

Judgment of the Court (Grand Chamber) of 22 December 2008 (reference for a preliminary ruling from the Cour Administrative d'Appel de Lyon — France) — Régie Networks v Direction de Contrôle Fiscal Rhône-Alpes Bourgogne

(Case C-333/07) ⁽¹⁾

(State aid — Aid scheme to support local radio stations — Financed by a parafiscal charge on advertising companies — Favourable decision by the Commission at the conclusion of the preliminary stage of the review procedure under Article 93(3) of the EC Treaty (now Article 88(3) EC) — Aid that may be compatible with the common market — Article 92(3) of the EC Treaty (now, after amendment, Article 87(3) EC) — Decision challenged on the ground that it is unlawful — Obligation to state the reasons on which the decision is based — Assessment of the facts — Whether the parafiscal charge is compatible with the EC Treaty)

(2009/C 44/22)

Language of the case: French

Referring court

Cour Administrative d'Appel de Lyon

Parties to the main proceedings

Applicant: Régie Networks

Defendant: Direction de Contrôle Fiscal Rhône-Alpes Bourgogne

Re:

Reference for a preliminary ruling — Cour Administrative d'Appel de Lyon — Validity of Commission Decision No N 679/97 of 10 November 1997 by which the Commission decided not to raise any objections to amendments made to the radio broadcasting aid scheme introduced by Decree 92-1053 of 30 September 1992 (JORF No 228 of 1 October 1992) (SG(97) D/9265) — Parafiscal charge on advertisements broadcast on sound radio and television in French territory, the revenue from which is allocated to a fund to support radio broadcasting — Aid scheme which benefits only national undertakings — Applicability to that scheme — and to the charge which funds it — of the exception provided for in Article 87(3)(c) EC

Operative part of the judgment

The decision of the Commission of the European Communities of 10 November 1997 not to raise any objections to the new version of an aid scheme to support local radio stations (State aid No N 679/97 — France) is invalid.

The effects of the declaration that that decision of the Commission of the European Communities of 10 November 1997 is invalid are suspended pending the adoption of a new decision by the Commission

under Article 88 EC. Those effects are to be preserved for a period not exceeding two months from the date of delivery of this judgment if the Commission decides to adopt such a new decision under Article 88(3) EC, and for a reasonable further period if the Commission decides to initiate the procedure under Article 88(2) EC. Only undertakings which, prior to the date of delivery of this judgment, brought legal proceedings or made an equivalent complaint regarding the levying of the parafiscal charge on advertising broadcast by sound radio or television, established by Article 1 of Decree No 97-1263 of 29 December 1997 creating a parafiscal charge for the benefit of a fund to support radio broadcasting, are excluded from the temporal limitation of the effects of this judgment.

⁽¹⁾ OJ C 211, 8.9.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Verwaltungsgericht Hannover — Germany) — Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk

(Case C-336/07) ⁽¹⁾

(Directive 2002/22/EC — Article 31(1) — Reasonable 'must carry' obligations — National law requiring analogue cable network operators to provide access to their cable networks to all television programmes allowed to be broadcast terrestrially — Principle of proportionality)

(2009/C 44/23)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Kabel Deutschland Vertrieb und Service GmbH & Co. KG

Defendant: Niedersächsische Landesmedienanstalt für privaten Rundfunk

Intervening parties: Norddeutscher Rundfunk, Zweites Deutsches Fernsehen, ARTE GEIE, Bloomberg LP, Mitteldeutscher Rundfunk, MTV Networks Germany GmbH, successor in law to VIVA Plus Fernsehen GmbH, VIVA Music Fernsehen GmbH & Co. KG, MTV Networks Germany GmbH, successor in law to MTV Networks GmbH & Co. oHG, Westdeutscher Rundfunk, RTL Television GmbH, RTL II Fernsehen GmbH & Co. KG, VOX Film

und Fernseh-GmbH & Co. KG, RTL Disney Fernsehen GmbH & Co. KG, SAT. 1 Satelliten-Fernsehen GmbH and Others, Regio. TV GmbH, Eurosport SA, TM-TV GmbH & Co. KG, ONYX Television GmbH, Radio Bremen, Hessischer Rundfunk, Nederland 2, Hamburg 1 Fernsehen Beteiligungs GmbH & Co. KG, Turner Broadcasting System Deutschland GmbH, n-tv Nachrichtenfernsehen GmbH & Co. KG, Bayerischer Rundfunk, Deutsches Sportfernsehen GmbH, NBC Europe GmbH, BBC World, Mediendienst Borkum — Kurverwaltung NSHB Borkum GmbH, Friesischer Rundfunk GmbH, Home Shopping Europe GmbH & Co. KG, Euro News SA, Reise-TV GmbH & Co. KG, SKF Spielekanal Fernsehen GmbH, TV 5 Europe, DMAX TV GmbH & Co. KG, formerly XXP TV — Das Metropolenprogramm GmbH & Co. KG, RTL Shop GmbH

Re:

Reference for a preliminary ruling — Verwaltungsgericht Hannover — Interpretation of Article 31(1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — National legislation which requires analogue cable network operators to provide access on their cable networks to all the television programmes approved for terrestrial broadcasting and provides that, in the event of a shortage of channels, the competent national authority has to establish an order of priority of applicants which results in full use of the channels available to the cable network operator concerned.

Operative part of the judgment

1. Article 31(1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) is to be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, which requires a cable operator to provide access to its analogue cable network to television channels and services that are already being broadcast terrestrially, thereby resulting in the utilisation of more than half of the channels available on that network, and which provides, in the event of a shortage of channels available, for an order of priority of applicants which results in full utilisation of the channels available on that network, provided that those obligations do not give rise to unreasonable economic consequences, which is a matter for the national court to establish;
2. The concept of 'television services' within the meaning of Article 31(1) of Directive 2002/22 includes services of television broadcasters or providers of media services, such as teleshopping, provided that the conditions laid down in that provision are met, which is a matter for the national court to establish.

⁽¹⁾ OJ C 247, 20.10.2007.

Judgment of the Court (Third Chamber) of 18 December 2008 (reference for a preliminary ruling from the Verwaltungsgericht Stuttgart — Germany) — Ibrahim Altun v Stadt Böblingen

(Case C-337/07) ⁽¹⁾

(EEC-Turkey Association Agreement — Article 7, first paragraph of Decision No 1/80 of the Association Council — Right of residence of a child of a Turkish worker — Worker duly registered as belonging to the labour force — Involuntary unemployment — Applicability of that agreement to Turkish refugees — Conditions governing the loss of acquired rights)

(2009/C 44/24)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Ibrahim Altun

Defendant: Stadt Böblingen

Re:

Reference for a preliminary ruling — Verwaltungsgericht Stuttgart — Interpretation of the first indent of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council — Right to stay of a Turkish national who has entered national territory as a minor for the purpose of family reunion — Criminal conviction — Effect on the right to stay — Applicability to Turkish refugees — Asylum granted to the father on the basis of false statements — Withdrawal of grant of asylum as a condition for refusal of the derived right to stay — Derived right conditional on lawful registration as belonging to the labour force of a Member State for a period of three years during which the father lives together in a household with the minor

Operative part of the judgment

1. The first indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was co-habiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.
2. The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Article 7 of Decision No 1/80.