The judgments of both courts prevent the immediate and effective execution of the Commission decision.

It is not sufficient that the Slovak Republic made use of all means at its disposal. The application of those means must result in the immediate and effective enforcement of the decision, failing which the Slovak Republic must be considered as having failed to fulfil its obligations. A Member State fails to fulfil its obligation to recover if the steps taken by that Member State have no impact on the actual recovery of those amounts.

([1]) OJ L 112, 30.4.2007, p. 14.

Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 12 January 2009 — Hava Genc v Land Berlin

(Case C-14/09)

(2009/C 102/13)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Hava Genc

Defendant: Land Berlin

Questions referred

1. Is a Turkish national who is duly registered as belonging to the labour force of a Member State and who has, for an extended period for and under the instruction of another, performed services of a certain economic value in return for which he receives remuneration a 'worker' for the purposes of Article 6(1) of Decision No 1/80 of the EEC/Turkey Association Council, even if the time spent in that activity amounts to only approximately 14% of the collectively agreed working time of a full-time worker (in the present case, 5.5 hours as against a 39-hour working week) and the income earned from that activity by itself covers only approximately 25% of the amount determined under the national law of the Member State to be necessary for subsistence (in the present case, approximately EUR 175 as against approximately EUR 715)?

   If the answer to the first question is affirmative:

2. Can a Turkish national then also rely on the freedom of movement under the EEC/Turkey Association as a worker within the terms of Article 6(1) of Decision No 1/80 if the purpose of the stay for which he entered the country is no longer applicable (in the present case, joining a spouse for the purpose of family reunification), if there are no other interests for remaining in the contracting State which merit protection, and if the possibility of continuing to engage in a minimal activity in the contracting State cannot be regarded as constituting a ground for remaining there, in particular because no serious efforts have been made by that Turkish national to achieve stable economic integration without reliance on social benefits to ensure the means of subsistence?

Reference for a preliminary ruling from the Arbeitsgericht Hamburg (Germany) lodged on 2 February 2009 — Gisela Rosenbladt v Oellerking Gebäudereinigungsgesellschaft mbH

(Case C-45/09)

(2009/C 102/14)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: Gisela Rosenbladt

Defendant: Oellerking Gebäudereinigungsgesellschaft mbH

Questions referred

1. Following the entry into force of the German General law on equal treatment (Allgemeines Gleichbehandlungsgesetz; 'the AGG') are the rules under collective law, which discriminate based on age, compatible with the prohibition of age discrimination in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 ([1]) establishing a general framework for equal treatment in employment and occupation, without the AGG expressly permitting this (as was previously the case in Paragraph 10 Sentence 3 Point 7 of the AGG)?

2. Does a national rule that permits the state, the parties to a collective agreement and the parties to an individual employment contract to specify the automatic termination of an employment relationship upon reaching a specific fixed age (in this case: reaching the age of 65), contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation if, according to established practice in place for several decades in the Member State, clauses of this type have consistently applied to the employment relationships of nearly all workers, irrespective of the prevailing economic, social and demographic state of affairs and the actual labour market situation?

3. Does a collective agreement that permits an employer to end an employment relationship at a specific fixed age (in this case: reaching the age of 65), contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation if, according to established practice in place for several decades in the Member State, clauses of this type have consistently applied to the employment relationships of nearly all workers, irrespective of the prevailing economic, social and demographic state of affairs and the actual labour market situation?

4. Does a state that declares a collective agreement permitting employers to end employment relationships at a specific fixed age (in this case: reaching the age of 65) to be generally applicable and upholds this extension contravene the prohibition of age discrimination laid down in Article 1 and Article 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, if this is effected irrespective of the prevailing economic, social and demographic state of affairs and irrespective of the actual labour market situation?

(1) OJ 2000 L 303, p. 16.

Defendant: Republic of Poland

Form of order sought

— declare that, by applying a reduced VAT rate of 7 % to supplies, the import and the intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear on the basis of Article 41(2) of the Law on Goods and Services Tax (ustawa o podatku od towarów i usług) of 11 March 2004, in conjunction with items 45 and 47 of Annex III to that Law, the Republic of Poland has failed to fulfil its obligations under Article 98 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (1) in conjunction with Annex III thereto;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

In the applicant's view, the Republic of Poland's application of a reduced VAT rate of 7% to supplies, the import and the intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear on the basis of Article 41(2) of the Law on Goods and Services Tax of 11 March 2004, in conjunction with items 45 and 47 of Annex III to that Law, is contrary to the explicit provisions of Article 98 of Directive 2006/112/EC. Application of that reduced rate to the above-mentioned goods is not covered by any derogation accorded to the Republic of Poland in point 1(a) and (b) of Chapter 9 ('Taxation') of Annex XII to the Act concerning the conditions of accession of the Republic of Poland to the European Union or in Article 128 of Directive 2006/112/EC.

(1) OJ No L 347, 11.12.2006, p. 1.

Action brought on 2 February 2009 — Commission of the European Communities v Republic of Poland

(Case C-49/09)

(2009/C 102/15)

Language of the case: Polish

Parties

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

Reference for a preliminary ruling from the Juzgado de lo Mercantil 4, Barcelona (Spain) lodged on 13 February 2009 — Axel Walz v Clickair SA

(Case C-63/09)

(2009/C 102/16)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil 4, Barcelona