Parties to the main proceedings

Applicants: X Holding BV (Case-538/08), Oracle Nederland BV (C-33/09)

Defendants: Staatssecretaris van Financiën (Case C-538/08), Inspecteur van de Belastingdienst Utrecht-Gooi (Case C-33/09)

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden, Den Haag — Interpretation of Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ English special edition 1967, p. 16) and of Articles 6(2) and 17(2) and (6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the legislation of the Member States concerning turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exclusion of the right of deduction — Power of the Member States to maintain exclusions existing upon the entry into force of the Sixth Directive — Rules pre-dating the Sixth Directive providing for the exclusion of the right of deduction for categories of goods and services provided for use in private transport — Definition of those categories

Operative part of the judgment

1. *Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax, and Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as not precluding the tax legislation of a Member State from excluding from deduction value added tax which relates to categories of expenditure concerning, on the one hand, the provision of 'private transport', 'food', 'drink', 'accommodation' and 'opportunities for recreation' to the members of staff of a taxable person and, on the other hand, the provision of 'business gifts' or 'other gifts';*

2. *Article 17(6) of Sixth Directive 77/388 must be interpreted as not precluding national legislation, enacted before the Sixth Directive entered into force, under which a taxable person may deduct value added tax paid on the acquisition of certain goods and services used partly for private purposes and partly for professional purposes not in full but only in proportion to their use for professional purposes.*

3. *Article 17(6) of Sixth Directive 77/388 must be interpreted as not precluding an amendment by a Member State, after the entry into force of that directive, to an existing exclusion from the right of deduction, designed in principle to restrict the scope of that exclusion but in respect of which it cannot be ruled out that, in an individual case in a particular tax year, the scope of that exclusion might be extended by reason of the flat-rate nature of the amended scheme.*

([1]) OJ C 55, 7.3.2009.
OJ C 90, 18.4.2009.

Judgment of the Court (Fourth Chamber) of 15 April 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Friedrich G. Barth v Bundesministerium für Wissenschaft und Forschung

(Case C-542/08) ([1])

(Freedom of movement for persons — Workers — Equal treatment — Special length-of-service increment for university professors provided for by national legislation held to be incompatible with Community law by a judgment of the Court — Limitation period — Principles of equivalence and effectiveness)

(2010/C 148/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Friedrich G. Barth

Defendant: Bundesministerium für Wissenschaft und Forschung

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interepretation of Art. 39 EC and Art. 7(1) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475) — National legislation providing for a special length-of-service increment for university professors, the incompatibility of which with Community law, in its earlier version, was established in Case C-224/01 *Köbler* — Amended legislation which, by suspending the time-limit for taking advantage of the rights at issue only as from the date of that Court judgment, disadvantages professors who were deprived of that increment by reason of the previous legislation incompatible with Community law

Operative part of the judgment

European Union law does not preclude legislation such as that at issue in the main proceedings making claims for payment of special length-of-service increments — which a worker who had exercised his rights to freedom of movement was denied prior to the delivery of the judgment of 30 September 2003 in Case C-224/01 Köbler, on the basis of a domestic law incompatible with Community law — subject to a three-year limitation rule.

([1]) OJ C 90, 18.4.2009.

Judgment of the Court (Second Chamber) of 15 April 2010 — Ralf Schräder v Community Plant Variety Office (CPVO)

(Case C-38/09 P) ([1])

(Appeal — The Court's power of review — Regulations (EC) Nos 2100/94 and 1239/95 — Agriculture — Community plant variety rights — Distinctness of the candidate variety — Variety a matter of common knowledge — Proof — Plant variety SUMCOL 01)

(2010/C 148/13)

Language of the case: German

Parties

Appellant: Ralf Schräder (represented by: T. Leidereiter, Rechtsanwalt)

Other party to the proceedings: Community Plant Variety Office (CPVO) (represented by: M. Ekvad and B. Kiewiet, acting as Agents, and by A. von Mühlendahl, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Seventh Chamber) of 19 November 2008 in Case T-187/06 *Schräder* v *CPVO*, by which that Court dismissed the action brought by the appellant against the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 2 May 2006 dismissing the appeal against the decision of the CPVO concerning the rejection of the application for Community plant variety rights in respect of the plant variety 'SUMCOL 01' — Distinctness of the candidate variety — Factors which can be taken into consideration in order to determine whether a variety is a matter of common knowledge — Incorrect assessment of the facts — Infringement of the right to be heard before a court

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Mr Schräder to pay the costs.*

([1]) OJ C 82, 04.04.2009.

Judgment of the Court (First Chamber) of 15 April 2010 — European Commission v French Republic

(Case C-64/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/53/EC — Articles 5(3) and (4), 6(3) and 7(1) — Defective transposition)

(2010/C 148/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: P. Oliver and J.-B. Laignelot, Agents)

Defendant: French Republic (represented by: G. de Bergues and A. Adam, Agents)