

following registration pursuant to Article 51 of Regulation No 40/94, because they would have been registrable at the date of filing of the application and any developments between the date of filing and registration would be expressly disregarded by the Court. According to the appellant, this means that an individual would be given unjustified preferential treatment as against the public interest which merits protection, which would be incompatible with the protective purpose of Articles 7 and 51 of Regulation No 40/94.

Finally, as regards the Court's argument concerning the duration of the procedure, it should be noted that this can depend on a great number of factors, not only those within the appellant's control, but also the applicant's, or — as in the case of the conduct of the pre-registration opposition procedure provided for in Regulation No 40/94 — factors which may be determined by third parties. Furthermore, absolute grounds for refusal, which may not have been influenced, or been capable of being influenced, by the appellant, can arise at very short notice. In a proper assessment of opposing interests in such *ad hoc* situations, the public interest should be given priority, particularly since, before registration, applicants cannot be absolutely certain that they will be granted the protection sought. In such cases, it is appropriate, therefore, to take account also of developments up to the date of registration.

For those reasons, the judgment under appeal of the Court of First Instance should, therefore, be set aside on the grounds of a breach of Article 51 of Regulation No 40/94.

Reference for a preliminary ruling from the Conseil de Prud'hommes de Caen (France) lodged on 20 August 2009 — Sophie Noël v SCP Brouard Daude as liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, and Centre de Gestion et d'Étude AGS (C.G.E.A.) IDF Est

(Case C-333/09)

(2009/C 256/28)

Language of the case: French

Referring court

Conseil de Prud'hommes de Caen (France)

Parties to the main proceedings

Applicant: Sophie Noël

Defendants: SCP Brouard Daude as liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, and Centre de Gestion et d'Étude AGS (C.G.E.A.) IDF Est

Questions referred

1. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, entitled 'Prohibition of discrimination', provides: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Is there discrimination in that there is different treatment of employees dismissed for economic reasons who have accepted a personal redeployment agreement, whose right to contest the breach of their contract remains subject to the five-year limitation period, and those who have refused it, who are subject to the one-year limitation period referred to in Article L.1235-7 of the Code du travail (Labour Code)?

2. Article 26 of the International Covenant on Civil and Political Rights of 16 December 1966 — which is merely the basis of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms — provides: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Must a French court thus, pursuant to Article 55 of the French Constitution of 4 October 1958, apply the provisions of Article 26 of the International Covenant on Civil and Political Rights of 16 December 1966 and disregard the discriminatory provisions of Article L.1235-7 of the Code du travail which derive from an ordinary law, No 2005-35 of 18 January 2005, subsequent to 4 February 1981, the date on which the International Covenant entered into force in national territory?

Action brought on 25 August 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-340/09)

(2009/C 256/29)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Kingdom of Spain

Forms of order sought

- Declare that the Kingdom of Spain has failed to fulfil its obligations under Article 4(2), (3), (4) and (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos,⁽¹⁾ in respect of certain zoos in the Autonomous Communities of Aragon, Asturias, the Balearic Islands, the Canary Islands, Cantabria, Castile and Leon, Valencia, Extremadura and Galicia:
- by failing to ensure that, by the date laid down in the Directive, all the zoos in its territory were licensed in accordance with paragraphs 2, 3 and, in the cases of Aragon, Asturias, the Canary Islands, Cantabria and Castile and Leon, 4 of Article 4 of the Directive; and
- by failing to order the closure of zoos, in accordance with Article 4(5) of the Directive, where they were not licensed;
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the Kingdom of Spain:

- has failed to ensure that, by the date laid down in the Directive, all the zoos in its territory were licensed in accordance with paragraphs 2, 3 and, in the cases of Aragon, Asturias, the Canary Islands, Cantabria and Castile and Leon, 4 of Article 4 of the Directive; and
- has failed to order the closure of zoos, in accordance with Article 4(5) of the Directive, where they were not licensed.

⁽¹⁾ OJ 1999 L 94, p. 24.

273/2004⁽¹⁾, by failing to communicate those measures pursuant to Article 16 of that Regulation and by failing to adopt the national measures necessary to implement Articles 26(3) and 31 of Regulation (EC) No 111/2005⁽²⁾, Ireland has failed to fulfil its obligations under Regulation (EC) No 273/2004 on drug precursors and Regulation (EC) No 111/2005 laying down the rules for the monitoring of trade between the Community and third countries in drug precursors;

- order Ireland to pay the costs.

Pleas in law and main arguments

Member States are required to adopt the measures necessary to comply with the provisions of Regulations, within the time limits laid down in those Regulations, and to notify those measures forthwith to the Commission. The Government of Ireland has failed to adopt and communicate the measures required to implement Articles 10, 12 and 16 of Regulation (EC) no 273/2004 on drug precursors. The Government of Ireland has also failed to adopt measures in accordance with articles 26(3) and 31 of regulation (EC) no 111/2005 laying down the rules for the monitoring of trade between the Community and third countries in drug precursors.

⁽¹⁾ Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors
OJ L 47, p. 1

⁽²⁾ Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors
OJ L 22, p. 1

Action brought on 3 September 2009 — Commission of the European Communities v Ireland

(Case C-355/09)

(2009/C 256/30)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver, A.-A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

- Declare that, by failing to adopt national measures necessary to implement Articles 10 and 12 of Regulation (EC) No

Action brought on 11 September 2009 — Commission v Italian Republic

(Case C-366/09)

(2009/C 256/31)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: G. Braun and E. Vesco, Agents)

Defendant: Italian Republic