

Reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium), lodged on 25 September 2009 — Maurits Casteels v British Airways plc

(Case C-379/09)

(2009/C 312/25)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Appellant: Maurits Casteels

Respondent: British Airways plc

Questions referred

1. Can Article 42 EC, in the absence of action on the part of the Council, be invoked by a private individual against his private-sector employer in a dispute before national courts?
2. Do Article 39 EC, prior to the adoption of Directive 98/49, ⁽¹⁾ and Article 42 EC, individually or in conjunction with each other, preclude the following situation:

In the case where an employee who is in the service of the same legal entity/employer, otherwise than in the context of postings, is employed successively in a number of operating units of that employer in various Member States and in each case is subject to the supplementary pension plans applicable to those operating units,

- for the determination of a period for the acquisition of definitive entitlements to supplementary pension benefits (based on the contributions of the employer and the employee) in a particular Member State, no account is taken of the years of service already completed with the same employer in another Member State or of the employee's membership of a supplementary pension scheme there, and
- the transfer of an employee, with his agreement, to an operating unit of the same employer in another Member State is treated as equivalent to the situation, as envisaged in the pension rules, of an employee voluntarily leaving an operating unit, in which case entitlements to a supplementary pension are limited to the employee's own contributions,
- and that situation has the unfavourable consequence that the employee loses his entitlements to supplementary pension benefits in relation to his employment in that Member State, which would not have been the case had he worked for his employer in only one Member State

and remained a member of the supplementary pension scheme of that Member State?

⁽¹⁾ Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ 1998 L 209, p. 46).

Action brought on 25 September 2009 — Commission of the European Communities v French Republic

(Case C-383/09)

(2009/C 312/26)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: O. Beynet and D. Recchia, acting as Agents)

Defendant: French Republic

Form of order sought

- Declare that, by not establishing a programme of measures to ensure strict protection of the species *Cricetus cricetus* (the European Hamster), the French Republic has failed to fulfil its obligations under Article 12(1)(d) of Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁾;
- order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission of the European Communities claims that the French Republic has failed to establish, as required by Article 12 of Directive 92/43/EEC, a system of strict protection for the species *Cricetus cricetus* (the European Hamster) in Alsace, which is the area in France where this species is naturally distributed.

According to the applicant, a survey of the number of the animal's burrows showed a significant fall in their numbers in recent years, since the number of burrows has gone from 1167 in 2001 to only 161 in 2007. That being the case, threatened both by unfavourable farming practices and by the pressure of urban development, the species is threatened with complete extinction in the very near future.

In its application, the Commission recognises that the defendant has taken those problems into account by adopting measures relating both to town planning and farming practices, but those measures are entirely inadequate.

First, the three priority action areas, which are the areas where the bulk of efforts to protect the species are concentrated, cover only a very small part of the territory which is the animal's natural habitat since two thirds of the existing burrows are located outside those areas, which themselves represent no more than 2 % of the land which is favourable to the European Hamster. However, if the territory to be covered by the measures for the protection of this species is to be sufficient, it is necessary to take as the minimum point of reference the presence of the European Hamster in 1990, not in 2000.

Secondly, the protection measures are themselves greatly lacking. The Commission is particularly concerned by the lack of clarity in the legislation in relation to areas which can be re-occupied by the hamster. The national authority has much too great a discretion in the granting of derogations for urban development projects in territories which are the habitat of the hamsters and great uncertainty prevails as regards compensatory measures to be taken for the protection of this species.

(¹) OJ 1992 L 206, p. 7

Reference for a preliminary ruling from the Tribunal de grande instance de Paris (France) lodged on 29 September 2009 — PRUNUS SARL v Directeur des Services Fiscaux

(Case C-384/09)

(2009/C 312/27)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicant: Prunus SARL

Defendant: Directeur des Services Fiscaux

Questions referred

1. Does Article 56 et seq. of the EC Treaty preclude legislation such as that laid down by Article 990 D et seq. of the Code général des impôts which grants legal persons having their effective centre of management in France or, since 1 January 2008, in a Member State of the European Union, entitlement to exemption from the tax at issue and which, as regards legal persons having their effective centre of

management in the territory of a non-Member State, makes that entitlement conditional either on the existence of a convention on administrative assistance to combat tax evasion and avoidance concluded between France and that State or on there being a requirement, under a treaty containing a clause prohibiting discrimination on grounds of nationality, that those legal persons are not to be taxed more heavily than legal persons having their effective centre of management in France?

2. Does Article 56 et seq. of the EC Treaty preclude legislation such as that laid down by Article 990 F of the Code général des impôts which enables tax services to hold jointly and severally liable for payment of the tax provided for in Article 990 D et seq. of the Code général des impôts any legal person interposed between the party or parties liable to the tax and the immovable properties or rights in such properties?

Reference for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Republic of Lithuania) lodged on 29 September 2009 — Nidera Handelscompagnie B.V. v Valstybinės mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-385/09)

(2009/C 312/28)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės

Parties to the main proceedings

Applicant: Nidera Handelscompagnie B.V.

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Is legislation under which the right to deduct VAT is given only to VAT payers — that is to say, only to taxable persons registered as VAT payers in a Member State (in this case, in Lithuania) according to the established procedures — in accordance with the provisions of Directive 2006/112/EC governing the right to deduct VAT?