

for a preliminary ruling in the proceedings pending before that court between Debra Allonby and Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services Secretary of State for Education and Employment, on the interpretation of Article 141 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann and J.N. Cunha Rodrigues (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it has ruled:

1. *In circumstances such as those of the main proceedings, Article 141(1) EC must be interpreted as meaning that a woman whose contract of employment with an undertaking has not been renewed and who is immediately made available to her previous employer through another undertaking to provide the same services is not entitled to rely, vis-à-vis the intermediary undertaking, on the principle of equal pay, using as a basis for comparison the remuneration received for equal work or work of the same value by a man employed by the woman's previous employer.*
2. *Article 141(1) EC must be interpreted as meaning that a woman in circumstances such as those of the main proceedings is not entitled to rely on the principle of equal pay in order to secure entitlement to membership of an occupational pension scheme for teachers set up by State legislation of which only teachers with a contract of employment may become members, using as a basis for comparison the remuneration, including such a right of membership, received for equal work or work of the same value by a man employed by the woman's previous employer.*
3. *In the absence of any objective justification, the requirement, imposed by State legislation, of being employed under a contract of employment as a precondition for membership of a pension scheme for teachers is not applicable where it is shown that, among the teachers who are workers within the meaning of Article 141(1) EC and fulfil all the other conditions for membership, a much lower percentage of women than of men is able to fulfil that condition. The formal classification of a self-employed person under national law does not change the fact that a person must be classified as a worker within the meaning of that article if his independence is merely notional.*
4. *Article 141(1) EC must be interpreted as meaning that where State legislation is at issue, the applicability of that provision vis-à-vis an undertaking is not subject to the condition that the worker concerned can be compared with a worker of the other sex who is or has been employed by the same employer and who has received higher pay for equal work or work of equal value.*

(1) OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

of 11 December 2003

in Case C-322/01 (Reference for a preliminary ruling from the Landgericht Frankfurt am Main): Deutscher Apothekerverband eV v 0800 DocMorris NV, Jacques Waterval⁽¹⁾

(Articles 28 EC and 30 EC — Directives 92/28/EEC and 2000/31/EC — National legislation restricting internet sales of medicinal products for human use by pharmacies established in another Member State — Doctor's prescription required for supply — Prohibition on advertising the sale of medicinal products by mail order)

(2004/C 47/08)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-322/01: Reference to the Court under Article 234 EC by the Landgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between Deutscher Apothekerverband eV and 0800 DocMorris NV, Jacques Waterval, on the interpretation of Articles 28 EC and 30 EC and of Article 1(3) and (4) and Articles 2 and 3 of Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use (OJ 1992 L 113, p. 13), in conjunction with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('the Directive on electronic commerce') (OJ 2000 L 178, p. 1), the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas (Presidents of Chambers), D.A.O. Edward (Rapporteur), A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

1. a) *A national prohibition on the sale by mail order of medicinal products the sale of which is restricted to pharmacies in the Member State concerned, such as the prohibition laid down in Paragraph 43(1) of the Arzneimittelgesetz (Law on medicinal products) in the version of 7 September 1998, is a measure having an effect equivalent to a quantitative restriction for the purposes of Article 28 EC.*
- (b) *Article 30 EC may be relied on to justify a national prohibition on the sale by mail order of medicinal products which may be sold only in pharmacies in the Member State concerned in so far as the prohibition covers medicinal products subject to prescription. However, Article 30 EC cannot be relied on to justify an absolute*

prohibition on the sale by mail order of medicinal products which are not subject to prescription in the Member State concerned.

- (c) Questions 1(a) and 1(b) do not need to be assessed differently where medicinal products are imported into a Member State in which they are authorised, having been previously obtained by a pharmacy in another Member State from a wholesaler in the importing Member State.
2. Article 88(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use precludes a national prohibition on advertising the sale by mail order of medicinal products which may be supplied only in pharmacies in the Member State concerned, such as the prohibition laid down in Paragraph 8(1) of the Heilmittelwerbe-gesetz (Law on the advertising of medicinal products), in so far as the prohibition covers medicinal products which are not subject to prescription.

(¹) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 December 2003

in Case C-364/01 (Reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch): The heirs of H. Barbier v Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen (¹)

(Interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) — Directives 88/361/EEC and 90/364/EEC — Inheritance tax — Requirement of cross-border economic activity — Prohibition of discrimination on the basis of Member State of residence)

(2004/C 47/09)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-364/01: Reference to the Court under Article 234 EC by the Gerechtshof te 's-Hertogenbosch (Netherlands) for a preliminary ruling in the proceedings pending before that court between the heirs of H. Barbier and Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te

Heerlen, on the interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) and the provisions of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) and Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5), the Court (Fifth Chamber), composed of: P. Jann, acting as the President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

Community law precludes national legislation concerning the assessment of tax due on the inheritance of immovable property situated in the Member State concerned according to which, in order to assess the property's value, the fact that the person holding legal title was under an unconditional obligation to transfer it to another person who has financial ownership of that property may be taken into account if, at the time of his death, the former resided in that Member State, but may not be taken into account if he resided in another Member State.

(¹) OJ C 331 of 24.11.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-500/01: Commission of the European Communities v Kingdom of Spain (¹)

(Failure of a Member State to fulfil its obligations — Market for telecommunications services — Tariff rebalancing — Access to the local loop — Directive 90/388/EEC — Article 4(c))

(2004/C 47/10)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-500/01, Commission of the European Communities (Agent: S. Rating) v Kingdom of Spain (Agent: S. Ortiz