

**Judgment of the Court (Third Chamber) of 26 March 2009
— Commission of the European Communities v Hellenic Republic**

(Case C-559/07) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Social policy — Article 141 EC — Equal pay for male and female workers — National civil and military pension regime — Different treatment with regard to retirement age and minimum required service — Justification — Absence)

(2009/C 113/16)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and M. van Beek, acting as Agents)

Defendant: Hellenic Republic (represented by: F. Spathopoulos, K. Bokovits, A. Samoni-Rantou, E.-M. Mamouna and S. Vodina, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 141 EC — Infringement of the principle of equal pay for male and female workers — National civil and military retirement pensions regime prescribing a retirement age that can vary according to sex

Operative part of the judgment

The Court:

1. Declares that, by maintaining in force provisions which provide for differences between male and female workers with regard to retirement age and minimum required service under the Greek Civil and Military Pensions Code instituted by Presidential Decree No 166/2000 of 3 July 2000, in the version applicable to the present case, the Hellenic Republic has failed to fulfil its obligations under Article 141 EC;
2. Orders the Hellenic Republic to pay the costs.

⁽¹⁾ OJ C 37, 9.2.2008.

**Judgment of the Court (First Chamber) of 19 March 2009
— Commission of the European Communities v Republic of Finland**

(Case C-10/08) ⁽¹⁾

(Taxation in Finland of second-hand vehicles imported from other Member States — Compatibility of national legislation with the first paragraph of Article 90 EC, the Sixth VAT Directive and Directive 2006/112/EC)

(2009/C 113/17)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: I. Koskinen and D. Triantafyllou, Agents)

Defendant: Republic of Finland (represented by: J. Heliskoski, Agent)

Re:

Failure by a Member State to fulfil obligations — Infringement of Article 90 EC and Article 17(1) and (2) of Directive 77/388/EEC: Sixth Council Directive 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), now Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation providing for value added tax on the tax on vehicles and a right to deduct the corresponding amount from output value added tax — Application of the same taxable value to vehicles under three months old and to new vehicles — Application of a level of depreciation of 0,8 % per month to vehicles under six months old where there are no equivalent vehicles on the national market

Operative part of the judgment

The Court hereby:

1. Declares that, by allowing the tax referred to in Article 5 of Law No 1482/1994 on vehicle tax (*autoverolaki* (1482/1994)) of 29 December 1994 to be deducted from the value added tax, pursuant to Article 102(1)(4) of Law No 1501/1993 on value added tax (*arvonlisäverolaki* (1501/1993)) of 30 December 1993, the Republic of Finland has failed to fulfil its obligations under the first paragraph of Article 90 EC and Article 17(1) and (2) of Directive 77/388/EEC: Sixth Council Directive 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, reproduced in Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;

2. Declares that, by retaining, when taxing vehicles, the same taxable value for vehicles under three months old as for new vehicles, the Finnish Republic has failed to fulfil its obligations under the first paragraph of Article 90 EC;
3. Orders the action to be dismissed as to the remainder;
4. Orders the Finnish Republic to pay, apart from its own costs, three-quarters of the costs of the Commission of the European Communities;
5. Orders the Commission of the European Communities to bear the remainder of its own costs.

(¹) OJ C 79, 29.3.2008.

Judgment of the Court (Second Chamber) of 26 March 2009 — Sunplus Technology Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Sun Microsystems Inc.

(Case C-21/08 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Word and figurative mark ‘SUNPLUS’ — Opposition by the proprietor of the national word marks ‘SUN’ — Refusal of registration)

(2009/C 113/18)

Language of the case: English

Parties

Appellant: Sunplus Technology Co. Ltd (represented by: K. Lochner and H. Gauß, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), Sun Microsystems Inc. (represented by: M. Graf, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 15 November 2007 in Case T-38/04 *Sunplus Technology Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) in which the Court of First Instance dismissed an action brought, by the applicant for the figurative mark ‘SUNPLUS’ for goods in Class 9, against decision R 642/2000-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 October 2003, dismissing the appeal against the decision of the opposition division which refused an application for registration of that mark in opposition proceedings initiated by the holder of the national figurative and word trade marks ‘SUN’ for goods in Class 9 — Similarity between the marks — Article 8(1)(b) of

Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Sunplus Technology Co. Ltd to pay the costs.

(¹) OJ C 64, 8.3.2008.

Judgment of the Court (Fourth Chamber) of 19 March 2009 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz — Austria) — Dachberger & Söhne GmbH v Zollamt Salzburg, Erstattungen

(Case C-77/08) (¹)

(Export refund — Differentiated refund — Time of the submission of the request — Export declaration — No proof of clearance for release for consumption in the destination country — Penalty)

(2009/C 113/19)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Graz

Parties to the main proceedings

Applicant: Dachberger & Söhne GmbH

Defendant: Zollamt Salzburg, Erstattungen

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat, Außenstelle Graz — Interpretation of the second sentence of the second subparagraph of Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 amending Regulation (EEC) No 3665/87 laying down common detailed rules for the application of the system of export refunds on agricultural products, as regards the recovery of amounts unduly paid and sanctions (OJ 1994 L 310, p. 57) — Concept of the request for the differentiated part of the export refund — Imposition of the penalty in the event of incorrect information with regard to the destination country featuring in the export declaration