

**Judgment of the Court (Third Chamber) of 21 October 2010** (reference for a preliminary ruling from the *Anotato Dikastirio tis Kipriakis Demokratias* (Cyprus)) — *Simvoulio Apokhetefseon Lefkosias v Anatheoritiki Arkhi Prosforon*

(Case C-570/08) <sup>(1)</sup>

*(Public contracts — Directive 89/665/EEC — Article 2(8) — Body responsible for review procedures that is not judicial in character — Annulment of the contracting authority's decision to accept a tender — Possibility for the contracting authority to appeal against that annulment before a judicial body)*

(2010/C 346/12)

Language of the case: Greek

#### Referring court

Anotato Dikastirio tis Kipriakis Demokratias

#### Parties to the main proceedings

Applicant: *Simvoulio Apokhetefseon Lefkosias*

Defendant: *Anatheoritiki Arkhi Prosforon*

#### Re:

Reference for a preliminary ruling — *Anotato Dikastirio Kiprou* (Cyprus) — Interpretation of Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — Right of a contracting authority to judicial review of decisions of a responsible body, within the meaning of that provision, which is not judicial in character

#### Operative part of the judgment

Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, must be interpreted as not requiring the Member States to provide, also for contracting authorities, a right to seek judicial review of the decisions of non-judicial bodies responsible for review procedures concerning the award of public contracts. However, that provision does not prevent the Member States from providing, in their legal systems, such a review procedure in favour of contracting authorities.

<sup>(1)</sup> OJ C 55, 7.3.2009.

**Judgment of the Court (Second Chamber) of 14 October 2010** (reference for a preliminary ruling from the *Bundesfinanzhof* (Germany)) — *Gudrun Schwemmer v Agentur für Arbeit Villingen-Schwenningen — Familienkasse*

(Case C-16/09) <sup>(1)</sup>

*(Social security — Regulations (EEC) Nos 1408/71 and 574/72 — Family benefits — 'Anti-overlap' rules — Article 76(2) of Regulation No 1408/71 — Article 10(1)(a) of Regulation No 574/72 — Children residing in a Member State with their mother who fulfils the conditions for drawing family benefits there, and the father of whom, working in Switzerland and fulfilling, at first sight, the conditions for drawing family benefits of the same type under Swiss legislation, refrains from applying for the grant of those benefits)*

(2010/C 346/13)

Language of the case: German

#### Referring court

Bundesfinanzhof

#### Parties to the main proceedings

Applicant: *Gudrun Schwemmer*

Defendant: *Agentur für Arbeit Villingen-Schwenningen — Familienkasse*

#### Re:

Reference for a preliminary ruling — *Bundesfinanzhof* — Interpretation of Article 76(2) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971 (II), p. 416), as amended, and of Article 10(1)(a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1972 (I), p. 159), as amended — Determination of the State required to grant family benefits — Rules against overlapping — Children residing in one Member State with their mother, who satisfies the conditions governing entitlement to family allowances, and whose father, resident in Switzerland and satisfying the conditions governing receipt of similar family allowances under Swiss law, intentionally refrains from seeking payment of those allowances in order to adversely affect his divorced wife — *Kindergeld*

#### Operative part of the judgment

On a proper interpretation of Article 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, and Article 10 of Council Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation

No. 1408/71, in the versions of those regulations as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by European Parliament and Council Regulation (EC) No 647/2005 of 13 April 2005, a right, which is not subject to conditions of insurance, employment or self-employment, to benefits under the legislation of a Member State in which one parent resides with the children in favour of which those benefits are granted cannot be partially suspended in a situation, such as that at issue in the main proceedings, in which the former spouse, who is the other parent of the children concerned, would in principle be entitled to family benefits under the legislation of the State in which he is employed, either simply by virtue of the national legislation of that State, or in application of Article 73 of the said Regulation No 1408/71, but does not actually draw those benefits because he has not made an application for them.

(<sup>1</sup>) OJ C 90, 18.4.2009.

**Judgment of the Court (Grand Chamber) of 12 October 2010 (reference for a preliminary ruling from the Arbeitsgericht Hamburg (Germany)) — Gisela Rosenblatt v Oellerking Gebäudereinigungsges.mBH**

(Case C-45/09) (<sup>1</sup>)

**(Directive 2000/78/EC — Discrimination on the grounds of age — Termination of employment contract on reaching retirement age)**

(2010/C 346/14)

Language of the case: German

**Referring court**

Arbeitsgericht Hamburg

**Parties to the main proceedings**

Applicant: Gisela Rosenblatt

Defendant: Oellerking Gebäudereinigungsges.mBH

**Re:**

Reference for a preliminary ruling — Arbeitsgericht Hamburg — Interpretation of Articles 1 and 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination based on age — Provision of a collective agreement declared generally applicable, providing for the automatic termination of the employment contract on the employee's attaining the age of 65 years, irrespective of the economic, social or demographic situation or the actual situation on the employment market

**Operative part of the judgment**

1. Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that it does not preclude a national provision such as Paragraph 10(5) of the General Law on equal treatment (Allgemeines Gleichbehandlungsgesetz), under which clauses on automatic termination of employment contracts on the ground that the employee has reached the age of retirement are considered to be valid, in so far as, first, that provision is objectively and reasonably justified by a legitimate aim relating to employment policy and the labour market and, second, the means of achieving that aim are appropriate and necessary. The implementation of that authorisation by means of a collective agreement is not, as such, exempt from any review by the courts but, in accordance with the requirements of Article 6(1) of that directive, must itself pursue a legitimate aim in an appropriate and necessary manner;
2. Article 6(1) of Directive 2000/78 must be interpreted as meaning that it does not preclude a measure such as the automatic termination of employment contracts of employees who have reached retirement age, set at 65, provided for by Paragraph 19(8) of the framework collective agreement for employees in the commercial cleaning sector (Allgemeingültiger Rahmentarifvertrag für die gewerblichen Beschäftigten in der Gebäudereinigung);
3. Articles 1 and 2 of Directive 2000/78 must be interpreted as meaning that they do not preclude a Member State from declaring a collective agreement containing a clause on the automatic termination of employment contracts, like that at issue in the main proceedings, to be of general application, provided that it does not deprive employees who have reached retirement age of the protection from discrimination on grounds of age conferred on them by those provisions.

(<sup>1</sup>) OJ C 102, 1.5.2009.

**Judgment of the Court (Third Chamber) of 28 October 2010 — European Commission v Republic of Poland**

(Case C-49/09) (<sup>1</sup>)

**(Failure of a Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Later accession of Member States — Transitional provisions — Temporal application — Application of a reduced rate — Clothing and clothing accessories for babies and children's footwear)**

(2010/C 346/15)

Language of the case: Polish

**Parties**

Applicant: European Commission (represented by: D. Triantafyllou and K. Herrmann, acting as Agents)