— *payments made by the operator of the scheme concerned to redeemers who supply loyalty rewards to customers must be regarded, in Case C-53/09, as being the consideration, paid by a third party, for a supply of goods to those customers or, as the case may be, a supply of services to them. It is, however, for the referring court to determine whether those payments also include the consideration for a supply of services corresponding to a separate service; and*

— *payments made by the sponsor to the operator of the scheme concerned who supplies loyalty rewards to customers must be regarded, in Case C-55/09, as being, in part, the consideration, paid by a third party, for a supply of goods to those customers and, in part, the consideration for a supply of services made by the operator of that scheme for the benefit of that sponsor.*

(1) OJ 2009 C 90, 18.4.2009.
OJ 2010 C 148, 5.6.2010.

Judgment of the Court (Third Chamber) of 7 October 2010 — European Commission v Portuguese Republic

(Case C-154/09) (1)

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Electronic communications — Networks and services — Articles 3(2) and 8(2) — Designation of undertakings responsible for universal service obligations — Incorrect transposition)

(2010/C 328/07)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and A. Nijenhuis, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent and L. Morais, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3(2) and 8(2) 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) — Designation of undertakings responsible for universal service obligations

Operative part of the judgment

The Court:

1. *Declares that, by failing to correctly transpose into national law the provisions of European Union law governing the designation of universal service provider(s) and, in any event, by failing to ensure in practice that those provisions are applied, the Portuguese Republic has failed to fulfil its obligations under Articles 3(2) and 8(2) 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. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 153, 4.7.2009.

Judgment of the Court (Third Chamber) of 7 October 2010 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — Secretary of State for Work and Pensions v Taous Lassal

(Case C-162/09) (1)

(Reference for preliminary ruling — Freedom of movement for persons — Directive 2004/38/EC — Article 16 — Right of permanent residence — Temporal application — Periods completed before the date of transposition)

(2010/C 328/08)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicant: Secretary of State for Work and Pensions

Defendant: Taous Lassal

In the presence of: The Child Poverty Action Group

Re:

Interpretation of Article 16(1) of Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Citizen of the Union who resided lawfully in the United Kingdom for five years prior to 30 April 2006, the last date for transposition of the directive, and then left the territory for a period of 10 months — Taking into account of the period ending prior to 30 April 2006 for the purposes of entitlement to the grant of a permanent right of residence

Operative part of the judgment

Article 16(1) and (4) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that:

— *continuous periods of five years' residence completed before the date of transposition of Directive 2004/38, namely 30 April 2006, in accordance with earlier European Union law instruments, must be taken into account for the purposes of the acquisition of the right of permanent residence pursuant to Article 16(1) thereof, and*

— *absences from the host Member State of less than two consecutive years, which occurred before 30 April 2006 but following a continuous period of five years' legal residence completed before that date do not affect the acquisition of the right of permanent residence pursuant to Article 16(1) thereof.*

([1]) OJ C 153, 4.7.2009.

Judgment of the Court (Grand Chamber) of 5 October 2010 (reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Georgi Ivanov Elchinov v Natsionalna zdravnoosiguritelna kasa

(Case C-173/09) ([1])

(Social security — Freedom to provide services — Sickness insurance — Hospital treatment provided in another Member State — Prior authorisation — Conditions of application of the second subparagraph of Article 22(2) of Regulation (EEC) No 1408/71 — Methods of reimbursement to the insured person of hospital expenses incurred in another Member State — Obligation on a lower court to comply with the directions of a higher court)

(2010/C 328/09)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Georgi Ivanov Elchinov

Defendant: Natsionalna zdravnoosiguritelna kasa

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Art. 49 of the EC Treaty and Art. 22(1)(c) and (2), second para., 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 (OJ 1971 L 149, p. 2), as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — Sickness insurance — National institution for sickness expenses refusing authorisation (Form E 112) for obtaining more effective medical treatment in a Member State other than that in which the insured patient is resident — Presumption of a necessary connection between that financing and the existence of that type of treatment in national territory — Meaning of 'treatment which cannot be provided to the person concerned in the Member State of residence' — Rules for authorisation of financing and system applicable to the repayment of costs incurred — Duty of a lower national court to comply with instructions on interpretation from a higher court which it considers contrary to Community law

Operative part of the judgment

1. *European Union law precludes a national court which is called upon to decide a case referred back to it by a higher court hearing an appeal from being bound, in accordance with national procedural law, by legal rulings of the higher court, if it considers, having regard to the interpretation which it has sought from the Court, that those rulings are inconsistent with European Union law.*

2. *Articles 49 EC and 22 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, preclude a rule of a Member State which is interpreted as excluding, in all cases, payment for hospital treatment given in another Member State without prior authorisation.*

3. *With regard to medical treatment which cannot be given in the Member State on whose territory the insured person resides, the second subparagraph of Article 22(2) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1992/2006, must be interpreted as meaning that that authorisation required under Article 22(1)(c)(i) cannot be refused:*