

**Parties to the main proceedings**

*Appellant:* Provincie Antwerpen

*Respondent:* Belgacom NV van publiek recht

**Question referred**

Must Article 6 and/or Article 13 of Directive 2002/20/EC <sup>(1)</sup> of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding a public authority of a Member State from being allowed to tax, for budgetary or other reasons, the economic activity of telecommunications operators which arises in the territory or a part thereof through the presence on public or private property of GSM masts, pylons or antennae which are used for that activity?

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<sup>(1)</sup> OJ 2002 L 108, p. 21.

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**Request for a preliminary ruling from the Tribunal des affaires de sécurité sociale des Bouches-du-Rhône (France) lodged on 13 May 2013 — Anouthani Mlalali v CAF des Bouches-du-Rhône**

**(Case C-257/13)**

(2013/C 207/43)

*Language of the case: French*

**Referring court**

Tribunal des affaires de sécurité sociale des Bouches-du-Rhône

**Parties to the main proceedings**

*Applicant:* Anouthani Mlalali

*Defendant:* CAF des Bouches-du-Rhône

**Question referred**

Must Article 11 of Directive 2003/109/EC <sup>(1)</sup> of 25 November 2003 be interpreted as precluding the requirements laid down by Articles L.512 and D.512-2 of the Code de la sécurité sociale français (French Social Security Code)?

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<sup>(1)</sup> 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).

**Appeal brought on 8 May 2013 by Peter Schönberger against the judgment of the General Court (Sixth Chamber) delivered on 7 March 2013 in Case T-186/11 Peter Schönberger v European Parliament**

**(Case C-261/13 P)**

(2013/C 207/44)

*Language of the case: German*

**Parties**

*Appellant:* Peter Schönberger (represented by: O. Mader, Rechtsanwalt)

*Other party to the proceedings:* European Parliament

**Form of order sought**

— Set aside the judgment of the General Court of 7 March 2013 in Case T-186/11;

— Uphold the application made by the appellant at first instance. Annul the respondent's decision, communicated to the appellant by letter of 25 January 2011, by which the examination of his petition No 1188/2010 was terminated, without the Committee on Petitions examining the substance of the petition;

— Order the respondent to pay the costs.

**Pleas in law and main arguments**

In its presentation of the facts, the General Court suppressed the fact that the chairperson of the Committee on Petitions informed the appellant without giving further reasons that, although his petition was admissible, the Committee on Petitions could not examine its substance. Subsequently the General Court assumed — thereby distorting the facts — that the petition had been examined.

The General Court misrepresented the scope of protection of the fundamental right of petition by unlawfully presuming that it was limited to the examination of the admissibility of a petition. The scope of protection also however encompasses the right to a substantive examination of the petition and to a decision on the substance, if the petition is admissible (right to have case examined).

The General Court contradicted itself by holding that the Parliament's failure to examine an admissible petition, unlike the failure to examine an inadmissible petition, does not produce any legal effects.

The General Court ruled in a manner contrary to its own case-law in Case T-308/07 *Tegebauer*. <sup>(1)</sup> It held in that case that the effectiveness of the right of petition can be impaired where the substance of a petition has not been examined.

The General Court overlooked the legal infringement constituted by the deficient reasoning of the European Parliament's decision. It instead substituted its own reasoning for the deficient reasons given for the failure to deal with the petition.

The General Court failed to take due account of the fact that the appellant was denied the possibility of presenting his case to the Committee on Petitions in an undistorted way.

<sup>(1)</sup> Judgment of the General Court of 14 September 2011 (not yet published in the ECR).

**Appeal brought on 14 May 2013 by the Kingdom of Spain against the judgment of the General Court (Second Chamber) delivered on 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 Spain v Commission**

**(Case C-263/13 P)**

(2013/C 207/45)

*Language of the case: Spanish*

**Parties**

*Appellant:* Kingdom of Spain (represented by: A. Rubio González, agent)

*Other party to the proceedings:* European Commission

**Form of order sought**

- Declare that the present appeal is well founded and set aside the judgment of the General Court of 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 *Spain v Commission*;
- Annul Commission Decisions C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009, and C(2010) 337 of 28 January 2010 reducing the aid from the European Regional Development Fund (ERDF) to Operational Programme 'Andalucía', falling within Objective 1 (1994-1999), under Commission Decision C(94) 3456 of 9 December 1994, Operational Programme 'País Vasco', falling within Objective 2 (1997-1999), under Commission Decision C(1998) 121 of 5 February 1998, and to Operational Programme 'Comunidad Valenciana', falling within Objective 1 (1994-1999), under Commission Decision C(1994) 3043/6 of 25 November 1994, respectively;
- Order the respondent to pay the costs.

**Pleas in law and main arguments**

- **Error of law in holding Article 24(2) of Regulation 4253/88 <sup>(1)</sup> to be the legal basis for applying financial corrections based on an extrapolation.** This provision is

not a legal basis for applying financial corrections by extrapolation in the event of systematic irregularities, since this power has not been conferred on the Commission.

- **Error of law in the review of the reliability, consistency, relevance and appropriateness of the extrapolation applied by the Commission.** The review by the General Court with respect to the representativeness of the sample used for the application of the financial correction by extrapolation was not carried out in accordance with the *Tetra Laval* <sup>(2)</sup> case-law.

- <sup>(1)</sup> Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments OJ 1988 L 374, p. 1
- <sup>(2)</sup> Judgment of 15 February 2005 in Case C-12/03 P *Commission v Tetra Laval* [2005] ECR I-987, paragraph 39

**Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 15 May 2013 — Provincie Antwerpen v Mobistar NV**

**(Case C-264/13)**

(2013/C 207/46)

*Language of the case: Dutch*

**Referring court**

Hof van beroep te Antwerpen

**Parties to the main proceedings**

*Appellant:* Provincie Antwerpen

*Respondent:* Mobistar NV

**Question referred**

Must Article 6 and/or Article 13 of Directive 2002/20/EC <sup>(1)</sup> of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding a public authority of a Member State from being allowed to tax, for budgetary or other reasons, the economic activity of telecommunications operators which arises in the territory or a part thereof through the presence on public or private property of GSM masts, pylons or antennae which are used for that activity?

<sup>(1)</sup> OJ 2002 L 108, p. 21.