

Parties to the main proceedings

Applicant: Susanne Gassmayr

she received during a reference period prior to the beginning of her maternity leave with the exception of the on-call duty allowance.

(¹) OJ C 197, 2.8.2008.

Defendant: Bundesminister für Wissenschaft und Forschung

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 11(1), (2) and (3) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1) — Direct effect — Right of a female worker, during periods when pregnant workers are prohibited from working and/or during maternity leave, to a non-flat-rate allowance for on-call duty outside normal working hours ('Journaldienstzulage').

Operative part of the judgment

1. Article 11(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) has direct effect and gives rise, for the benefit of individuals, to rights which they can rely on against a Member State which has failed to implement that directive in national law or has implemented it incorrectly, and which the national courts are required to protect;
2. Article 11(1) of Directive 92/85 must be interpreted as not precluding national legislation which provides that a pregnant worker temporarily granted leave from work on account of her pregnancy is entitled to pay equivalent to the average earnings she received during a reference period prior to the beginning of her pregnancy with the exception of the on-call duty allowance;
3. Article 11(2) and (3) of Directive 92/85 must be interpreted as not precluding national legislation which provides that a worker on maternity leave is entitled to pay equivalent to the average earnings

**Judgment of the Court (Second Chamber) of 8 July 2010 —
European Commission v Italian Republic**

(Case C-334/08) (¹)

(Failure of a Member State to fulfil obligations — Union's own resources — Refusal to make available to the Union own resources corresponding to certain unlawful customs authorisations — Force majeure — Fraudulent conduct by the customs authorities — Liability of the Member States — Lawfulness of the entry of established entitlements in a separate account)

(2010/C 234/07)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: A. Aresu and A. Caeiros, acting as Agents)

Defendant: Italian Republic (represented by: I. Bruni, acting as Agent, assisted by G. Albenzio, avvocato dello Stato)

Intervener in support of the defendant: Federal Republic of Germany (represented by M. Lumma and B. Klein, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 10 EC, Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42), and Articles 2, 6, 10, 11 and 17 of the Council Regulation (EC, Euratom) of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 11) — Refusal to make available to the Communities the own resources corresponding to certain irregular customs authorisations

Operative part of the judgment

The Court:

1. Declares that, by refusing to place at the disposal of the Commission the own resources corresponding to the customs debt deriving from the issue by the Direzione Compartimentale delle Dogane per le Regioni Puglia e Basilicata, located in Bari, as from 27 February 1997, of irregular authorisations to create and operate Type C customs bonded warehouses in Taranto, followed by consecutive authorisations for processing under customs control and to use the inward processing procedure, until their revocation on 4 December 2002, the Italian Republic has failed to fulfil its obligations under Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources and Articles 2, 6, 10, 11 and 17 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;
2. Orders the Italian Republic to pay the costs;
3. Orders the Federal Republic of Germany to bear its own costs.

⁽¹⁾ OJ C 223, 30.08.2008.

Judgment of the Court (First Chamber) of 1 July 2010
(reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — *Emanuela Sbarigia v Azienda USL RM/A, Comune di Roma, Assiprofar — Associazione Sindacale Proprietari Farmacia, Ordine dei Farmacisti della Provincia di Roma*

(Case C-393/08) ⁽¹⁾

(National legislation governing opening times and closing days of pharmacies — Exemption — Power of decision of the competent authorities)

(2010/C 234/08)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Emanuela Sbarigia

Defendants: Azienda USL RM/A, Comune di Roma, Assiprofar — Associazione Sindacale Proprietari Farmacia, Ordine dei Farmacisti della Provincia di Roma

Re:

Reference for a Preliminary Ruling — Tribunale Amministrativo Regionale del Lazio — Interpretation of Arts 49, 81 to 86, 152 and 153 EC — National legislation governing the opening hours and rota arrangements for pharmacies — Pharmacists forbidden to decline annual holiday closure or to remain open beyond the maximum limits set for opening hours

Operative part of the judgment

The reference for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio, made by decision of 21 May 2008, is inadmissible.

⁽¹⁾ OJ C 285, 8.11.2008.

Judgment of the Court (Second Chamber) of 1 July 2010 — Knauf Gips KG, formerly Gebrüder Knauf Westdeutsche Gipswerke KG v European Commission

(Case C-407/08 P) ⁽¹⁾

(Appeal — Agreements, decisions and concerted practices — Plasterboard — Access to the file — Inculpatory and exculpatory evidence — Concept of ‘undertaking’ — Economic unit — Company responsible for the economic unit’s actions — Argument raised for the first time during the judicial proceedings)

(2010/C 234/09)

Language of the case: German

Parties

Appellant: Knauf Gips KG, formerly Gebrüder Knauf Westdeutsche Gipswerke KG (represented by: M. Klusmann and S. Thomas, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and R. Sauer, Agents)