

their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as amended — Applicability of the Flemish care insurance scheme to persons employed in the Dutch-speaking region or in the bilingual region of Bruxelles-Capitale (Brussels Capital) and residing either in one of those regions or in another Member State, to the exclusion of persons residing in another part of the national territory.

Operative part of the judgment

1. Benefits provided under a scheme such as the care insurance scheme established by the Decree of the Flemish Parliament on the organisation of care insurance (Decreet houdende de organisatie van de zorgverzekering) of 30 March 1999, in the version contained in the Decree of the Flemish Parliament amending the Decree of 30 March 1999 (Decreet van de Vlaamse Gemeenschap houdende wijziging van het decreet van 30 maart 1999 houdende de organisatie van de zorgverzekering) of 30 April 2004, fall within the scope *ratione materiae* of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 307/1999 of 8 February 1999.
2. On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing the care insurance scheme established by the Flemish Community by the decree of 30 March 1999, as amended by the Decree of the Flemish Parliament of 30 April 2004, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State, is contrary to those provisions, in so far as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.
3. On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme only to persons residing in that entity's territory is contrary to those provisions, in so far as such limitation affects nationals of other Member States working in that entity's territory or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.

(¹) OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 3 April 2008 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy), *Militzer & Münch GmbH v Ministero delle Finanze*)

(Case C-230/06) (¹)

(Customs union — Community transit — Recovery of a customs debt — Competent Member State — Proof of the regularity of the operation or of the place of the offence — Time-limits — Liability of the principal)

(2008/C 128/07)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Militzer & Münch GmbH

Defendant: Ministero delle Finanze,

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Article 11a of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1987 L 107, p. 1) and Article 215(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Discharge by the customs office of destination evidenced by forged documents — Period prescribed for notifying the fact that a consignment has not been presented at the office of destination — Applicability

Operative part of the judgment

1. In order to verify whether the Member State which recovered customs duties has jurisdiction, it is for the referring court to determine whether, at the time when it came to light that the consignment had not been presented at the office of destination, it was possible to establish the place where the offence or irregularity occurred. If that is the case, the Member State in which the first offence or irregularity capable of being classified as a removal from customs surveillance was committed can be identified as the State with jurisdiction to recover the customs debt, pursuant to Articles 203(1) and 215(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. On the other hand, if the place where the offence or irregularity was committed cannot be thus established, the Member State to which the office of departure belongs has jurisdiction to recover the customs duties, in accordance with Articles 378 and 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92.

2. Where a consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, it is for the office of departure alone to make the notification required within the 11-month and 3-month time-limits laid down by Article 379(1) and (2) of Regulation No 2454/93.

3. It is not contrary to the principle of proportionality to hold a customs clearance agent, in his capacity as principal, liable for a customs debt.

(¹) OJ C 190, 12.8.2006.

**Judgment of the Court (Third Chamber) of 10 April 2008
— Commission of the European Communities v
Portuguese Republic**

(Case C-265/06) (¹)

(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Articles 11 and 13 of the EEA Agreement — Quantitative restrictions on imports — Measures having equivalent effect — Motor vehicles — Affixing of tinted film to windows)

(2008/C 128/08)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros, P. Guerra e Andrade and M. Patakia, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent, and by A. Duarte de Almeida, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 28 EC and 30 EC — National legislation prohibiting the affixing of tinted film to the windows of passenger or goods vehicles

Operative part of the judgment

The Court:

1) Declares that, by prohibiting in Article 2(1) of Decree-Law No 40/2003 of 11 March 2003 the affixing of tinted film to the windows of motor vehicles, the Portuguese Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC and Articles 11 and 13 of the Agreement of 2 May 1992 on the European Economic Area;

2) Orders the Portuguese Republic to pay the costs.

(¹) OJ C 212, 2.9.2006.

**Judgment of the Court (Grand Chamber) of 1 April 2008
(Reference for a preliminary ruling from the Bayerisches
Verwaltungsgericht München (Germany)) — Tadao Maruko
v Versorgungsanstalt der deutschen Bühnen**

(Case C-267/06) (¹)

(Equal treatment in employment and occupation — Directive 2000/78/EC — Survivors' benefits under a compulsory occupational pensions scheme — Concept of 'pay' — Refusal because the persons concerned were not married — Same-sex partners — Discrimination based on sexual orientation)

(2008/C 128/09)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Tadao Maruko

Defendant: Versorgungsanstalt der deutschen Bühnen

Re:

Reference for a preliminary ruling — Bayerisches Verwaltungsgericht München — Interpretation of Articles 1, 2(2)(a), 3(1)(c) and (3) of 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) — Meaning of pay — Registered partner excluded from receipt of a survivor's pension

Operative part of the judgment

1) A survivor's benefit granted under an occupational pension scheme such as that managed by the Versorgungsanstalt der deutschen Bühnen falls within the scope of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;