

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.

(¹) 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) (¹)

(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.

(¹) 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) (¹)

(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)

Defendant: Republic of Poland (represented by: M. Szpunar, M. Dowgiewicz, M. Jarosz and A. Rutkowska, acting as Agents)

Defendant: Aufsichts- und Dienstleistungsdirektion

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), in conjunction with Annex III thereto — Application of a reduced rate of VAT to clothing and clothing accessories for babies and children's footwear

Re:

Reference for a preliminary ruling — Oberverwaltungsgericht Rheinland-Pfalz — Interpretation of Article 44(2) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) — Interpretation of the terms 'agricultural area' and 'non-agricultural activity' with regard to a situation in which the objective of environmental protection takes precedence over the objective of agricultural production — Conditions for allocation of an agricultural area to a holding

Operative part of the judgment

The Court:

1. Declares that, by applying a reduced value added tax rate of 7 % to supplies, import and intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear, the Republic of Poland has failed to fulfil its obligations under Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in conjunction with Annex III thereto;
2. Orders the Republic of Poland to pay the costs.

(¹) OJ C 102, 1.5.2009.

Judgment of the Court (First Chamber) of 14 October 2010 (reference for a preliminary ruling from the Oberverwaltungsgericht Rheinland-Pfalz (Germany)) — Landkreis Bad Dürkheim v Aufsichts- und Dienstleistungsdirektion

(Case C-61/09) (¹)

(Common agricultural policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Common rules for direct support schemes — Concept of 'eligible hectare' — Non-agricultural activities — Conditions for allocation of an agricultural area to a holding)

(2010/C 346/16)

Language of the case: German

Referring court

Oberverwaltungsgericht Rheinland-Pfalz

Parties to the main proceedings

Applicant: Landkreis Bad Dürkheim

Operative part of the judgment

1. Article 44(2) of Council Regulation (EC) 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 2013/2006 of 19 December 2006, must be interpreted as not precluding an area from being eligible for aid where, while it is admittedly also used for agricultural purposes, the overriding objective is landscape management and nature conservation. In addition, the fact that the farmer is subject to the instructions of the nature conservation authority does not deprive an activity which meets the definition referred to in Article 2(c) of that regulation of its agricultural character.
2. Article 44(2) of Regulation No 1782/2003, as amended, must be interpreted as meaning that:

— it is not necessary, for an agricultural area to be considered as allocated to the farmer's holding, that it be at his disposal against payment on the basis of a lease or another similar type of contract to let;

— the allocation of an agricultural area to a holding is not precluded by the fact that the area is placed at the farmer's disposal free of charge, the farmer being obliged only to take over the contributions to a trade association, for a specific use and for a limited period of time in accordance with the objectives of nature conservation, on condition that the farmer is able to use that area with a degree of autonomy sufficient for his agricultural activities for a period of at least 10 months; and that