

Operative part of the judgment

1. The concepts of 'cancellation' and 'refusal' in Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as including a situation in which, under a financial leasing agreement with definite transfer of ownership, the lessor may no longer claim payment of the leasing instalment from the lessee because the lessor has terminated the agreement owing to breach of contract by the lessee.
2. Where a financial leasing agreement has been definitively terminated because of non-payment of the lease instalments payable by the lessee, the lessor may rely on Article 90(1) of Directive 2006/112 against a Member State with a view to obtaining a reduction of the taxable amount for value added tax, even if the applicable national law considers that situation to be a case of 'non-payment' within the meaning of Article 90(2) of the directive and does not allow the taxable amount to be reduced in the case of non-payment.

⁽¹⁾ OJ C 364, 3.10.2016.

Appeal brought on 27 April 2017 by Hernández Zamora, SA against the judgment of the General Court (Ninth Chamber) delivered on 17 February 2017 in Case T-369/15: Hernández Zamora, SA v European Union Intellectual Property Office

(Case C-224/17 P)

(2017/C 412/18)

Language of the case: English

Parties

Appellant: Hernández Zamora, SA (represented by: J.L. Rivas Zurdo, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Rosen Tantau KG

By order of 19 October 2017 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Action brought on 5 May 2017 — European Commission v Hungary

(Case C-235/17)

(2017/C 412/19)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: L. Malferrari and L. Havas, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

- declare that, by adopting legislation which restricts the usufruct of arable land, Hungary has failed to fulfil its obligations under Articles 49 and 63 of the Treaty on the Functioning of the European Union and under Article 17 of the Charter of Fundamental Rights of the European Union;
- order Hungary to pay the costs.

Pleas in law and main arguments

The Commission takes the view that, by disproportionately restricting the usufruct of arable and forest land, the Hungarian legislation at issue is incompatible with Hungary's obligations under Articles 49 and 63 of the Treaty on the Functioning of the European Union and under Article 17 of the Charter of Fundamental Rights of the European Union.

The withdrawal of rights of usufruct by way of legislation amounts to a restriction of the freedom of establishment guaranteed by Article 49 of the Treaty on the Functioning of the European Union, in particular because such removal of the right of usufruct makes it impossible or excessively difficult, for those who have hitherto held such rights, to set up a secondary establishment in Hungary (or to obtain title there enabling them to exploit arable land) for the purpose of carrying out their activities there and so contribute, through economic activity on a self-employed basis, to economic and social interpenetration within the European Union. The Commission considers that the withdrawal of rights of usufruct by way of legislation is liable to hinder or make less attractive the exercise of the freedom of establishment.

The Hungarian legislation also infringes the free movement of capital since it has the effect of preventing or limiting investment in immovable property situated in Hungary by those who do not have Hungarian nationality. Such legislation has the effect of reducing the value of existing rights of usufruct, which also constitutes a restriction on the free movement of capital.

The Hungarian legislation gives rise to indirect discrimination by placing at a disadvantage EU citizens who do not have Hungarian nationality.

That restriction of the abovementioned freedoms is unjustifiable. It cannot be justified by any of the grounds laid down in the Treaty or by the other grounds that the Hungarian Government put forward in the course of the proceedings.

In particular, the Commission cannot accept the Hungarian Government's submission that the restriction is necessary in order to end an unlawful situation. According to the Commission, it cannot be accepted that there is a general presumption — which is not established in any event — that all usufruct contracts concluded by foreign citizens in respect of arable land in Hungary are, from the time at which they are made, illegal or invalid. Nor can the submission be accepted that the unlawfulness of each and every usufruct contract may be inferred from the absence of authorisation for the currency exchange required by the legislation in force prior to 2002.

The restriction introduced by the Hungarian legislation does not satisfy the requirement of proportionality since it is not appropriate for attaining the objectives pursued and, in addition, goes significantly beyond what is necessary to attain those objectives.

The Hungarian legislation does not meet the requirements arising from the principles of legal certainty and the protection of legitimate expectations and does not guarantee adequate compensation for those who have suffered loss and damage because of the withdrawal or restriction of rights of usufruct.

In the Commission's view, the Hungarian legislation at issue is contrary to the right to property guaranteed by Article 17 of the Charter. In certain cases, there is interference with the right to property even when the infringement does not extend to the three constituent elements of 'property' (use and enjoyment, possession and disposal).

Appeal brought on 28 June 2017 by Irit Azoulay, Andrew Boreham, Mirja Bouchard and Darren Neville against the judgment of the General Court (Eighth Chamber) delivered on 28 April 2017 in Case T-580/16, Azoulay and Others v European Parliament

(Case C-390/17 P)

(2017/C 412/20)

Language of the case: French

Parties

Appellants: Irit Azoulay, Andrew Boreham, Mirja Bouchard and Darren Neville (represented by: M. Casado García-Hirschfeld, avocat)

Other party to the proceedings: European Parliament