Parties to the main proceedings

Applicant: Alketa Xhymshiti

Defendant: Bundesagentur für Arbeit — Familienkasse Lörrach

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation, first, of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ 2003 L 124, p. 1) and, second, of Articles 2, 13 and 76 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and of Article 10(1)(a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1972 (I), p. 159) — National of a non-member country working in the Swiss Confederation and residing with his spouse and children in a Member State of which the children are nationals — Refusal of the Member State of residence to grant family benefits — Compatibility of such a refusal of family benefits with the abovementioned Community provisions

Operative part of the judgment

1. *In the case in which a national of a non-member country is lawfully resident in a Member State of the European Union and works in Switzerland, Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality does not apply to that person in his Member State of residence, in so far as Regulation No 859/2003 is not among the Community acts mentioned in section A of Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999, which the parties to that agreement undertake to apply. Consequently, there is no obligation on the Member State of residence to apply Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, and Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71, in the version amended and updated by Regulation No 118/97, to that employee and his spouse;*

2. *Articles 2, 13 and 76 of Regulation No 1408/71 and Article 10(1)(a) of Regulation No 574/72 are irrelevant in respect of a national of a non-member country in the situation of the claimant in the main proceedings, in so far as her situation is governed by the legislation of the Member State of residence. The fact that that national's children are citizens of the European Union cannot, by itself, make the refusal to grant child allowance in the Member State of residence unlawful where, as is evident from the referring court's findings, the statutory conditions which must be satisfied for the purposes of such a grant are not fulfilled.*

([1]) OJ C 233, 26.9.2009.

Judgment of the Court (Second Chamber) of 18 November 2010 (reference for a preliminary ruling from the Rayonen sad Plovdiv — Bulgaria) — Vasil Ivanov Georgiev v Tehnicheski universitet — Sofia, filial Plovdiv

(Joined Cases C-250/09 and C-268/09) ([1])

(Directive 2000/78/EC — Article 6(1) — Prohibition of discrimination on grounds of age — University lecturers — National provision providing for the conclusion of fixed-term employment contracts beyond the age of 65 — Compulsory retirement at the age of 68 — Justification for differences in treatment on grounds of age)

(2011/C 13/19)

Language of the case: Bulgarian

Referring court

Rayonen sad Plovdiv

Parties to the main proceedings

Applicant: Vasil Ivanov Georgiev

Defendant: Tehnicheski universitet — Sofia, filial Plovdiv

Re:

Reference for a preliminary ruling — Rayonen sad Plovdiv — Interpretation of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National law permitting university professors who have reached the age of 65 to conclude an employment contract only for a fixed duration — National law fixing 68 as the final retirement age for university professors — Justification for differences of treatment on grounds of age

Operative part of the judgment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, in particular Article 6(1), must be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main

proceedings, under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and labour market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

Since this is a dispute between a public institution and an individual, if national legislation such as that at issue in the main proceedings does not satisfy the conditions set out in Article 6(1) of Directive 2000/78, the national court must decline to apply that legislation.

([1]) OJ C 220, 12.09.2009.

Judgment of the Court (Grand Chamber) of 16 November 2010 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart — Germany) — Execution of a European arrest warrant issued in respect of Gaetano Mantello

(Case C-261/09) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 3(2) — Ne bis in idem — Concept of the 'same acts' — Possibility for the executing judicial authority to refuse to execute a European arrest warrant — Final judgment in the issuing Member State — Possession of narcotic drugs — Trafficking in narcotic drugs — Criminal organisation)

(2011/C 13/20)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Party in the main proceedings

Gaetano Mantello

Re:

Reference for a preliminary ruling — Oberlandesgericht Stuttgart — Interpretation of Article 3(2) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Principle of 'ne bis in idem' at national level — Whether executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of conducting a criminal prosecution concerning acts some of which have already been subject to final disposal at trial in the issuing Member State — Concept of 'the same acts' — Situation in which all the facts on which the European arrest warrant is based were known to the investigating authorities of the issuing Member State at the time of the first criminal proceedings but were not used for tactical reasons relating to the investigation

Operative part of the judgment

The Court:

For the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' in Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constitutes an autonomous concept of European Union law.

In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of that Framework Decision made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of 'same acts' as enshrined in Article 3(2) of the Framework Decision, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision.

([1]) OJ C 220, 12.9.2009.

Judgment of the Court (Fifth Chamber) of 18 November 2010 — Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) v Commission

(Case C-317/09 P) ([1])

(Appeal — Set-off of claims governed by separate legal orders — Application for repayment of sums advanced — Principle of litis denuntiatio — Rights of the defence and right to a fair hearing)

(2011/C 13/21)

Language of the case: French

Parties

Appellant: Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) (represented by: P.-P. Van Gehuchten, lawyer)

Other party to the proceedings: European Commission (represented by: E. Manhaeve and S. Delaude, Agents)