

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Third Chamber) of 15 October 2009 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — Grundstücksgemeinschaft Busley and Cibrian Fernandez v Finanzamt Stuttgart-Körperschaften**

(Case C-35/08) <sup>(1)</sup>

*(Free movement of capital — Immovable property — Income tax — Deductibility of rental losses from the taxable income of a person liable to tax — Application of the decreasing-balance method of depreciation to the costs of acquisition or construction — More favourable tax treatment confined to immovable property situated on the national territory)*

(2009/C 297/03)

Language of the case: German

**Referring court**

Finanzgericht Baden-Württemberg

**Parties to the main proceedings**

*Applicant:* Grundstücksgemeinschaft Busley and Cibrian Fernandez

*Defendant:* Finanzamt Stuttgart-Körperschaften

**Re:**

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of Articles 18 and 56 of the EC Treaty — National income tax legislation limiting the ability to deduct losses arising from the rental of real property to those losses relating to property located on national territory, and reserving to such property alone the application of a more favourable method of depreciation

**Operative part of the judgment**

Article 56 EC precludes income-tax legislation of a Member State under which natural persons who are resident and liable to

unlimited taxation are entitled to have (i) losses from the letting or leasing of an immovable property deducted from the taxable amount in the year in which those losses arise, and (ii) the income from such property assessed on the basis of the application of the decreasing-balance method of depreciation, only if the property in question is situated on the territory of that Member State.

\_\_\_\_\_ <sup>(1)</sup> OJ C 92, 12.04.2008.

**Judgment of the Court (Fourth Chamber) of 15 October 2009 (reference for a preliminary ruling from the Cour de cassation (Luxembourg)) — Audiolux SA, BIP Investment Partners SA, Jean-Paul Felten, Joseph Weyland, Luxiprivilège SA, Foyer SA, Investas ASBL, Claudie Stein-Lambert, Christiane Worre-Lambert, Baron Antoine De Schorlemer, Jacques Funck, Jean Petitdidier v Groupe Bruxelles Lambert SA (GBL), RTL Group, Juan Abello Gallo, Didier Bellens, André Desmarais, Gérald Frère, Jocelyn Lefebvre, Onno Ruding, Gilles Samyn, Martin Taylor, Bertelsmann AG, Siegfried Luther, Thomas Middelhoff, Ewald Wagenbach, Rolf Schmidt-Holz, Erich Schumann, WAZ Finanzierungs-GmbH, Westdeutsche Allgemeine Zeitungsverlagsgesellschaft E. Brost & J. Funke GmbH & Co (WAZ)**

(Case C-101/08) <sup>(1)</sup>

*(Directives 77/91/EEC, 79/279/EEC and 2004/25/EC — General principle of Community law on the protection of minority shareholders — None — Company law — Acquisition of control — Mandatory bid — Recommendation 77/534/EEC — Code of Conduct)*

(2009/C 297/04)

Language of the case: French

**Referring court**

Cour de cassation

**Parties to the main proceedings**

*Applicants:* Audiolux SA, BIP Investment Partners SA, Jean-Paul Felten, Joseph Weyland, Luxiprivilège SA, Foyer SA, Investas ASBL, Claudie Stein-Lambert, Christiane Worre-Lambert, Baron Antoine De Schorlemer, Jacques Funck, Jean Petitdidier

*Defendants:* Groupe Bruxelles Lambert SA (GBL), RTL Group, Juan Abello Gallo, Didier Bellens, André Desmarais, Gérard Frère, Jocelyn Lefebvre, Onno Ruding, Gilles Samyn, Martin Taylor, Bertelsmann AG, Siegfried Luther, Thomas Middelhoff, Ewald Wagenbach, Rolf Schmidt-Holz, Erich Schumann, WAZ Finanzierungs-GmbH, Westdeutsche Allgemeine Zeitungsverlagsgesellschaft E. Brost & J. Funke GmbH & Co (WAZ)

**Re:**

Reference for a preliminary ruling — Cour de cassation (Grand Duchy of Luxembourg) — Interpretation of (1) Articles 20 and 42 of the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies ... in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1), (2) the Commission Recommendation of 25 July 1977 concerning a European code of conduct relating to transactions in transferable securities (OJ 1977 L 212 p. 37), (3) Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (OJ 1979 L 66, p. 21) and (4) Article 3(1)(a) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12) — Is there, in Community law, a general principle of the equality of shareholders? — If so, what is the scope *ratione materiae* and *ratione temporis* of that principle?

**Operative part of the judgment**

*Community law does not include any general principle of law under which minority shareholders are protected by an obligation on the dominant shareholder, when acquiring or exercising control of a company, to offer to buy their shares under the same conditions as those agreed when a shareholding conferring or strengthening the control of the dominant shareholder was acquired.*

<sup>(1)</sup> OJ C 116, 9.5.2008.

**Judgment of the Court (Third Chamber) of 22 October 2009 (reference for a preliminary ruling from the Hof van Cassatie van België (Belgium)) — C. Meerts v Proost NV**

(Case C-116/08) <sup>(1)</sup>

*(Directive 96/34/EC — Framework agreement on parental leave concluded by UNICE, CEEP and the ETUC — Interpretation of Clause 2.6 and 2.7 — Part-time parental leave — Dismissal of a worker before the end of parental leave without observing the statutory period of notice — Calculation of compensation)*

(2009/C 297/05)

Language of the case: Dutch

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

*Appellant:* C. Meerts

*Respondent:* Proost NV

**Re:**

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of clauses 2.4 to 2.7 of the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, annexed to Council Directive 96/34/EC of 3 June 1996 (OJ 1996 L 145, p. 4) — Parental leave in the form of part-time working — Dismissal of the employee before the end of the period of parental leave without urgent cause or without observing the statutory period of notice — Calculation of payment in lieu of notice

**Operative part of the judgment**

*Clause 2.6 and 2.7 of the framework agreement on parental leave concluded on 14 December 1995, which is annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as precluding, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.*

<sup>(1)</sup> OJ C 128, 24.5.2008.