

2. On the assumption that emergency measures may be adopted only within the framework of Article 34 of Regulation (EC) No 1829/2003, may the authorities of a Member State adopt, and under what circumstances, a measure such as the contested order <sup>(3)</sup> on grounds of the containment of risk as referred to in Article 53 of Regulation (EC) No 178/2002 <sup>(4)</sup> or by way of the interim protective measures which may be adopted by a Member State on the basis of Article 54 of the same regulation?
3. On the assumption that the authorities of a Member State may intervene on the basis of Article 23 of Directive 2001/18/EC or on the basis of Article 34 of Regulation (EC) No 1829/2003, or on both of those legal bases, the application raises the question as to what degree of requirement, taking into account in particular the precautionary principle, is imposed, respectively, by Article 23 of the directive under which the adoption of emergency measures such as a suspension of the use or provisional prohibition against use of the product is subject to the condition that the Member State must have 'detailed grounds for considering that a GMO ... constitutes a risk to ... the environment' and by Article 34 of the regulation under which the adoption of such a measure is subject to the condition that it be 'evident' that the product is 'likely to constitute a serious risk to ... the environment', in terms of identifying the risk, evaluating its probability and assessing the nature of its effects?

<sup>(1)</sup> Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003, L 268, p. 1)

<sup>(2)</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001, L 106, p. 1)

<sup>(3)</sup> Order of 5 December 2007 in Case C-58/10; order of 7 February 2008, as amended by the order of 13 February 2008, in Cases C-59/10 to C-68/10.

<sup>(4)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002, L 31, p. 1).

**Reference for a preliminary ruling from the Tribunal administratif (Luxembourg) lodged on 5 February 2010 — Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration**

(Case C-69/10)

(2010/C 100/40)

*Language of the case: French*

**Referring court**

Tribunal administratif

## Parties to the main proceedings

*Applicant:* Brahim Samba Diouf

*Defendant:* Ministre du Travail, de l'Emploi et de l'Immigration

## Questions referred

1. Is Article 39 of Directive 2005/85/EC <sup>(1)</sup> to be interpreted as precluding national rules such as those established in the Grand Duchy of Luxembourg by Article 20(5) of the Amended Law of 5 May 2006 on the right of asylum and complementary forms of protection, pursuant to which an applicant for asylum does not have a right to appeal to a court against the administrative authority's decision to rule on the merits of the application for international protection under the accelerated procedure?
2. If the answer is in the negative, is the general principle of an effective remedy under Community law, prompted by Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, to be interpreted as precluding national rules such as those established in the Grand Duchy of Luxembourg by Article 20(5) of the Amended Law of 5 May 2006 on the right of asylum and complementary forms of protection, pursuant to which an applicant for asylum does not have a right to appeal to a court against the administrative authority's decision to rule on the merits of the application for international protection under the accelerated procedure?

<sup>(1)</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

**Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 9 February 2010 — Criminal proceedings against Marcello Costa**

(Case C-72/10)

(2010/C 100/41)

*Language of the case: Italian*

**Referring court**

Corte Suprema di Cassazione