

Pleas in law and new arguments

In general terms, for the provisions of an international treaty to be able to continue to have effect after its natural expiry a decision in that behalf must be taken in concertation by the signatory States and only by them.

No joint position was adopted by the signatory States of the ECSC Treaty, prior to the expiry thereof, with a view to extending its validity in its entirety and to providing for a general transitional regime to ensure the continuance in effect of all its provisions. Instead the signatory States allowed the ECSC Treaty to be extinguished, merely regulating the transfer of ECSC provisions to the EC regime in regard to certain sectors. In particular, no joint provision was made in regard to a transitional regime in competition matters under the ECSC Treaty. In the case of investigations under way at the time of expiry of the ECSC Treaty such expiry could not be claimed to be 'non-retroactive' since that would entail the continuance in effect of its provisions, no right, obligation or legal situation arising during the currency of the Treaty itself.

From the applicant's point of view, absorption of the ECSC rules within the EC rules may occur only by way of an instrument manifesting the common will in that regard of the signatory states.

Action brought on 28 May 2003 by the Commission of the European Communities against the Republic of Finland

(Case C-232/03)

(2003/C 184/37)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 28 May 2003 by the Commission of the European Communities, represented by D. Martin and I. Koskinen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that, by preventing cross-frontier workers from benefiting from certain benefits provided to them by their employers on the sole ground that the workers in question live in the Republic of Finland, into which the vehicles owned by their employers have been imported, the Republic of Finland has failed to fulfil its obligations under Articles 10 EC and 39 EC;
2. Order Finland to pay the costs.

Pleas in law and main arguments

Provisions of Finnish legislation limit the possibility for a person permanently resident in Finland to use in Finland a

vehicle registered abroad. They require payment of the car tax chargeable in Finland before the vehicle may be used. Car tax is to be levied on vehicles which are used in traffic in Finland, even to a small extent, unless a specific exception is laid down by law.

Under the Finnish provisions, car tax is to be paid on a vehicle before it is used on Finnish territory. If the vehicle is nevertheless used without paying tax in cases in which tax should have been regarded as paid, the authorities levy tax on the vehicle.

The Finnish legislation, contrary to Article 39 EC, prevents the realisation of freedom of movement of workers, because employees living in Finland cannot use a car provided by their employer and registered in another Member State for their work in Finland, if tax is not paid on the car in Finland. As a result of the Finnish legislation, employees resident in Finland cannot accept an offer of work from a neighbouring State of the European Union where the use in both countries of a car provided by the employer is part of the work.

Companies operating in another Member State cannot engage employees living in Finland because they cannot use a car registered in another country in Finland if Finnish tax has not been paid on the car. The practice discriminates in particular against cross-frontier workers living in Finland, who cannot use a car provided by the employer for daily work journeys between the home and the workplace. The use of a car provided by the employer is often a regular part of the remuneration. A Member State breaches the duty of cooperation under Article 10 EC if the national measures of the Member State prevent freedom of movement in such a way that workers living in another Member State cannot pursue their occupation in the other Member State.

Reference for a preliminary ruling by the Audiencia Nacional by order of that Court of 16 April 2003 in the case of Contse S.A., Vivisol SRL and Oxigen Salud S.A. against INSALUD (now INGESA)

(Case C-234/03)

(2003/C 184/38)

Reference has been made to the Court of Justice of the European Communities by order of the Audiencia Nacional (National High Court) of 16 April 2003, received at the Court Registry on 2 June 2003, for a preliminary ruling in the case of Contse S.A., Vivisol SRL and Oxigen Salud S.A. against INSALUD (now INGESA) on the following questions: