Parties

Applicant: Karol Mihal

Defendant: Daňový úrad Košice V

Re:

Reference for a preliminary ruling — Najvyšší súd Slovenskej republiky — Interpretation of the first subparagraph of Article 4(5) 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) — Treatment of a body governed by public law as a non-taxable person in respect of activities or operations engaged in as a public authority — Inclusion of bailiffs in the exercise of their public duties — Direct effect

Operative part of the order

An activity exercised by a private individual, such as that of a bailiff, is not exempted from value added tax merely because it consists in engaging in acts falling within the rights and powers of a public authority. Even on the assumption that, in the exercise of his duties, a bailiff does carry out such acts, he does not, under legislation such as that at issue in the main proceedings, exercise his activity in the form of a body governed by public law, not being integrated into the organisation of the public administration, but in the form of an independent economic activity carried out in a self-employed capacity, and, consequently, he is not covered by the exemption provided for in the first subparagraph of Article (5) 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.

Order of the Court (Eighth Chamber) of 22 May 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — M. Ilhan v Staatssecretaris van Financiën

(Case C-42/08) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom to provide services — Articles 49 EC to 55 EC — Motor vehicles — Use in one Member State of a motor vehicle registered and leased in another Member State — Taxation of that vehicle in the first Member State)

(2008/C 209/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden Den Haag

Parties to the main proceedings

Applicant: M. Ilhan

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Articles 49 EC to 55 EC — National rules providing for imposition of a registration tax on first use of a vehicle on the national road network irrespective of the duration of use of that network — Liability to tax of a person established in that Member State who has leased a vehicle which is registered in another Member State and which is intended for use essentially in the first Member State for professional and private purposes for a period of three years

Operative part of the order

Articles 49 EC to 55 EC preclude the application of national rules, such as those at issue in the main proceedings, by virtue of which a person, residing or established in a Member State, who uses — primarily in that Member State — a motor vehicle registered and leased in another Member State, must, on first use of that vehicle on the road network of the first Member State, pay a tax which is calculated without taking into account the duration of the leasing agreement for that vehicle or the length of time that vehicle will be used on that road network.

([1]) OJ C 92, 12.4.2008.

Appeal brought on 3 April 2008 by Japan Tobacco, Inc. against the judgment delivered on 30 January 2008 by the Court of First Instance (Fifth Chamber) in Case T-128/06, Japan Tobacco, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Torrefacção Camelo

(Case C-136/08 P)

(2008/C 209/26)

Language of the case: French

Parties

Appellant: Japan Tobacco, Inc. (represented by: A. Ortiz López, abogada, S. Ferrandis González, abogado and E. Ochoa Santamaría, abogada)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) Torrefacção Camelo L[da]

Form of order sought

— set aside the judgment of the Court of First Instance of the European Communities of 30 January 2008 delivered in Case T-128/06 and deliver a judgment amending the judgment of the Court of First Instance and declaring it necessary to apply the prohibition contained in Article 8(5) of the Community Trade Mark Regulation ([1]) to this case and, consequently, in considering the arguments submitted by Japan Tobacco, decide to refuse the registration of Community trade mark No 1 469 121;

— order OHIM to pay the costs of these proceedings.

Pleas in law and main arguments

By its appeal, the appellant claims that the Court of First Instance infringed the Community Trade Mark Regulation and, more specifically, Article 8(5) thereof. Despite the fact that the Court of First Instance recognised the reputation of the earlier mark, the similarity between the marks in question and the connection between the goods designated by the marks, it required actual, real and current evidence of harm to the earlier mark, whilst Article 8(5) requires a mere likelihood of harm to that mark, of unfair advantage being taken of its distinctive character or of detriment to it.

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

Action brought on 16 April 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-160/08)

(2008/C 209/27)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by M. Kellerbauer and D. Kukovec, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by failing to publish notices of contracts awarded and by failing to make a public call for tenders or failing transparently to award service contracts in the field of public ambulance services, the Federal Republic of Germany has failed to fulfil its obligations under Directives 92/50/EEC ([1]) and 2004/18/EC ([2]) and infringed the principles of freedom of establishment and freedom to provide services (Articles 43 EC and 49 EC);

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The Commission states that its attention has been drawn by several complaints to the procurement practice for service contracts in the field of public ambulance services in the Federal Republic of Germany. Those complaints objected to the fact that contracts in that field were, as a rule, not the subject of a call for tenders and not awarded transparently. In the Commission's view, the generally small number of Europe-wide calls for tenders for ambulance services by local authorities as bodies responsible for the public ambulance service (13 contract notices in a period of six years, by only 11 out of the 400-plus German districts and cities with district status) is evidence of a widespread practice in Germany of not awarding those ambulance services in accordance with the requirements of the European procurement directives and the fundamental principles of Community law. Moreover, those contracts were awarded without measures to ensure the appropriate transparency and to avoid discrimination.

It says that by that award practice the Federal Republic of Germany has failed to fulfil its obligations under Directives 92/50/EEC and 2004/18/EC and infringed the principles of freedom of establishment and freedom to provide services laid down in Articles 43 EC and 49 EC, in particular the prohibition of discrimination contained in those principles.

Local authorities as bodies responsible for the ambulance service are contracting authorities within the meaning of Article 1(b) of Directive 92/50/EEC or Article 1(9) of Directive 2004/18/EC. It should also be undisputed that contracts awarded in the field of public ambulance services constitute public contracts for consideration that are caught by those directives and clearly exceed the relevant threshold value for the directives to be applicable. It follows from all those circumstances that the contracts for services in question should have been awarded in the procedures laid down by the directives and in compliance with their general provisions on equal treatment and non-discrimination.