

Judgment of the Court (Fourth Chamber) of 7 July 2011
(reference for a preliminary ruling from the Oberste
Berufungs- und Disziplinarkommission — Austria) —
Gentcho Pavlov, Gregor Famira v Ausschuss der
Rechtsanwaltskammer Wien

(Case C-101/10) ⁽¹⁾

*(External relations — Association agreements — National
legislation excluding, before the accession of the Republic of
Bulgaria to the European Union, Bulgarian nationals from
inclusion on the list of trainee lawyers — Compatibility of
that legislation with the prohibition of all discrimination
based on nationality, as regards working conditions, in the
EC-Bulgaria Association Agreement)*

(2011/C 269/18)

Language of the case: German

Referring court

Oberste Berufungs- und Disziplinarkommission

Parties to the main proceedings

Applicants: Gentcho Pavlov, Gregor Famira

Defendant: Ausschuss der Rechtsanwaltskammer Wien

Re:

Reference for a preliminary ruling — Oberste Berufungs- und
Disziplinarkommission — Interpretation of Article 38(1) of the
Europe Agreement establishing an association between the
European Communities and their Member States, of the one
part, and the Republic of Bulgaria, of the other part (OJ 1994
L 358 of 31 December 1994, p. 3) — Prohibition of any
discrimination based on nationality as regards working
conditions — Compatibility with that article of national rules
excluding, before the accession of Bulgaria to the European
Union, Bulgarian nationals from registration on the list of
trainee lawyers — Direct effect of that provision

Operative part of the judgment

The principle of non-discrimination set out in the first indent of Article
38(1) of the Europe Agreement establishing an association between
the European Communities and their Member States, of the one part,
and the Republic of Bulgaria, of the other part, concluded and
approved on behalf of the Communities by Decision 94/908/ECSC,
EC, Euratom of the Council and the Commission of 19 December
1994, must be interpreted as not having precluded, before the
accession of the Republic of Bulgaria to the European Union, legis-
lation of a Member State such as Paragraph 30(1) and (5) of the
Austrian Code of Lawyers (Österreichische Rechtsanwaltsordnung), in
the version applicable in the main proceedings, under which a
Bulgarian national, because of a nationality condition laid down by
that legislation, was unable to obtain inclusion on the list of trainee
lawyers and, consequently, to obtain a certificate of entitlement to
appear in court.

⁽¹⁾ OJ C 134, 22.5.2010.

Judgment of the Court (Second Chamber) of 21 July 2011
(reference for a preliminary ruling from the High Court
(Ireland)) — Patrick Kelly v National University of
Ireland (University College, Dublin)

(Case C-104/10) ⁽¹⁾

*(Directives 76/207/EEC, 97/80/EC and 2002/73/EC —
Access to vocational training — Equal treatment for men
and women — Rejection of candidature — Access of an
applicant for vocational training to information on the
qualifications of the other applicants)*

(2011/C 269/19)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Patrick Kelly

Defendant: National University of Ireland (University College,
Dublin)

Re:

Reference for a preliminary ruling — High Court of Ireland —
Interpretation of Article 4(1) of Council Directive 97/80/EC of
15 December 1997 on the burden of proof in cases of discrimi-
nation based on sex (OJ 1998 L 14, p. 6), Article 4 of Council
Directive 76/207/EEC of 9 February 1976 on the implemen-
tation of the principle of equal treatment for men and women
as regards access to employment, vocational training and
promotion, and working conditions (OJ 1976 L 39, p. 40)
and Article 3 of Directive 2002/73/EC of the European
Parliament and of the Council of 23 September 2002
amending Council Directive 76/207/EEC (OJ 2002 L 269,
p. 15) — Candidate who failed to obtain a place in a vocational
training course and who claims that there has been an
infringement of the principle of equal treatment — Request
for information concerning the qualifications of the other
candidates

Operative part of the judgment

1. Article 4(1) of Council Directive 97/80/EC of 15 December
1997 on the burden of proof in cases of discrimination based
on sex must be interpreted as meaning that it does not entitle an
applicant for vocational training, who believes that his application
was not accepted because of an infringement of the principle of
equal treatment, to information held by the course provider on the
qualifications of the other applicants for the course in question, in
order that he may establish 'facts from which it may be presumed
that there has been direct or indirect discrimination' in accordance
with that provision.

Nevertheless, it cannot be ruled out that a refusal of disclosure by
the defendant, in the context of establishing such facts, could risk
compromising the achievement of the objective pursued by that
directive and thus depriving Article 4(1) thereof in particular of
its effectiveness. It is for the national court to ascertain whether
that is the case in the main proceedings.

2. Article 4 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Article 1(3) of Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Directive 76/207 must be interpreted as meaning that they do not entitle an applicant for vocational training to information held by the course provider on the qualifications of the other applicants for the course in question, either because he believes that he has been denied access to vocational training on the basis of the same criteria as the other candidates and discriminated against on grounds of sex, referred to in Article 4 of Directive 76/207, or because that applicant complains that he was discriminated against on the grounds of sex, referred to in Article 1(3) of Directive 2002/73, in terms of accessing that vocational training.
3. Where an applicant for vocational training can rely on Directive 97/80 in order to obtain access to information held by the course provider on the qualifications of the other applicants for the course in question, that entitlement to access can be affected by rules of European Union law relating to confidentiality.
4. The obligation contained in the third paragraph of Article 267 TFEU does not differ according to whether a Member State has an adversarial or an inquisitorial legal system.

(¹) OJ C 134, 22.5.2010.

**Judgment of the Court (Fourth Chamber) of 21 July 2011
(reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium)) — Bureau d'intervention et de restitution belge (BIRB) v Beneo-Orafti SA**

(Case C-150/10) (¹)

(Agriculture — Common organisation of the markets — Sugar — Nature and scope of transitional quotas allocated to an undertaking producing sugar — Possibility for an undertaking receiving restructuring aid for the marketing year 2006/2007 to use the transitional quota allocated to that undertaking — Calculation of the amount to be recovered and of the penalty to be applied in the case of non-compliance with commitments entered into under the restructuring plan — Ne bis in idem principle)

(2011/C 269/20)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Bureau d'intervention et de restitution belge (BIRB)

Defendant: Beneo-Orafti SA

Re:

Reference for a preliminary ruling — Tribunal de première instance de Bruxelles — Interpretation of Article 9 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 (OJ 2006 L 89, p. 11) — Interpretation of Article 3 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42) — Interpretation of Articles 26 and 27 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community (OJ 2006 L 176, p. 32) — Nature and scope of the transitional quotas allocated to an undertaking engaged in the production of sugar — Whether the grant of a transitional quota to an undertaking in receipt of restructuring aid for the marketing year 2006/2007 is compatible with the legislation of the European Union — Calculation of the amount to be recovered and of the penalty to be applied in the case of failure to meet commitments entered into under the restructuring plan

Operative part of the judgment

1. Article 3(1)(b) of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy must be interpreted as meaning that the term 'quota' in that provision also includes the transitional quotas within the meaning of Article 9 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002.
2. Article 3(1)(b) of Regulation No 320/2006 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the commitment to renounce the quota for the production of sugar, isoglucose and inulin syrup that has been allocated to an undertaking and assigned by it to one or more of its factories, referred to in that provision, takes effect on the date when, having regard to the information that is communicated to it or that is published in the Official Journal of the European Union, the undertaking that makes that commitment is in a position to know, as a reasonably diligent undertaking, that, in the view of the competent authorities, the conditions for obtaining the restructuring aid set out in Article 5(2) of that regulation have been fulfilled.
3. Articles 26(1) and 27 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Regulation No 320/2006 and Article 15 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector must be interpreted as meaning that a production such as that at issue in the main proceedings, on the assumption that it is contrary to the commitment to renounce the quota for the production of sugar,