Questions referred

1. Does Community law preclude a national authority — in order to avoid discriminating against foreign equity holdings which, unlike domestic (Austrian) equity holdings, are not tax exempt under legislation until the size of the equity holding reaches 25 % (under present legislation 10 %) — from applying the credit method because the Austrian Verwaltungsgerichtshof (Administrative Court) has ruled that this outcome is closest to the (hypothetical) intention of the legislature but not simultaneously permitting a deduction to be carried forward to subsequent years or a tax credit to be given for a loss year with regard, firstly, to the corporation tax to be credited and, secondly, to the withholding tax to be credited?

1.1 If the answer to the first question should be in the affirmative: Does Community law preclude a refusal to allow a deduction to be carried forward or a tax credit to be given in the case of non-member country dividends?

Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 27 October 2008 — Ümit Bekleyen v Land Berlin

(Case C-462/08)

(2009/C 19/20)

Language of the case: German

Referring court

Oberverwaltungsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: Ümit Bekleyen

Defendant: Land Berlin

Question referred

Is the second paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council on the development of the Association to be interpreted as meaning that the right of access to the labour market and the corresponding right of residence following the completion of a vocational training course in the host Member State can also be invoked in a situation in which the child who was born in the host Member State, but afterwards returned with her family to the family's country of origin, returns on her own to the relevant Member State after she has reached the age of majority in order to start a vocational training course, at a moment occurring 10 years after her parents, Turkish nationals who used to be employed in that Member State, had permanently left that Member State?

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 31 October 2008 — Sociedad General de Autores y Editores de España (SGAE) v Padawan, S.L. and Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), intervener

(Case C-467/08)

(2009/C 19/21)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Sociedad General de Autores y Editores de España (SGAE)

Defendant: Padawan, S.L.

Other party: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)

Questions referred

1. Does the concept of 'fair compensation' in Article 5(2)(b) of Directive 2001/29 [1] entail harmonisation, irrespective of the Member States' right to choose the system of collection which they deem appropriate for the purposes of giving effect to the right to fair compensation of intellectual property rightholders affected by the adoption of the private copying exception or limitation?

2. Regardless of the system used by each Member State to calculate fair compensation, must that system ensure a fair balance between the persons affected, the intellectual property rightholders affected by the private copying exception, to whom the compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other, and is that balance determined by the reason for the fair compensation, which is to mitigate the harm arising from the private copying exception.?

3. Where a Member State opts for a system of charging or levying in respect of digital reproduction equipment, devices and media, in accordance with the aim pursued by Article 5(2)(b) of Directive 2001/29 and the context of that provision, must that charge (the fair compensation for private copying) necessarily be linked to the presumed use of those equipment and media for making reproductions covered by the private copying exception, with the result that the application of the charge would be justified where it may be presumed that the digital reproduction equipment, devices and media are to be used for private copying, but not otherwise?

4. If a Member State adopts a private copying 'levy' system, is the indiscriminate application of that 'levy' to undertakings and professional persons who clearly purchase digital reproduction devices and media for purposes other than private copying compatible with the concept of 'fair compensation'?

5. Might the system adopted by the Spanish State of applying the private copying levy indiscriminately to all digital reproduction equipment, devices and media infringe Directive 2001/29, in so far as there is insufficient correlation between the fair compensation and the limitation of the private copying right justifying it, because to a large extent it is applied to different situations in which the limitation of rights justifying the compensation does not exist?

([1]) Corrigendum to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167 of 22.6.2001).

Reference for a preliminary ruling from the Helsingin käräjäoikeus (Finland) lodged on 4 November 2008 — Sanna Maria Parviainen v Finnair Oyj

(Case C-471/08)

(2009/C 19/22)

Language of the case: Finnish

Referring court

Helsingin käräjäoikeus

Parties to the main proceedings

Applicant: Sanna Maria Parviainen

Defendant: Finnair Oyj

Question referred

Is Article 11(1) of the Protection of Pregnant Workers Directive ([1]) to be interpreted as meaning that a worker who is transferred to other lower-paid work because of her pregnancy must, on the basis of that provision, be paid as much as she received on average before the transfer, and is it relevant in that respect what kind of allowances and on what basis the worker was paid in addition to her basic monthly pay?

([1]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348, 1992, p. 1.

Appeal brought on 6 November 2008 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the Court of First Instance (Third Chamber) delivered on 10 September 2008 in Case T-59/05 Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Commission of the European Communities

(Case C-476/08 P)

(2009/C 19/23)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, P. Katsimani, Δικηγόροι)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claim that the Court should:

— Set aside the decision of the Court of First Instance;

— annul the decision of the Commission (DG Agriculture) to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted

Pleas in law and main arguments

The appellant bases its appeal against the judgment T-59/05 of the Court of First Instance on the following grounds: