

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 23 September 2013 — Levent Redzheb Yumer v Direktor na Teritorialna direksia na NAP — Varna

(Case C-505/13)

(2013/C 344/87)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Levent Redzheb Yumer

Defendant: Teritorialna direksia na NAP — Varna

Questions referred

1. Do Article 2 of the Treaty on European Union and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union allow that only one category of persons — natural persons registered under the Zakon za danak varhu dobavenata stoinost (Law on value added tax, 'ZDDS') — has no legally recognised right to a tax reduction in respect of an agricultural activity?
2. Do Article 2 of the Treaty on European Union and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union allow the setting of different tax rates for the same type of activity depending on the legal form of the exercise of that activity and registration under the ZDDS?
3. Is the introduction of internal measures which result in natural persons registered under the ZDDS and as farmers being denied a tax reduction that is provided for sole traders and legal persons — although they have fulfilled their legal obligations to constitute their taxable income in the same way as sole traders and to determine their annual basis of assessment in the same way as sole traders — an infringement of the principles of legal certainty, effectiveness and proportionality?

Appeal brought on 19 September 2013 by Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro AE against the judgment of the General Court (Fourth Chamber) of 9 July 2013 in Case T-552/11 Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro v Commission

(Case C-506/13 P)

(2013/C 344/88)

Language of the case: Greek

Parties

Appellant: Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro AE (represented by: E. Tzannini, lawyer)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- uphold the present action;
- set aside the judgment of the General Court of the European Union (registered under No 575925) of 9 July 2013 in Case T-552/11;
- hear and rule on the substance of the present case, alternatively refer the case back to the General Court of the European Union for it to examine the substance of the case;
- dismiss the counter claim of the European Commission in that all the relevant forms of order raised at first instance are wholly inadmissible and in any event unfounded;
- uphold the action brought on 24 October 2011 by the 'Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro' for the annulment of the debit note No 3241109207 issued on 9 September 2011;
- annul the contested debit note No 3241109207 for the sum of EUR 83 001,09;
- order the European Commission to pay the costs.

Pleas in law and main arguments

1. Error of law, in the failure to recognise that the debit note produces legal effects and as a result misapplication of Article 263 TFEU. The General Court, in holding that the European Commission did not exercise powers which it holds as a public authority and that the purpose of the debit note resides in the exercise of rights acquired by the Commission from the provisions of the contract committed an error of law.
2. Error of law, in the incorrect classification under the legal concept of 'undue payment'. The General Court's interpretation of the contract in respect of the meaning of undue payment is incorrect and wholly improper.
3. Infringement of the fundamental principles of European Union law in that the arguments of 'Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro' in relation to the default interest rate were not taken into account. The General Court unlawfully determined the date when interest would start to run as the date following the date for payment stated in the debit note.
4. Application of the incorrect legal criteria in the assessment by the General Court of the evidence. The General Court incorrectly called into question the working hours of the persons employed.

5. Error of law and erroneous classification of the facts in the basic premise. The General Court did not make a correct legal classification of the contested facts in respect of the nature and function of time sheets.
6. Manifest legal errors of assessment in respect of the procedural rules which safeguard the rights of the defence and equality of arms between the European Commission and the 'Lito Maieftiko Ginaikologiko kai Khirourgiko Kentro'. The General Court erroneously held that the submitted worksheets did not meet the requirements imposed by the provisions of the contract and consequently determined that they were to be rejected as a means of proof and, further, that the submitted correspondence was not adequate evidence of the hours of work which were in fact provided by the persons employed.
7. Error of law in the assessment of the legal nature of the methods for the calculation of costs (Cost Models).
8. Error of law in respect of the meaning of misuse of power by the European Commission.
9. Erroneous classification of the facts in the basic premise, which leads to the erroneous judicial ruling on rejection of the argument of the 'Lito Maieftiko Ginaikologiko kai Khirourgiko Kentro' on the inadequate statement of reasons in the contested debit note.
10. Error of law in the assessment of the principle of the protection of legitimate expectations. The General Court erred in not holding that the European Commission, in breach of the protection of legitimate expectations, nullified the entire research work of the 'Lito Maieftiko Ginaikologiko kai Khirourgiko Kentro', validating its formal deviations from the allegedly correct procedure by pursuit of the entirety of the sums paid.

Action brought on 23 September 2013 — Republic of Estonia v European Parliament, Council of the European Union

(Case C-508/13)

(2013/C 344/89)

Language of the case: Estonian

Parties

Applicant: Republic of Estonia (represented by: K. Kraavi-Käerdi, acting as Agent)

Defendants: European Parliament, Council of the European Union

Form of order sought

— The Republic of Estonia considers that the following provisions of Directive 2013/34/EU⁽¹⁾ of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European

Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC:

1. Article 4(6) and (8),
2. Article 16(3), and
3. Article 6(3)

are not consistent with the principles of proportionality and subsidiarity, and asks the Court to annul them on the ground of breach of the Treaties or the rules implementing them. The Republic of Estonia considers that, when those provisions were adopted, the obligation to state reasons laid down in Article 296 TFEU — an essential procedural requirement within the meaning of Article 263 TFEU — was also infringed. The Republic of Estonia consequently asks the Court to annul the words 'and the disclosure requirement is contained in the national tax legislation for the strict purposes of tax collection' in Article 4(6), the words 'required by national tax legislation' and 'as referred to in paragraph 6' in Article 4(8), and Article 16(3) and Article 6(3) as a whole. Should the Court take the view that those provisions are not to be regarded as separate and cannot be severed from the remaining text of the directive without changing it, and that the annulment of those provisions may affect the general system of the directive, the Republic of Estonia asks the Court to annul the directive as a whole on the same grounds and for the same reasons;

— order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

1. The Republic of Estonia brings an action for the annulment of certain provisions of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ('the Directive') or alternatively of the Directive as a whole.
2. The action is brought on the basis of the first paragraph of Article 263 TFEU for the annulment of the words '*and the disclosure requirement is contained in the national tax legislation for the strict purposes of tax collection*' in Article 4(6), the words '*required by national tax legislation*' and '*as referred to in paragraph 6*' in Article 4(8), and Article 16(3) and Article 6(3) as a whole, or alternatively of the Directive as a whole, on the ground of breach of essential procedural requirements and infringement of the Treaties or rules implementing them.
3. The breach of essential procedural requirements consists, in the opinion of the Republic of Estonia, in the failure to comply with the obligation to state reasons laid down in Article 296 TFEU when adopting the Directive. The infringement of the Treaty or the rules implementing it consists, in the opinion of the Republic of Estonia, in a breach of the principles of proportionality and subsidiarity.