

Defendant: Portuguese Republic

Form of order sought

- Declare that, by taxing the dividends obtained by non-resident pension funds at a rate higher than the dividends obtained by pension funds resident in Portuguese territory, the Portuguese Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the EEA Agreement.
- Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under the provisions of the Portuguese Estatuto dos Benefícios Fiscais (Tax Relief Regulations) and the Código do Imposto sobre o Rendimento das Pessoas Colectivas (the Corporation Tax Code), the dividends paid to pension funds set up and operating in accordance with the Portuguese legislation are wholly exempt from the imposto sobre o rendimento das pessoas colectivas (corporation tax). By contrast, the dividends paid to non-resident pension funds are subject to corporation tax at a rate of between 10 % and 20 %, depending on whether there is a bilateral agreement between Portugal and the State of residence and the terms thereof. That corporation tax is collected by being withheld at source.

The detrimental difference in treatment by the Portuguese tax legislation of the non-resident pension funds makes the investment by those funds in Portuguese companies less profitable and attractive. The tax rules referred to therefore constitute a restriction prohibited by Article 63 TFEU and by Article 40 of the EEA Agreement.

The discriminatory treatment of non-resident pension funds, which has harmful consequences on the competitiveness of the financial markets of the European Union and on the revenue from the investments made by the pension funds, cannot be justified by any of the grounds put forward by the Portuguese Republic.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 2 December 2009 — Nokia Corporation v Her Majesty's Commissioners of Revenue and Customs

(Case C-495/09)

(2010/C 37/26)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Nokia Corporation

Defendant: Her Majesty's Commissioners of Revenue and Customs

Question referred

Are non-Community goods bearing a Community trade mark which are subject to customs supervision in a Member State and in transit from a non-Member State to another non-Member State capable of constituting 'counterfeit goods' within the meaning of Article 2(1)(a) of Regulation 1383/2003/EC ⁽¹⁾ if there is no evidence to suggest that those goods will be put on the market in the EC, either in conformity with a customs procedure or by means of an illicit diversion.

⁽¹⁾ Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
OJ L 196, p. 7

Action brought on 2 December 2009 — European Commission v Hellenic Republic

(Case C-500/09)

(2010/C 37/27)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and D. Triantafillou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

- declare that, by continuing to apply Ministerial Decision A1/44351/3608 of 12 October 2005, the Hellenic Republic is in breach of its obligations under Directive 97/67/EC ⁽¹⁾ (as amended), as they result in particular from Article 9(1) and (2);

- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Hellenic Republic is hindering the liberalisation of postal services, the objective of Directive 97/67, which provides in that connection for the grant of general authorisations and individual licences in an open manner and without discrimination.

The Greek legislation requires of authorised carriers, when licences are issued for postal transport vehicles, that they should themselves be postal undertakings entered in the appropriate register as holders of a general authorisation. That necessitates radical restructuring of postal networks and makes it impossible for the principal undertakings to employ franchisees, unless they opt to convert themselves into undertakings leasing vehicles with the costs that that implies.

Moreover, the Greek legislation allows the transport of heavy loads only by certain commercial vehicles, reserved to a regulated profession, which prevents other undertakings from providing the same service.

The Hellenic Republic has not submitted sufficient justification for those restrictions.

(¹) OJ L 15 of 21.1.1998, p. 14.

Reference for a preliminary ruling from Upper Tribunal (Administrative Appeals Chamber) (United Kingdom) made on 4 December 2009 — *Lucy Stewart v Secretary of State for Work and Pensions*

(Case C-503/09)

(2010/C 37/28)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Applicant: Lucy Stewart

Defendant: Secretary of State for Work and Pensions

Questions referred

1. Is a benefit with the characteristics of short-term incapacity benefit in youth a sickness benefit or an invalidity benefit for the purposes of Regulation 1408/71 (¹)?
2. If the answer to question 1 is that such a benefit is to be treated as a sickness benefit:
 - (a) Is a person, such as the claimant's mother, who has definitively ceased all employed or self-employed activity by virtue of retirement nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity, or do Articles 27 to 34 (pensioners) contain the applicable rules?
 - (b) Is a person, such as the claimant's father, who has not undertaken an employed or self-employed activity since 2001, nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity?
 - (c) Is a claimant to be treated as a 'pensioner' for the purposes of Article 28 by virtue of the award of a benefit acquired pursuant to Article 95b of Regulation 1408/71, notwithstanding the facts that: (i) the claimant in question has never been an employed person under Article 1 (a) of Regulation 1408/71; (ii) the claimant has not reached state retirement age; and (iii) the claimant only comes within the personal scope of Regulation 1408/71 as a family member?
 - (d) Where a pensioner falls within Article 28 of Regulation 1408/71, can a family member of that pensioner who has at all times resided with and in the same State as the pensioner claim, pursuant to Article 28.1, as read with Article 29, a cash sickness benefit from the competent institution determined by Article 28.2 where such benefit is (if due) payable to the family member (and not payable to the pensioner)?
 - (e) If applicable (by reason of the answers to (a) to (d) above), is the application of a condition of national social security law limiting the initial acquisition of entitlement to a sickness benefit to those having completed a requisite period of past presence within the competent Member State within a defined prior period compatible with the provisions of Articles 19 and/or 28 of Regulation 1408/71?