

According to the convention, the teachers at the European Schools are seconded by their Member State of origin. Article 12(4)(a) of the Convention provides that seconded teachers 'retain promotion and retirement rights guaranteed by their national rules'. That notwithstanding, the salaries of teachers seconded by the United Kingdom are 'frozen' during the period of secondment. Thus, teachers seconded to the European Schools are denied access to improved pay scales (variously known as 'threshold pay', 'excellent teacher system', 'advanced skills teachers') and from other additional payments (such as 'teaching and learning responsibility payments') as well as the progression on existing pay-scales available to teachers employed in maintained schools in England and Wales.

This policy is contrary to the letter and purpose of Article 12(4)(a) of the Convention. It reduces the pension rights of the teachers concerned and their career prospects when returning to the United Kingdom. Moreover, it adversely affects the Union budget which bears the difference between a lower national pay and the Community top-up for seconded teachers.

Article 12(4)(a) of the Convention and by consequence Article 25(1) of the Convention should therefore be interpreted and applied so as to guarantee to seconded teachers full access to improved pay scales, progression on current pay scales and other allowances.

(¹) OJ L 212, 17.8.1994, p. 3

Action brought on 23 December 2009 — European Commission v Republic of Austria

(Case C-551/09)

(2010/C 63/52)

Language of the case: German

Parties

Applicant: European Commission (represented by: K. Gross and M. Adam, Agents)

Defendant: Republic of Austria

Form of order sought

1. declare that, by failing to take all necessary measures to recover the aid in issue in Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland, the Republic of Austria has failed to fulfil its obligations under Article 288 TFEU and under Articles 1 to 3 of that Commission Decision;

2. declare that, by failing to provide the Commission in good time with the information necessary for calculating the amount of the aid, the Republic of Austria has failed to fulfil its obligations under Article 288 TFEU and under Article 4 of Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland;

2. declare that, by failing to provide the Commission in good time with the information necessary for calculating the amount of the aid, the Republic of Austria has failed to fulfil its obligations under Article 288 TFEU and under Article 4 of Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland;
3. order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission takes the view that the period given to the Republic of Austria in Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland to provide the information required for the purpose of calculating the amount of the aid has expired.

An agreement reached by the Commission and the Republic of Austria after the expiry of the abovementioned period concerning the level of the amount to be recovered was, according to the Commission, revoked by the Republic of Austria on the ground that the company affected by the recovery claim intended, in the event of being obliged to pay, to cancel the purchase of Bank Burgenland. This, according to the Republic of Austria, would have had serious consequences for the economy of the *Land* of Burgenland. In the view of the Commission, however, this does not provide justification for waiving the demand for repayment.

The judicial challenge to the abovementioned decision likewise does not affect the obligation to give effect to it.

Reference for a preliminary ruling from the Audiencia Provincial de Tarragona (Spain) lodged on 4 January 2010 — Criminal proceedings against Valentín Salmerón Sánchez

(Case C-1/10)

(2010/C 63/53)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties to the main proceedings

Defendant: Valentín Salmerón Sánchez

Other parties: Ministerio Fiscal and Dorotea López León

Questions referred

1. Should the right of the victim to be understood, referred to in recital (8) of the preamble to the Framework Decision, ⁽¹⁾ be interpreted as meaning that the State authorities responsible for the prosecution and punishment of conduct which has an identifiable victim have a positive obligation to allow the victim to express her assessment, thoughts and opinion on the direct effects on her life which may be caused by the imposition of penalties on the offender with whom she has a family relationship or a strong emotional relationship?
2. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the duty of States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?
3. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?
4. Should Article 8 of the Framework Decision 2001/220/JHA providing that States are to guarantee a suitable level of protection for victims be interpreted as permitting the general and mandatory imposition of injunctions to stay away from the victim or orders prohibiting communication as ancillary penalties in all cases in which a person is a victim of crimes committed within the family, in the light of the specific characteristics of those offences, or, on the other hand, does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case-by-case basis, of the suitable level of protection having regard to the competing interests?
5. Should Article 10 of the Framework Decision 2001/220/JHA be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to crimes committed within the family, in the light of the specific characteristics of those crimes or, on the other

hand, should mediation also be permitted in proceedings of that kind, assessing the competing interests on a case-by-case basis?

⁽¹⁾ Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia (Italy) lodged on 4 January 2010 — Azienda Agro-Zootecnica Franchini s.a.r.l. and Eolica di Altamura s.r.l. v Regione Puglia

(Case C-2/10)

(2010/C 63/54)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicants: Azienda Agro-Zootecnica Franchini s.a.r.l. and Eolica di Altamura s.r.l.

Defendant: Regione Puglia

Question referred

Is Article 1(1226) of Law No 296 of 27 December 2006, in conjunction with the first paragraph of Article 5 of the decreto del Ministero dell'ambiente e della tutela del territorio e del mare (Decree of the Ministry for the Protection of the Environment, Land and Sea) of 17 October 2007 and with Article 2(6) of Regional Law No 31 of Apulia of 21 October 2008, compatible with Community law, and in particular with the principles which may be inferred from Directives 2001/77/EC ⁽¹⁾ and 2009/28/EC ⁽²⁾ (concerning renewable energies) and Directives 79/409/EEC ⁽³⁾ and 92/43/EEC ⁽⁴⁾ (concerning the protection of birds and natural habitats), in so far as those provisions absolutely prohibit, without distinction, the location of wind turbines not intended for self-consumption in the sites of Community importance (SCIs) and special protection areas (SPAs) comprising the 'Natura 2000' ecological network, instead of requiring an appropriate environmental impact assessment to be carried out to analyse the impact of an individual project on the particular site affected?

⁽¹⁾ OJ 2001 L 283, p. 33.

⁽²⁾ OJ 2009 L 140, p. 16.

⁽³⁾ OJ 1979 L 103, p. 1.

⁽⁴⁾ OJ 1992 L 206, p. 7.