

as meaning that it prohibits the levying of a duty, such as that at issue in the main proceedings, on the issue of shares into a clearance service.

(¹) OJ C 64, 8.3.2008.

Judgment of the Court (Fourth Chamber) of 1 October 2009 (Reference for a preliminary ruling from the Tribunal du travail de Nivelles — Belgium) — Ketty Leyman v Institut national d'assurance maladie-invalidité (INAMI)

(Case C-3/08) (¹)

(Reference for a preliminary ruling — Social security schemes — Invalidity benefits — Regulation (EEC) No 1408/71 — Article 40(3) — Different benefit schemes in the Member States — Disadvantages for migrant workers — Contributions on which there is no return)

(2009/C 282/11)

Language of the case: French

Referring court

Tribunal du travail de Nivelles

Parties to the main proceedings

Applicant: Ketty Leyman

Defendant: Institut national d'assurance maladie-invalidité (INAMI)

Re:

Reference for a preliminary ruling — Tribunal du travail de Nivelles (Belgium) — Lawfulness, in the light of Article 18 EC, of Council Regulation 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 (OJ 1971 149, p. 2) as amended — Invalidity allowance — Obstacle to the exercise of free movement as a result of the existence of different indemnification schemes

Operative part of the judgment

Article 39 EC must be interpreted as precluding application by the competent authorities of a Member State of national legislation which, in accordance with Article 40(3)(b) 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, makes acquisition of the right to invalidity benefits subject to the condition that a period of primary incapacity of one year has elapsed, where such application has the result that a migrant worker has paid into the social security scheme of that

Member State contributions on which there is no return and is therefore at a disadvantage by comparison with a non-migrant worker.

(¹) OJ C 79, 29.3.2008.

Judgment of the Court (First Chamber) of 6 October 2009 (Reference for a preliminary ruling from the Juzgado de Primera Instancia No 4 de Bilbao — Spain) — Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira

(Case C-40/08) (¹)

(Directive 93/13/EEC — Consumer contracts — Unfair arbitration clause — Measure void — Arbitration award which has become final — Enforcement — Whether the national court responsible for enforcement can consider of its own motion whether the unfair arbitration clause is null and void — Principles of equivalence and effectiveness)

(2009/C 282/12)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 4 de Bilbao

Parties to the main proceedings

Applicant: Asturcom Telecomunicaciones SL

Defendant: Cristina Rodríguez Nogueira

Re:

Reference for a preliminary ruling — Juzgado de Primera Instancia No 4 de Bilbao — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Adequate and effective means to prevent the continued use of unfair terms — Application for the enforcement of a final arbitration award made in default on the basis of an unfair arbitration clause

Operative part of the judgment

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court or tribunal hearing an action for enforcement of an arbitration award which has become final and was made in the absence of the consumer is required, where it has available to it the legal and factual elements necessary for that task, to assess of its own motion whether an arbitration clause in a contract concluded between a seller or supplier and a consumer is unfair, in so far as, under national rules