Pleas in law and main arguments

The Commission raises three heads of complaint alleging failure on the part of the Republic of Poland to comply with the provisions of Directive 94/22/EC.

First, in the view of the Commission, the Polish legislation on 'Geological Work and Mining' (Prawo geologiczne i górnicze) and the implementing regulations giving effect to that legislation set out requirements with which any interested undertaking must comply at the time when it applies for an authorisation for the prospection, exploration and production of hydrocarbons and which place a number of undertakings already operating within Polish territory in a more favourable position than other undertakings, thereby infringing the principle of equal access to those activities.

Second, the Polish legislation does not subject the whole of the procedure governing the granting of authorisation for the prospection, exploration and production of hydrocarbons to the adjudication procedure required pursuant to Article 3(2) of Directive 94/22/EC. Polish law makes the prospection, exploration and production of hydrocarbons subject to the acquisition of a mining permit and a concession. The acquisition of a mining permit alone is, as a rule, preceded by a prior adjudication procedure, subject, however, to the reservation of a two-year right of priority for an undertaking which has identified and documented a deposit of hydrocarbons and has prepared geological documentation with the precision required for the purpose of obtaining a concession to extract such hydrocarbons.

Third, in the view of the Commission, the adjudication of applications submitted for the purpose of acquiring an authorisation for the prospection, exploration and production of hydrocarbons is not conducted exclusively on the basis of the criteria set out in Article 5(1) of Directive 94/22/EC. Furthermore, not all of the criteria governing the appraisal of an application are generally accessible, that is to say, published in the *Official Journal of the European Union*.

([1]) OJ 1994 L 164, p. 3.

Reference for a preliminary ruling from the Tribunale di Bolzano (Italy) lodged on 7 December 2010 — Kamberaj Servet v Istituto Per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia Autonoma di Bolzano, Provincia Autonoma di Bolzano

(Case C-571/10)

(2011/C 46/11)

Language of the case: Italian

Referring court

Tribunale di Bolzano

Parties to the main proceedings

Applicant: Servet Kamberaj

Defendants: Istituto Per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia Autonoma di Bolzano, Provincia Autonoma di Bolzano

Questions referred

1. Does the principle of the primacy [*principe de primauté*] of European Union law oblige a national court to give full and immediate effect to provisions of European Union law having direct effect, by disapplying provisions of domestic law in conflict with European Union law even if they were adopted in accordance with fundamental principles of the Member State's constitutional system?

2. When there is a conflict between the provision of domestic law and the European Convention on Human Rights ('the ECHR'), does the reference to the latter in Article 6 TEU oblige the national court to apply directly Articles 14 [ECHR] and 1 of Additional Protocol No 12 [to the ECHR], disapplying the incompatible source of domestic law, without having first to raise the issue of constitutionality before the national constitutional court?

3. Does European Union law, in particular, Articles 2 and 6 TEU, Articles 21 and 34 of the Charter [of Fundamental Rights of the European Union] and Directives 2000/43/EC and 2003/109/EC preclude a provision of national [more correctly: regional] law, such as that contained in Article 15(3) [more correctly: 15(2)] of Presidential Decree No 670/1972 in conjunction with Articles 1 and 5 of Provincial Law No 13 of 1998 and Decision No 1865 of the Giunta Provinciale of 20 July 2009, inasmuch as that provision, with regard to the allowances concerned, in particular, so-called 'housing benefit', attaches importance to nationality by affording to long-term resident workers not belonging to the Union or to stateless persons treatment worse than that afforded to resident Community nationals (whether or not Italian)?

If those questions [1 to 3] should be answered in the affirmative:

4. In the case of an infringement of general principles of the Union, such as the prohibition of discrimination and the requirement of legal certainty, when there exists national implementing legislation permitting the court to 'order the cessation of the damaging conduct and adopt any other suitable measure, according to the circumstances and the effects of the discrimination', requiring the court to 'order the discriminatory conduct, behaviour or action, if still subsisting, to cease and its effects to be eliminated' and permitting the court to order 'a plan for the suppression of the discrimination found to exist, in order to prevent its repetition, within the period fixed in the measure', must Article 15 of Directive 2000/43/EC, in so far as it provides that sanctions must be effective, proportionate and dissuasive, be interpreted as including, in discrimination found to exist and effects to be eliminated, and in order to avoid unjustified reverse discrimination, all infringements affecting the persons discriminated against, even if they do not form part of the dispute?

If the previous question [4] should be answered in the affirmative:

5. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43/EC and 2003/109/EC, for a provision of national [more correctly: provincial] law to require of non-Community nationals only and not of Community nationals also (whether or not Italian), who receive equal treatment merely in respect of the obligation to have resided for more than 5 years in the territory of the province, the further condition that they should have completed three years of work in order to be eligible for housing benefit?

6. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43/EC and 2003/109/EC, for a provision of national [more correctly: provincial] law to require Community nationals (whether or not Italian) to make a declaration that they ethnically belong to or elect to join one of the three linguistic groups of the Alto Adige/Südtirol in order to be eligible for housing benefit?

7. Is it contrary to European Union law, in particular, to Articles 2 and 6 TEU, and to Articles 18, 45 and 49 TFEU in conjunction with Articles 1, 21 and 34 of the Charter, for a provision of national [more correctly: provincial] law to impose on Community nationals (whether or not Italian) the obligation to have resided or worked in the territory of the province for at least five years in order to be eligible for housing benefit?

Reference for a preliminary ruling from the Curtea de Apel Timişoara (Romania) lodged on 8 December 2010 — Sergiu Alexandru Micşa v Administraţia Finanţelor Publice Lugoj, Direcţia Generală a Finanţelor Publice Timiş, Administraţia Fondului pentru Mediu

(Case C-573/10)

(2011/C 46/12)

Language of the case: Romanian

Referring court

Curtea de Apel Timişoara

Parties to the main proceedings

Applicant: Sergiu Alexandru Micşa

Defendants: Administraţia Finanţelor Publice Lugoj, Direcţia Generală a Finanţelor Publice Timiş, Administraţia Fondului pentru Mediu

Questions referred

1. Must Article 110 TFEU be interpreted as meaning that it precludes exemption from payment of pollution tax on the first registration in the territory of a Member State of vehicles with specific, precisely designated, technical characteristics where other vehicles are subject to payment of the tax under national provisions.

2. If Article 110 TFEU precludes the exemption referred to in the first question only in certain circumstances, do such circumstances include a situation in which all, the majority or a significant number of motor vehicles produced on national territory have technical characteristics which entail the exemption (bearing in mind that such characteristics are also found in motor vehicles produced in other Member States of the EU and that the exemption applies to those, too).

3. If the second question is answered in the affirmative, what are the characteristics of a product which make it similar, within the meaning of Article 110 TFEU, to a motor vehicle which has all the following characteristics:

   (a) it is new (or has not previously been sold for a purpose other than resale or supply and therefore has never been registered) or it is second-hand and has been registered in a Member State of the European Union during the period from 15 December 2008 to 31 December 2009 inclusive;

   (b) it was designed and built for the transport of passengers and has, in addition to the driver's seat, at most eight seats (vehicles in category M1, under the Romanian legislation) or was designed and built for the transport of goods with a maximum weight of 3.5 tons (vehicles in category NI, under the Romanian legislation);

   (c) it falls within pollution class Euro 4;

   (d) it has a cylinder capacity of less than 2 000 cc (a characteristic to be taken into account only in the case of vehicles in category MI).