

**Judgment of the Court (Grand Chamber) of 11 December 2007 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) International Transport Workers' Federation, Finnish Seamen's Union v Viking Line ABP, OÜ Viking Line Eesti**

(Case C-438/05) <sup>(1)</sup>

*(Maritime transport — Right of establishment — Fundamental rights — Objectives of Community social policy — Collective action taken by a trade union organisation against a private undertaking — Collective agreement liable to deter an undertaking from registering a vessel under the flag of another Member State)*

(2008/C 51/17)

Language of the case: English

**Referring court**

Court of Appeal (Civil Division)

**Parties to the main proceedings**

*Applicants:* International Transport Workers' Federation, Finnish Seamen's Union

*Defendants:* Viking Line ABP, OÜ Viking Line Eesti

**Re:**

Reference for a preliminary ruling — Court of Appeals Civil Division — Interpretation of Article 43 EC and of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1) — Industrial action by a trade union to compel a private undertaking to adopt a collective bargaining agreement making it pointless for that undertaking's vessels to reflag to another Member State — Applicability of Article 43 EC and/or Regulation No 4055/86 under Title XI of the EC Treaty and Case C-67/96 *Albany* — Whether an undertaking can rely on the provisions of Article 43 EC and/or Regulation No 4055/86 against another private person, including a trade union in respect of its industrial action.

**Operative part of the judgment**

1. Article 43 EC is to be interpreted as meaning that, in principle, collective action initiated by a trade union or a group of trade unions against a private undertaking in order to induce that undertaking to enter into a collective agreement, the terms of which are liable to deter it from exercising freedom of establishment, is not excluded from the scope of that article.
2. Article 43 EC is capable of conferring rights on a private undertaking which may be relied on against a trade union or an association of trade unions.

3. Article 43 EC is to be interpreted to the effect that collective action such as that at issue in the main proceedings, which seeks to induce a private undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction within the meaning of that article.

That restriction may, in principle, be justified by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

<sup>(1)</sup> OJ C 60, 11.3.2006.

**Judgment of the Court (Second Chamber) of 13 December 2007 — Commission of the European Communities v Italian Republic**

(Case C-465/05) <sup>(1)</sup>

*(Failure of a Member State to fulfil its obligations — Freedom to provide services — Right of establishment — Occupation of security guard — Private security services — Oath of allegiance to the Italian Republic — Authorisation from the Prefetto — Place of business — Minimum number of employees — Lodging of a guarantee — Administrative control of the pricing of services provided)*

(2008/C 51/18)

Language of the case: Italian

**Parties**

*Applicant:* Commission of the European Communities (represented by: E. Traversa and E. Montaguti, Agents)

*Defendant:* Italian Republic (represented by: I.M. Braguglia, Agent, and D. Del Gaizo, avvocato dello Stato)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 49 EC — Requirements for the exercise of the occupation of private security guard — Obligation to swear an oath of allegiance to the Italian Republic — Obligation to obtain an authorisation from the Prefetto

## Operative part of the judgment

The Court:

1. Declares that, in relation to the Consolidated Law on public security (*Testo unico delle leggi di pubblica sicurezza*), approved by Royal Decree No 773 of 18 June 1931, as amended:
  - by providing that it is obligatory to swear an oath of allegiance to the Italian Republic in order to work as a private security guard, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;
  - by providing that private security activities may be pursued by service providers established in other Member States only after authorisation of limited territorial validity has been granted by the Prefetto, without requiring account to be taken of the obligations to which those service providers are already subject in the Member States of origin, the Italian Republic has failed to fulfil its obligations under Article 49 EC;
  - by providing that that authorisation is to have limited territorial validity and that the granting of such authorisation is to be subject to consideration of the number and size of security undertakings already operating in the area in question, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;
  - by providing that private security undertakings must have a place of business in each province in which they operate, the Italian Republic has failed to fulfil its obligations under Article 49 EC;
  - by providing that the staff of those undertakings must be individually authorised to undertake private security work, without requiring account to be taken of the controls and verifications already carried out in the Member State of origin, the Italian Republic has failed to fulfil its obligations under Article 49 EC;
  - by providing that private security undertakings must have a minimum and/or a maximum number of employees in order to obtain authorisation, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;
  - by providing that those undertakings must lodge a guarantee with the local *Cassa depositi e prestiti*, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC; and
  - by providing that the prices for private security services are to be fixed, with the approval of the Prefetto, within the limits of a predetermined margin for variation, the Italian Republic has failed to fulfil its obligations under Article 49 EC;
2. Orders the Italian Republic to pay the costs.

<sup>(1)</sup> OJ C 60, 11.3.2006.

**Judgment of the Court (First Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Fazenda Pública — Director Geral das Alfândegas v ZF Zefeser — Importação e Exportação de Produtos Alimentares Lda**

(Case C-62/06) <sup>(1)</sup>

**(Regulation (EEC) No 1697/79 — Article 3 — Post-clearance recovery of import duties — Act that could give rise to criminal court proceedings — Competent authority for classifying the act)**

(2008/C 51/19)

Language of the case: Portuguese

## Referring court

Supremo Tribunal Administrativo

## Parties to the main proceedings

Applicant: Fazenda Pública — Director Geral das Alfândegas

Defendant: ZF Zefeser — Importação e Exportação de Produtos Alimentares Lda

Intervener in support of the defendant: Ministério Público

## Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1) — ‘Act that could give rise to criminal court proceedings’ — Concept and classification

## Operative part of the judgment

Classification of an act as ‘an act that could give rise to criminal court proceedings’ within the meaning of the first paragraph of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties, falls within the competence of the customs authorities required to determine the exact amount of the import duties or export duties in question.

<sup>(1)</sup> OJ C 86, 8.4.2006.