. Is the concept of 'parody' an independent concept in European Union law?

2. If so, must a parody satisfy the following conditions or conform to the following characteristics:

   — the display of an original character of its own (originality);

   — and such that the parody cannot reasonably be ascribed to the author of the original work;

   — be designed to provoke humour or to mock, regardless of whether any criticism thereby expressed applies to the original work or to something or someone else;

   — mention the source of the parodied work?

3. Must a work satisfy any other conditions or conform to other characteristics in order to be capable of being labelled as a parody?

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) made on 17 April 2013 — Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez v Secretary of State for the Home Department

(Case C-202/13)

(2013/C 189/12)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez

Defendant: Secretary of State for the Home Department

Questions referred

1. Does Article 35 of Directive 2004/38/EC [1] on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Directive') entitle a Member State to adopt a measure of general application to refuse, terminate, or withdraw the right conferred by Article 5(2) of the Directive exempting non-national EU family members who are holders of residence cards issued pursuant to Article 10 of the Directive ('residence card holders') from visa requirements?

2. Can Article 1 of Protocol No. 20 on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland entitle the United Kingdom to require residence card holders to have an entry visa which must be obtained prior to arrival at the frontier?

3. If the answer to question 1 or question 2 is yes, is the United Kingdom's approach to residence card holders in the present case justifiable, having regard to the evidence summarized in the referring court's judgment?

([1]) 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 L 158, p. 77

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 April 2013 — Hauck GmbH & Co. KG v Stokke A/S and Others

(Case C-205/13)

(2013/C 189/13)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Hauck GmbH & Co. KG

Respondents: Stokke A/S, Stokke Nederland BV, Peter Opsvik, Peter Opsvik A/S

Questions referred

1. (a) Does the ground for refusal or invalidity in Article 3(1)(e)(i) of Directive 89/104/EEC, ([1]) as codified in Directive 2008/95/EC, ([2]) namely that shape trade marks may not consist exclusively of a shape which results from the nature of the goods themselves, refer to a shape which is indispensable to the function of the goods, or can it also refer to the presence of one or more substantial functional characteristics of goods which consumers may possibly look for in the goods of competitors?

   (b) If neither of those alternatives is correct, how should the provision then be interpreted?

2. (a) Does the ground for refusal or invalidity in Article 3(1)(e)(iii) of Directive 89/104/EEC, as codified in Directive 2008/95/EC, namely, that (shape) trade marks may not consist exclusively of a shape which gives substantial value to the goods, refer to the motive (or motives) underlying the relevant public's decision to purchase?

   (b) Does a 'shape which gives substantial value to the goods' within the meaning of the aforementioned provision exist only if that shape must be considered to constitute the main or predominant value in comparison with other values (such as, in the case of high chairs for children, safety, comfort and reliability) or can it also exist if, in addition to that value, other values of the goods exist which are also to be considered substantial?

   (c) For the purpose of answering Questions 2(a) and 2(b), is the opinion of the majority of the relevant public decisive, or may the court rule that the opinion of a portion of the public is sufficient in order to take the view that the value concerned is 'substantial' within the meaning of the aforementioned provision?

   (d) If the latter option provides the answer to Question 2(c), what requirement should be imposed as to the size of the relevant portion of the public?

3. Should Article 3(1) of Directive 89/104/EEC, as codified in Directive 2008/95/EC, be interpreted as meaning that the ground for exclusion referred to in subparagraph (e) of that article also exists if the shape trade mark consists of a sign to which the content of sub-subparagraph (i) of subparagraph (e) applies, and which, for the rest, satisfies the contents of sub-subparagraph (iii) of subparagraph (e)?

([1]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

([2]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 18 April 2013 — Wagenborg Passagiersdiensten BV and Others v Minister van Infrastructuur en Milieu; other parties: Wagenborg Passagiersdiensten BV, Terschellinger Stoombootmaatschappij BV

(Case C-207/13)

(2013/C 189/14)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven