

Parties to the main proceedings

Applicant: N

Defendant: Inspecteur van de Belastingdienst Oost/kantoor Almelo

Re:

Reference for a preliminary ruling from the Gerechtshof te Arnhem — Free movement of persons — Freedom of establishment — Tax charge resulting from the transfer of residence to another Member State — Pursuit of an economic activity in the latter state — Income tax on the basis of deemed profit from the sale of a substantial shareholding in a company — Provision of a guarantee in order to obtain deferment of payment — Articles 18 EC and 43 EC

Operative part of the judgment

The Court:

1. A Community national, such as the applicant in the main proceedings, who has been living in one Member State since the transfer of his residence and who holds all the shares of companies established in another Member State, may rely on Article 43 EC.
2. Article 43 EC must be interpreted as precluding a Member State from establishing a system for taxing increases in value in the case of a taxpayer's transferring his residence outside that Member State, such as the system at issue in the main proceedings, which makes the granting of deferment of the payment of that tax conditional on the provision of guarantees and does not take full account of reductions in value capable of arising after the transfer of residence by the person concerned and which were not taken into account by the host Member State.
3. An obstacle arising from a requirement, in breach of Community law, that a guarantee be constituted cannot be raised with retroactive effect merely by releasing that guarantee. The form of the document on the basis of which the guarantee was released is immaterial to that assessment. Where a Member State makes provision for the payment of interest on arrears where a guarantee demanded in breach of national law is released, such interest is also due in the case of an infringement of Community law. Moreover, it is for the national court to assess, in accordance with the guidelines provided by the Court of Justice and in compliance with the principles of equivalence and effectiveness, whether the Member State is liable on account of the damage caused by the obligation to constitute such a guarantee.

Judgment of the Court (Third Chamber) of 7 September 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-484/04) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Social policy — Protection of the health and safety of workers — Directive 93/104/EC — Organisation of working time — Article 17(1) — Derogation — Articles 3 and 5 — Right to minimum daily and weekly rest periods)

(2006/C 261/05)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and N. Yerrell, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: M. Bethell and E. O'Neill, Agents, and K. Smith, Barrister)

Re:

Failure by a Member State to fulfil obligations — Breach of Article 17(1) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) — Scope of the derogation — Implementation of provisions relating to rest periods

Operative part of the judgment

The Court:

1. Declares that, by applying the derogation provided for in Article 17(1) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, to workers whose working time is partially not measured or predetermined or can be determined partially by the worker himself and by failing to adopt the measures necessary to implement the rights of workers to daily and weekly rest, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Articles 17(1), 3 and 5 of that directive;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

⁽¹⁾ OJ C 31, 05.02.2005.

⁽¹⁾ OJ C 31, 5. 2. 2005.