Operative part of the judgment

1. *The fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market.*

2. *Public statements by which an employer lets it be known that under its recruitment policy it will not recruit any employees of a certain ethnic or racial origin are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory within the meaning of Article 8(1) of Directive 2000/43. It is then for that employer to prove that there was no breach of the principle of equal treatment. It can do so by showing that the undertaking's actual recruitment practice does not correspond to those statements. It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's contentions that it has not breached the principle of equal treatment.*

3. *Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Second Chamber) of 17 July 2008 — Franco Campoli v Commission of the European Communities, Council of the European Union

(Case C-71/07 P) ([1])

(Appeal — Officials — Remuneration — Pension — Application of the correction coefficient calculated on the basis of the average cost of living in the country of residence — Transitional arrangements established by the Regulation amending the Staff Regulations — Objection of illegality)

(2008/C 223/18)

Language of the case: French

Parties

Appellant: Franco Campoli (represented by: G. Vandersanden, L. Levi and S. Rodrigues, avocats)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Joris and D. Martin, acting as Agents), Council of the European Union (represented by: M. Arpio Santacruz and I. Šulce, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 29 November 2006 in Case T-135/05 *Campoli* v *Commission*, by which the Court dismissed as partially inadmissible and partially unfounded the action for annulment of the appellant's pension payslips from May to July 2004, in as much as they applied for the first time a weighting calculated in an allegedly unlawful manner on the basis of the average cost of living in the appellant's country of residence, rather than, as previously, in relation to the cost of living in the capital of that country — Effect of the entry into force of the new Staff Regulations of Officials on the system of weighting — Transitional system for officials who retired before 1 April 2004 — Method of calculating weighting and respect for the principle of the equality of treatment — Obligation to state reasons

Operative part of the judgment

The Court:

1. *Dismisses the principal appeal and the cross-appeal.*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Fifth Chamber) of 17 July 2008 (reference for a preliminary ruling from the Arbeitsgericht Bonn — Germany) — Andrea Raccanelli v Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV

(Case C-94/07) ([1])

(Article 39 EC — Concept of 'worker' — Non-governmental organisation operating in the public interest — Doctoral grant — Employment contract — Conditions)

(2008/C 223/19)

Language of the case: German

Referring court

Arbeitsgericht Bonn

Parties to the main proceedings

Applicant: Andrea Raccanelli

Defendant: Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV

Re:

Preliminary ruling — Arbeitsgericht Bonn — Interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968(II), p. 475) — Capacity as a worker of a doctoral student engaged as a grant recipient by a non-profit-making association established under private law in another Member State which offers most national doctoral students the possibility of concluding a contract of employment — Need to make it possible for doctoral students who are nationals of the other Member States to choose between a grant and a contract of employment — Concept of 'worker'

Operative part of the judgment

1. *A researcher in a similar situation to that of the applicant in the main proceedings, that is, a researcher preparing a doctoral thesis on the basis of a grant contract concluded with the Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV, must be regarded as a worker within the meaning of Article 39 EC only if his activities are performed for a certain period of time under the direction of an institute forming part of that association and if, in return for those activities, he receives remuneration. It is for the referring court to undertake the necessary verification of the facts in order to establish whether such is the case in the dispute before it.*

2. *A private-law association, such as the Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV, must observe the principle of non-discrimination in relation to workers within the meaning of Article 39 EC. It is for the referring court to establish whether, in circumstances such as those of the case in the main proceedings, there has been inequality in the treatment of domestic and foreign doctoral students.*

3. *In the event that the applicant in the main proceedings is justified in relying on damage caused by the discrimination to which he has been subject, it is for the referring court to assess, in the light of the national legislation applicable in relation to non-contractual liability, the nature of the compensation which he would be entitled to claim.*

(1) OJ C 117, 26.5.2007.

Judgment of the Court (Grand Chamber) of 17 July 2008 (references for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Arcor AG & Co. KG (C-152/07), Communication Services TELE2 GmbH (C-153/07), Firma 01051 Telekom GmbH (C-154/07) v Bundesrepublik Deutschland

(Joined Cases C-152/07 to C-154/07) (1)

(Telecommunications — Networks and services — Tariff rebalancing — Article 4c of Directive 90/388/EEC — Article 7(2) of Directive 97/33/EC — Article 12(7) of Directive 98/61/EC — Regulatory authority — Direct effect of directives — Triangular situation)

(2008/C 223/20)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Arcor AG & Co. KG (C-152/07), Communication Services TELE2 GmbH (C-153/07), Firma 01051 Telekom GmbH (C-154/07)

Defendant: Bundesrepublik Deutschland

Intervening Party: Deutsche Telekom AG

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10) and Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32) — National legislation prescribing, in addition to interconnection charges calculated on the basis of the cost of the service, a financial contribution from other operators to cover the 'connection cost deficit' incurred by the incumbent operator as a result of providing the local loop — Obligation of the Member States to remove obstacles to the rebalancing of tariffs by former telecommunications organisations following the interconnection of networks — Ability of an individual to rely on the direct effect of a directive before the courts of a Member State in order to secure the annulment of an administrative decision laying down a financial obligation in favour of another individual