

Form of order sought

The applicant claims that the Court should:

- declare that the Kingdom of the Netherlands has failed to comply with its obligations pursuant to Article 5 (subsequently Article 10) of the Treaty establishing the European Community (now Article 4(3) of the Treaty on European Union) in not compensating the loss of the amounts of own resources which had to be established and made available for the Union budget pursuant to Articles 2, 6, 10, 11 and 17 of Regulation 1552/1989 ⁽¹⁾ (now Articles 2, 6, 10, 11 and 17 of Regulation 1150/2000 ⁽²⁾) if no movement certificates EUR.1 were issued in breach of Article 101(1) of Council Decision 91/482 ⁽³⁾ and Article 12(6) of Annex II to that decision for the import of milk powder and rice from Curacao in the period 1997-2000, Article 35(1) of Council Decision 2001/822 ⁽⁴⁾ and Article 15(4) of Annex III to that decision respectively for the import of groats and meal from Aruba in the period 2002-2003;
- order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The customs authorities of Curacao and Aruba, two overseas countries of the Kingdom of the Netherlands, wrongly issued certificates of origin EUR.1 for milk powder, rice, groats and meal. It is indeed undisputed that the conditions for according preferential status under the relevant decisions concerning the association of the overseas countries and territories with the European Economic Community were not met. The irregularities in the certificates led to a loss of own resources for the Union of EUR 18 192 641,95 for the administrative errors in Curacao and of EUR 298 080 for the administrative errors in Aruba.

The Commission is of the view that the Netherlands, as Member State, is responsible under EU law for this loss of own resources caused by its subregions, and that, under the obligation of loyal cooperation, the Netherlands must make the total amount of unestablished and uncollected customs duties and charges (plus rent) available to the EU budget.

⁽¹⁾ Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1).

⁽²⁾ 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 (OJ 2000 L 130, p. 1).

⁽³⁾ Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1).

⁽⁴⁾ Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') (OJ 2001 L 314, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 3 July 2017 — Martin Leitner v Landespolizeidirektion Tirol

(Case C-396/17)

(2017/C 347/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Martin Leitner

Defendant: Landespolizeidirektion Tirol

Questions referred

- 1.1. Is EU law, in particular Articles 1, 2 and 6 of Directive 2000/78/EC, ⁽¹⁾ in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that, for the purpose of eliminating discrimination against currently employed civil servants, establishes a transitional rule under which reclassification from the previous biennial system to a new biennial system, on the basis of a 'transition amount', which, while calculated in money, nevertheless corresponds to a certain grading that can be specifically allocated, that in and of itself is non-discriminatory for newly hired civil servants, such that age discrimination against currently employed civil servants still continues?
- 1.2. Is EU law, in particular Article 17 of Directive 2000/78/EC and Article 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that, in accordance with the interpretation of the Court of Justice of Articles 9 and 16 of Directive 2000/78 in its judgment of 11 November 2014 in *Schmitzer* (C-530/13, EU:C:2014:2359), prevents currently employed civil servants from having their remuneration status determined, in reliance on Article 2 of Directive 2000/78, as at the time prior to transition to the new system by declaring that the corresponding legal bases are no longer applicable retroactively to the date on which its historical original law entered into force and, in particular, that previous service periods completed before the age of 18 may not be accredited?
- 1.3. If the answer to Question 1.2. is in the affirmative:

Does the judgment of the Court of Justice of 22 November 2005 in *Mangold* (C-144/04, EU:C:2005:709) and in other cases specifying that EU law takes precedence over national legislation mandate that provisions applicable to currently employed civil servants at the time prior to transition, which had been retroactively repealed, must continue to be applied so that those civil servants can be retroactively classified in the old system in a non-discriminatory manner and are thus reclassified in the new remuneration system in a non-discriminatory manner?

- 1.4. Is EU law, in particular Articles 1, 2 and 6 of Directive 2000/78, in conjunction with Articles 21 and 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation that eliminates existing age discrimination (with respect to the accreditation of previous service periods completed before the age of 18) in a merely declaratory manner by specifying that the periods actually completed under conditions of discrimination are retroactively to be considered no longer discriminatory even though discrimination in fact still continues?

⁽¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Amtsgericht Nürnberg (Germany) lodged on 10 July 2017 — Andreas Fabri, Elisabeth Mathes v Sun Express Deutschland GmbH

(Case C-418/17)

(2017/C 347/07)

Language of the case: German

Referring court

Amtsgericht Nürnberg

Parties to the main proceedings

Applicants: Andreas Fabri, Elisabeth Mathes

Defendant: Sun Express Deutschland GmbH

Questions referred

1. Does a change in reservation to another flight constitute a situation covered by Article 4(3) of Regulation (EC) No 261/2004? ⁽¹⁾

If the first question is to be answered in the affirmative: