

Parties to the main proceedings

Applicant: ZSE Energia, a.s.

Defendant: RG

Questions referred

1. Must the term 'one of the parties' used in Article 3(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 ⁽¹⁾ establishing a European Small Claims Procedure ('Regulation No 861/2007') be interpreted as also including the 'intervener', that is, an individual participating in the proceedings who is neither the claimant (applicant) nor the respondent (defendant), but who intervenes in the proceedings in order to support the arguments put forward by the claimant (applicant) or the respondent (defendant)?
2. In the event that the 'intervener' is not to be regarded as a 'party' for the purposes of Article 3(1) of Regulation No 861/2007:

Does a procedure commenced using Form A of [Annex I] to Regulation No 861/2007 between a claimant (applicant) and a respondent (defendant) fall within the scope of Regulation No 861/2007 under Article 2(1) of that regulation, read in conjunction with Article 3(1) thereof, if those parties are domiciled in the same Member State as the Member State in which the court or tribunal seised is situated, and only the 'intervener' is domiciled in a different Member State?

⁽¹⁾ OJ 2007 L 199, p. 1.

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 10 November 2017 — Gmalieva s.r.o., Manfred Naderhirn

(Case C-633/17)

(2018/C 042/07)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: Gmalieva s.r.o., Manfred Naderhirn

Authorities concerned: Landespolizeidirektion Oberösterreich, Bezirkshauptmann von Linz-Land

Interveners: Mag. Jungwirth and Mag. Fabian OHG and others, Gunhild Mayr, Mag. Übermaßer KG

Question referred

Is a combination of procedural system and court structure such as established in Austria, for jurisdiction in matters of public law, in Articles 133(4) and 144(1) of the Bundesverfassungsgesetz (Federal Constitutional Law) in conjunction with Paragraphs 41, 42 and 63 of the Verwaltungsgerichtshofgesetz (Law on the Supreme Administrative Court), on the one hand, and with Paragraph 87 of the Verfassungsgerichtshofgesetz (Law on the Constitutional Court), on the other hand —

namely:

in either case simple annulment (*Kassation*) by the highest instance court, which in effect is not the same as resolving the case on the merits but is merely equivalent to a formal referral back to the lower instance court, i.e.

1) setting aside the contested decision,

2) with an obligation on the part of the lower instance court to reach a new resolution of the case on the merits, with

3) an obligation to be bound by the legal opinion of the highest instances,

whereby this binding effect is generally ordered by statute, i.e. in particular also for those situations in which it is not guaranteed *ex lege* that the higher courts, in proceedings meeting in every respect the requirements of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 47 of the Charter of Fundamental Rights of the European Union (but rather characterised in particular by

1) the prohibition on making new claims and defences or presenting new facts and evidence (*Neuerungsverbot*),

2) the binding nature of the facts of the case found by the lower court,

3) reference to the relevant factual and legal situation existing at the time of the lower court's decision, and

4) the scope of the power to rule being limited simply to fundamental legal questions (Supreme Administrative Court), on the one hand, and violations of the sphere of fundamental rights (Constitutional Court) on the other),

have conducted both an autonomous assessment of consistency and proportionality and an assessment based on the current factual situation

— compatible with the freedom of establishment guaranteed in Article 49 TFEU and the freedom of services guaranteed in Article 56 TFEU?

**Request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Coimbra (Portugal)
lodged on 16 November 2017 — Luís Manuel dos Santos v Fazenda Pública**

(Case C-640/17)

(2018/C 042/08)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Coimbra

Parties to the main proceedings

Applicant: Luís Manuel dos Santos

Defendant: Fazenda Pública

Question referred

Does the principle of free movement of goods between Member States, set out in Article 110 of the Treaty on the Functioning of the European Union (TFEU), preclude a rule of national law [Article 2(1)(b) of the CIUC ⁽¹⁾], interpreted as meaning that annual road tax should not take into account the date of first registration when it was allocated in another Member State and should only be based on the date of registration in Portugal, if that interpretation results in higher taxation of vehicles imported from another Member State?

⁽¹⁾ Código do Imposto Único de Circulação (Annual Road Tax Code)

Reference for a preliminary ruling from the High Court (Ireland) made on 27 November 2017 — M. A., S.A., A.Z. v The International Protection Appeals Tribunal, The Minister for Justice and Equality, Attorney General, Ireland

(Case C-661/17)

(2018/C 042/09)

Language of the case: English

Referring court

High Court (Ireland)