

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 6 October 2010 — European Commission v Kingdom of Belgium(Case C-222/08) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC ('Universal Service' Directive) — Electronic communications — Networks and services — Article 12 — Costing of universal service obligations — Social component of universal service — Article 13 — Financing of universal service obligations — Determination of whether an 'unfair burden' exists)

(2010/C 328/02)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: H. van Vliet and A. Nijenhuis, Agents)

Defendant: Kingdom of Belgium (represented by: T. Materne and M. Jacobs, Agents, assisted by S. Depré, lawyer)

Re:

Failure of a Member State to fulfil obligations — Incorrect transposition of Articles 12(1), 13(1) and Annex IV, Part I, of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service' Directive) (OJ 2002 L 108, p. 51) — Social component of universal service — Designation of undertakings — Provision of particular tariff conditions — Lack of transparency

Operative part of the judgment

The Court:

1. Declares that,

- first, by failing to take into consideration, in the calculation of the net cost of provision of the social component of universal service, the market benefits, including intangible benefits, accruing to the undertakings responsible, and
- second, by making a general finding on the basis of the calculation of the net costs of the erstwhile sole provider of universal service that all undertakings now responsible for the

provision of universal service are in fact subject to an unfair burden on account of that provision and by having done so without carrying out a specific assessment both of the net cost which the provision of universal service represents for each operator concerned and of all the characteristics particular to each operator, including the quality of its equipment or its economic and financial situation,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 12(1) and 13(1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);

2. Dismisses the action as to the remainder;

3. Orders the Kingdom of Belgium to pay two thirds of the costs and orders the European Commission to pay one third of the costs.

⁽¹⁾ OJ C 209, 15.8.2008.

Judgment of the Court (Fourth Chamber) of 6 October 2010 (reference for a preliminary ruling from the Grondwettelijk Hof (Belgium)) — Base NV, Euphony Benelux NV, Mobistar SA, Uninet International NV, T2 Belgium NV, KPN Belgium NV v Ministerraad

(Case C-389/08) ⁽¹⁾

(Electronic communications — Directive 2002/21/EC ('Framework' Directive) — Articles 2(g), 3 and 4 — National regulatory authority — National legislature acting as national regulatory authority — Directive 2002/22/EC ('Universal Service' Directive) — Networks and services — Article 12 — Costing of universal service obligations — Social component of universal service — Article 13 — Financing of universal service obligations — Determination of whether an 'unfair burden' exists)

(2010/C 328/03)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Base NV, Euphony Benelux NV, Mobistar SA, Uninet International NV, T2 Belgium NV, KPN Belgium NV

Defendant: Ministerraad

Intervener: Belgacom NV

Re:

Reference for a preliminary ruling — Grondwettelijk Hof — Belgium — Interpretation of Article 12 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — Calculation of the cost of universal service obligations — No assessment on a case-by-case basis

Operative part of the judgment

1. Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) does not in principle preclude, by itself, the national legislature from acting as national regulatory authority within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) provided that, in the exercise of that function, it meets the requirements of competence, independence, impartiality and transparency laid down by those directives and that its decisions in the exercise of that function can be made the object of an effective appeal to a body independent of the parties involved, which it is for the Grondwettelijk Hof to determine.
2. Article 12 of Directive 2002/22 does not preclude a national regulatory authority from determining generally and on the basis of the calculation of the net costs of the universal service provider which was previously the sole provider of that service that the provision of universal service may represent an 'unfair burden' for those undertakings designated as universal service providers.
3. Article 13 of Directive 2002/22 precludes that authority from deciding in the same way and on the basis of the same calculation that those undertakings are effectively subject to an unfair burden because of that provision, without having undertaken a specific examination of the situation of each of them.

(¹) OJ C 285, 8.11.2008.

Judgment of the Court (Grand Chamber) of 5 October 2010 — European Commission v French Republic

(Case C-512/08) (¹)

(Failure of a Member State to fulfil obligations — Article 49 EC — Social security — Medical treatment proposed in another Member State and requiring the use of major medical equipment — Requirement of prior authorisation — Planned treatment provided in another Member State — Difference in the levels of cover in force in the Member State of affiliation and in the Member State of stay, respectively — Insured person's right to assistance by the competent institution to supplement that of the institution of the Member State of stay)

(2010/C 328/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: N. Yerrell, G. Rozet and E. Traversa, acting as Agents)

Defendant: French Republic (represented by: A. Czubinski and G. de Bergues, acting as Agents)

Interveners in support of the defendants: Kingdom of Spain (represented by J.M. Rodríguez Cárcamo, acting as Agent), Republic of Finland (represented by A. Guimaraes-Purokoski, acting as Agent), United Kingdom of Great Britain and Northern Ireland (represented by I. Rao, and subsequently by S. Ossowski, acting as Agents, assisted by M.-E. Demetriou, Barrister)

Re:

Failure to fulfil obligations — Infringement of Article 49 EC — Requirement of prior authorisation, from the State of insurance, in order to obtain repayment for certain non-hospital treatment received in another Member State — Failure to pay the difference between the amount received by the insured, who receives hospital treatment in a Member State other than the Member State of insurance, and the amount to which he would have been entitled had he received the same treatment in the Member State of insurance — Unjustified obstacles to the freedom to provide services

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the European Commission to pay the costs;
3. Orders the Kingdom of Spain, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

(¹) OJ C 44, 21.2.2009.