

Reference for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 14 February 2012 — SC Mora IPR SRL v Direcția Generală a Finanțelor Publice Sibiu, Direcția Județeană pentru Accize și Operațiuni Vamali Sibiu

(Case C-79/12)

(2012/C 126/11)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicant: SC Mora IPR SRL

Defendants: Direcția Generală a Finanțelor Publice Sibiu, Direcția Județeană pentru Accize și Operațiuni Vamali Sibiu

Questions referred

1. Is Article 211 of Directive 2006/112/EC ⁽¹⁾ to be interpreted as precluding the introduction of a condition (such as the requirement that a deferred payment certificate be obtained, within a specific period, on the conditions established by order of the Minister for the Economy and Finance) additional to the condition relating to the entries in the VAT return to be made by taxable persons who are authorised not to pay to the customs authorities VAT on importation?
2. Are Articles 26(2), 28, 30 and 107(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding *repeated legislative intervention* such as that provided for in paragraphs 1 and 2 of Decree-Law No 22 of 28 March 2007 or in paragraph 69 of Decree-Law No 106 of 4 October 2007, by which Article 157(4) of the Fiscal Code was amended to the effect that only *some taxable persons for VAT purposes* (who have imported, or who are thought to have imported, goods after 15 April 2007 and who have obtained a deferred payment certificate) from among those in *identical situations* (inasmuch as they hold goods imported temporarily during the period preceding accession) are allowed not to pay VAT at customs?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Reference for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 14 February 2012 — Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării

(Case C-81/12)

(2012/C 126/12)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Asociația ACCEPT

Defendant: Consiliul Național pentru Combaterea Discriminării

Questions referred

1. Do the provisions of Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ⁽¹⁾ apply when a shareholder of a football club who presents himself as, and is considered in the mass media as, the principal director (or 'manager') of that football club makes a statement to the mass media in the following terms:

'Not even if I had to close Steaua down would I accept a homosexual on the team. Obviously people will talk, but how could anyone write something like that if it's not true and, what's more, put it on the front page... Perhaps he's not a homosexual [X, a Bulgarian footballer] ... But what if he is? ... I said to an uncle of mine who didn't believe in Satan or in Christ. I said to him: "Let's say God doesn't exist. But suppose he does? What do you lose by taking communion? Wouldn't it be good to go to Heaven?" He said I was right. A month before he died he took communion. May God forgive him. There's no room for gays in my family, and Steaua is my family. It would be better to play with a junior rather than someone who was gay. That's not discrimination. No one can force me to work with anyone. I have rights just as they do and I have the right to work with whoever I choose.

Not even if I had to close Steaua down would I accept a homosexual on the team. ... Perhaps he's not a homosexual, but what if he is? There's no room for gays in my family, and Steaua is my family. Rather than having a homosexual on the team, it would be better to play a junior. That's not discrimination. No one can force me to work with anyone. I have rights just as they do and I have the right to work with whoever I choose. Even if God told me in a dream that it was 100 percent certain that X wasn't a homosexual I still wouldn't take him! Too much has been written in the papers about his being a homosexual. Even if ȚSKA gave him to me for free I wouldn't have him! He could be the biggest troublemaker, the biggest drunk ... but if he's a homosexual I don't want to know about him?

2. To what extent may the abovementioned statements be regarded as 'facts from which it may be presumed that there has been direct or indirect discrimination' within the meaning of Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, as regards the defendant S.C. Fotbal Club Steaua București S.A.?
3. To what extent would there be *probatio diabolica* if the burden of proof referred to in Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation were to be reversed in this case and the defendant S.C. Fotbal Club Steaua București S.A. were required to demonstrate that there has been no breach of the principle of equal treatment and, in particular, that recruitment is unconnected with sexual orientation?
4. Does the fact that it is not possible to impose a fine in cases of discrimination after the expiry of the limitation period of six months from the date of the relevant fact, laid down in Article 13(1) of Government Decree No 2/2001 on the legal regime for sanctions, conflict with Article 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation given that sanctions, in cases of discrimination, must be effective, proportionate and dissuasive?

⁽¹⁾ OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 17 February 2012 — Criminal proceedings against Minh Khoa V o

(Case C-83/12)

(2012/C 126/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Minh Khoa V o

Other party: Generalbundesanwalt beim Bundesgerichtshof

Question referred

Are Articles 21 and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas ('the Visa Code'), ⁽¹⁾ which regulate the issue and annulment of a uniform visa, to be interpreted as precluding criminal liability, resulting from the application of national legislation, for the smuggling of foreign nationals in cases where, although they hold visas, the

persons smuggled obtained those visas by deceiving the competent authorities of another Member State as to the true purpose of their journey?

⁽¹⁾ OJ 2009 L 243, p. 1.

Reference for a preliminary ruling from the Rechtbank Roermond (Netherlands), lodged on 20 February 2012 — Criminal proceedings against Jibril Jaoo

(Case C-88/12)

(2012/C 126/14)

Language of the case: Dutch

Referring court

Rechtbank Roermond

Party to the main proceedings

Jibril Jaoo

Questions referred

- Does Article 4.17a of the Vreemdelingenbesluit 2000 (Decree on Foreign Nationals 2000) contravene the prohibition of border checks or the prohibition of checks equivalent to border checks within the terms, respectively, of Articles 20 and 21 of the Schengen Borders Code? ⁽¹⁾
- If so, are non-EU citizens or persons who do not have a residence permit for one of the Member States of the EU also entitled to rely thereon?

⁽¹⁾ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

Action brought on 21 February 2012 — European Commission v Republic of Poland

(Case C-90/12)

(2012/C 126/15)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Simonsson and M. Owsiany-Hornung, acting as Agents)

Defendant: Republic of Poland