Judgment of the Court (Eighth Chamber) of 15 March 2012 — European Commission v Republic of Poland

(Case C-46/11) [1]

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Inadequate protection of certain species, including the otter (Lutra Lutra))

(2012/C 133/14)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: S. Petrova and K. Hermann, Agents)

Defendant: Republic of Poland (represented by: M. Szpunar, D. Krawczyk and B. Majczyna, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Inadequate protection of certain species, including the otter (Lutra Lutra)

Operative part of the judgment

The Court:

1. *Declares that, by failing to transpose correctly the conditions governing the derogations laid down in Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Poland has failed to comply with its obligations under that provision;*

2. *Orders the Republic of Poland to pay the costs.*

[1] OJ C 103, 2.4.2011.

Judgment of the Court (Third Chamber) of 15 March 2012 (references for a preliminary ruling from the Bundespatentgericht — Germany) — Alfred Strigl v Deutsches Patent- und Markenamt (Case C-90/11), Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH v Öko-Invest Verlagsgesellschaft mbH (C-91/11)

(Joined Cases C-90/11 and C-91/11) [1]

(Trade marks — Directive 2008/95/EC — Grounds for refusal or invalidity — Verbal expressions which consist of a word combination and a sequence of letters identical to the initial letters of those words — Distinctive character — Descriptive character — Assessment criteria)

(2012/C 133/15)

Language of the cases: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicants: Alfred Strigl (C-90/11), Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH (C-91/11)

Defendants: Deutsches Patent- und Markenamt (Case C-90/11), Öko-Invest Verlagsgesellschaft mbH (C-91/11)

Re:

References for a preliminary ruling — Bundespatentgericht — Interpretation of Article 3(1)(b) and (c) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version) (OJ 2008 L 299, p. 25) — Distinctive character of a word mark composed of a combination of descriptive words and a sequence of non-descriptive letters that are identical to the initial letters of those words

Operative part of the judgment

Article 3(1)(b) and (c) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that it is applicable to a word mark which consists of the juxtaposition of a descriptive word combination and a letter sequence which is non-descriptive in itself, if the relevant public perceives that sequence as being an abbreviation of that word combination by reason of the fact that it reproduces the first letter of each word of that combination, and that the mark in question, considered as a whole, can thus be understood as a combination of descriptive indications or abbreviations which is therefore devoid of distinctive character.

[1] OJ C 173, 11.6.2011.

Judgment of the Court (Second Chamber) of 22 March 2012 (reference for a preliminary ruling from the Administrativen sad — Varna — Bulgaria) — Klub OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-153/11) [1]

(VAT — Directive 2006/112/EC — Article 168 — Right of deduction — Origin of the right of deduction — Right of a company to deduct the input VAT paid for the acquisition of capital goods not yet brought into use for the company's business activities)

(2012/C 133/16)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Klub OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

Reference for a preliminary ruling — Administrativen sad — Varna — Interpretation of Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Deduction of the VAT paid by a taxable person in respect of goods supplied to him in so far as they are used for his taxable transactions — Right of a company, whose main activity consists in leasing its own immovable property, to deduct input VAT on the purchase of another property which has yet to be commercially exploited by that company

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a taxable person who has acquired capital goods while acting as such and has allocated the goods to the assets of the business is entitled to deduct the value added tax on the acquisition of those goods in the tax period in which the tax became due, regardless of the fact that the goods are not immediately used for business purposes. It is for the national court to ascertain whether the taxable person acquired the capital goods for the purposes of his economic activity and to assess, if need be, whether there is a fraudulent practice.

(1) OJ C 186, 25.6.2011.

Judgment of the Court (Sixth Chamber) of 15 March 2012 (reference for a preliminary ruling from the Tribunale di Napoli — Italy) — Giuseppe Sibilio v Comune di Afragola

(Case C-157/11) (1)

(Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70/EC — Clause 2 — Concept of 'an employment contract or relationship defined by law, collective agreements or practice in force in each Member State' — Scope of the framework agreement — Clause 4, point 1 — Principle of non-discrimination — Persons carrying out 'work of social utility' with public authorities — National rule excluding the existence of an employment relationship — National rule establishing a difference between the benefit paid to socially useful workers and the remuneration received by workers engaged under a contract of definite and/or indefinite duration by the same public authorities and carrying out the same activities)

(2012/C 133/17)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Giuseppe Sibilio

Defendant: Comune di Afragola

Re:

Reference for a preliminary ruling — Tribunale di Napoli — Interpretation of Clauses 2, 3, 4 and 5 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Principle of non discrimination — Unemployed persons registered on mobility lists or as job seekers engaged by public authorities for a fixed term carrying out work of social utility/work of public utility (known as socially useful workers/publicly useful workers) — National legislation establishing a difference in treatment in terms of pay between socially useful workers/publicly useful workers and workers engaged under a contract of indefinite duration by the same public authorities performing the same duties.

Operative part of the judgment

Clause 2 of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which provides that the relationship between socially useful workers and the public authorities for whom they carry out their activities does not fall within the scope of that framework agreement where, and which is for the national court to determine, those workers are not covered by an employment relationship as defined by national law, collective agreements or practice in force, or the Member States and/or social partners have exercised the option granted to them under point 2 of that clause

(1) OJ C 173, 11.6.2011.

Judgment of the Court (Second Chamber) of 22 March 2012 (reference for a preliminary ruling from the Curtea de Apel Cluj — Romania) — Criminal proceedings against Rareș Doralin Nilaș, Sergiu-Dan Dascăl, Gicu Agenor Gânscă, Ana-Maria Oprean, Ionuț Horea Baboș

(Case C-248/11) (1)

(Directive 2004/39/EC — Markets in financial instruments — Article 4(1)(14) — Concept of 'regulated market' — Authorisation — Functional requirements — Market whose legal nature is not specified, but which is managed, after a merger, by a legal person also managing a regulated market — Article 47 — Not included on the list of regulated markets — Directive 2003/6/EC — Scope — Market manipulation)

(2012/C 133/18)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj