

2. Does a national rule that permits the state, the parties to a collective agreement and the parties to an individual employment contract to specify the automatic termination of an employment relationship upon reaching a specific fixed age (in this case: reaching the age of 65), contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation if, according to established practice in place for several decades in the Member State, clauses of this type have consistently applied to the employment relationships of nearly all workers, irrespective of the prevailing economic, social and demographic state of affairs and the actual labour market situation?
3. Does a collective agreement that permits an employer to end an employment relationship at a specific fixed age (in this case: reaching the age of 65), contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation if, according to established practice in place for several decades in the Member State, clauses of this type have consistently applied to the employment relationships of nearly all workers, irrespective of the prevailing economic, social and demographic state of affairs and the actual labour market situation?
4. Does a state that declares a collective agreement permitting employers to end employment relationships at a specific fixed age (in this case: reaching the age of 65) to be generally applicable and upholds this extension contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, if this is effected irrespective of the prevailing economic, social and demographic state of affairs and irrespective of the actual labour market situation?

⁽¹⁾ OJ 2000 L 303, p. 16.

Action brought on 2 February 2009 — Commission of the European Communities v Republic of Poland

(Case C-49/09)

(2009/C 102/15)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

- declare that, by applying a reduced VAT rate of 7 % to supplies, the import and the intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear on the basis of Article 41(2) of the Law on Goods and Services Tax (ustawa o podatku od towarów i usług) of 11 March 2004, in conjunction with items 45 and 47 of Annex III to that Law, the Republic of Poland has failed to fulfil its obligations under Article 98 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ⁽¹⁾ in conjunction with Annex III thereto;
- order the Republic of Poland to pay the costs.

Pleas in law and main arguments

In the applicant's view, the Republic of Poland's application of a reduced VAT rate of 7% to supplies, the import and the intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear on the basis of Article 41(2) of the Law on Goods and Services Tax of 11 March 2004, in conjunction with items 45 and 47 of Annex III to that Law, is contrary to the explicit provisions of Article 98 of Directive 2006/112/EC. Application of that reduced rate to the above-mentioned goods is not covered by any derogation accorded to the Republic of Poland in point 1(a) and (b) of Chapter 9 ('Taxation') of Annex XII to the Act concerning the conditions of accession of the Republic of Poland to the European Union or in Article 128 of Directive 2006/112/EC.

⁽¹⁾ OJ No L 347, 11.12.2006, p. 1.

Reference for a preliminary ruling from the Juzgado de lo Mercantil 4, Barcelona (Spain) lodged on 13 February 2009 — Axel Walz v Clickair SA

(Case C-63/09)

(2009/C 102/16)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil 4, Barcelona

Parties to the main proceedings*Applicant:* Axel Walz*Defendant:* Clickair SA**Question referred**

Does the limit of liability referred to in Article 22.2 of the Convention for the Unification of Certain Rules for International Carriage, signed in Montreal on 28 May 1999, include both non-material damage and material damage resulting from the loss of baggage?

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 17 February 2009 — Alexander Hengartner and Rudolf Gasser

(Case C-70/09)

(2009/C 102/17)

*Language of the case: German***Referring court**

Verwaltungsgerichtshof

Parties to the main proceedings*Applicants:* Alexander Hengartner, Rudolf Gasser*Defendant:* Vorarlberger Landesregierung**Question referred**

Is the carrying on of hunting, if the person licensed to hunt sells the shot wildlife within the country concerned, a self-employed activity within the meaning of Art. 43 EC, even if that activity is not intended to make an overall profit?

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 18 February 2009 — Établissements Rimbaud SA v Directeur général des impôts, Directeur des services fiscaux d'Aix-en-Provence

(Case C-72/09)

(2009/C 102/18)

*Language of the case: French***Referring court**

Cour de Cassation

Parties to the main proceedings*Applicant:* Établissements Rimbaud SA*Defendants:* Directeur général des impôts, Directeur des services fiscaux d'Aix-en-Provence**Question referred**

Does Article 40 of the Agreement on the European Economic Area preclude legislation such as that imposed by Article 990D et seq. of the Code général des impôts, in the version applicable at the relevant time, which exempts from the 3% tax on the market value of immovable property situated in France companies which have their registered office in France and which, in respect of a company which has its registered office in a country in the European Economic Area and which is not a member of the European Union, makes that exemption subject either to the existence of a convention on administrative assistance between France and that State for the purposes of combating tax avoidance and tax evasion or to the existence of a requirement in a treaty containing a clause prohibiting discrimination on grounds of nationality to the effect that those legal persons cannot be more heavily taxed than companies established in France?

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 18 February 2009 — Bâtiments et Ponts Construction SA, Thyssenkrupp Industrieservice v Berlaymont 2000 SA

(Case C-74/09)

(2009/C 102/19)

*Language of the case: French***Referring court**

Cour de cassation

Parties to the main proceedings*Applicants:* Bâtiments et Ponts Construction, Thyssenkrupp Industrieservice*Defendant:* Berlaymont 2000