3. *The first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into to question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.*

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Second Chamber) of 18 December 2008 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Sopropé — Organizações de Calçado Lda v Fazenda Pública

(Case C-349/07) ([1])

(Community Customs Code — Principle of respect for the rights of the defence — Post-clearance recovery of customs import duties)

(2009/C 44/25)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Sopropé — Organizações de Calçado Lda

Respondent: Fazenda Pública

Intervening party: Ministério Público

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Compatibility with Community law and the principle of the rights of the defence of national provisions of fiscal administrative procedure concerning the periods for the exercise of the taxpayer's right to a hearing — Administrative procedure for the post-clearance payment of import duties on goods from the far east

Operative part of the judgment

1. *With regard to recovery of a customs debt for the purpose of effecting post-clearance recovery of customs import duties, a period of 8 to 15 days allowed to an importer suspected of having committed a customs offence in which to submit its observations complies in principle with the requirements of Community law.*

2. *It is for the national court before which the case has been brought to ascertain, having regard to the specific circumstances of the case, whether the period actually allowed to that importer made it possible for it to be given a proper hearing by the customs authorities.*

3. *The national court must also ascertain whether, in the light of the period which elapsed between the time when the authorities concerned received the importer's observations and the date on which they took their decision, they can be deemed to have taken due account of the observations sent to them.*

([1]) OJ C 235, 6.10.2007.

Judgment of the Court (Second Chamber) of 18 December 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof) — Wienstrom GmbH v Bundesminister für Wirtschaft und Arbeit

(Case C-384/07) ([1])

(State aid — Article 88(3) EC — Aid declared compatible with the common market — Dispute between the aid recipient and the national authorities concerning the amount of aid unlawfully put into effect — Role of the national court)

(2009/C 44/26)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Wienstrom GmbH

Defendant: Bundesminister für Wirtschaft und Arbeit

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 88(3) EC — State aid scheme put into effect without prior notification to the Commission, the final amended version of which, however, following its notification, was declared compatible with the common market, without any express negative decision having been taken with regard to the previous non-notified version — Obligations of national courts deriving from the Commission's decision

Operative part of the judgment

The prohibition on putting State aid into effect laid down in the last sentence of Article 88(3) EC does not require a national court, in a situation such as that in the main proceedings, to dismiss an action brought by a State aid recipient concerning the amount of that State aid allegedly due in respect of a period predating a decision of the Commission of the European Communities finding that aid to be compatible with the common market.

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Krakowie — Republic of Poland) — Magoora sp. zoo v Dyrektor Izby Skarbowej w Krakowie

(Case C-414/07) ([1])

(Sixth VAT Directive — Article 17(2) and (6) — National legislation — Deduction of VAT on the purchase of fuel for certain vehicles irrespective of the purpose for which they are used — Effective restriction on deductions — Exclusions laid down by national law when the directive entered into force)

(2009/C 44/27)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Krakowie

Parties to the main proceedings

Applicant: Magoora sp. zoo

Defendant: Dyrektor Izby Skarbowej w Krakowie

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny w Krakowie — Interpretation of Article 17(2) and (6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — National rules excluding the right to deduct tax on purchases of fuel for certain vehicles irrespective of the purpose (business or private) for which the vehicle concerned is used — Amendment of the criteria governing vehicles covered by the exclusion, resulting in a *de facto* restriction of the scope of the right to deduct in comparison with the period before Directive 77/388 entered into force in the Member State concerned

Operative part of the judgment

The second subparagraph of Article 17(6) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment precludes a Member State from repealing in their entirety, when that directive is transposed into national law, national provisions concerning restrictions on the right to deduct input tax on purchases of fuel for vehicles used for a taxable activity, by replacing, on the date on which that directive entered into force on its territory, those provisions by provisions laying down new criteria in that regard, if — which is for the national court to determine — the latter provisions have the effect of extending the scope of those restrictions. It precludes, in any event, a Member State from subsequently amending its legislation which entered into force on that date, so as to extend the scope of those restrictions as compared with the situation existing prior to that date.

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Grand Chamber) of 9 December 2008 (reference for a preliminary ruling from the Oberster Patent- und Markensenat — Austria) — Verein Radetzky-Orden v Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'

(Case C-442/07) ([1])

(Trade marks — Directive 89/104/EEC — Article 12 — Revocation — Marks registered by a non-profit-making association — Concept of 'genuine use' of a trade mark — Charitable activities)

(2009/C 44/28)

Language of the case: German

Referring court

Oberster Patent- und Markensenat

Parties to the main proceedings

Applicant: Verein Radetzky-Orden

Defendant: Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'

Re:

Reference for a preliminary ruling — Oberster Patent- und Markensenat — Interpretation of Article 12(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Trade marks used on business papers, writing