

Operative part of the judgment

A trader who directs his advertising at members of the public residing in a given Member State and creates or makes available to them a specific delivery system and payment method, or allows a third party to do so, thereby enabling those members of the public to receive delivery of copies of works protected by copyright in that same Member State, makes, in the Member State where the delivery takes place, a 'distribution to the public' under Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Articles 34 TFEU and 36 TFEU must be interpreted as meaning that they do not preclude a Member State from bringing a prosecution under national criminal law for the offence of aiding and abetting the prohibited distribution of copyright-protected works where such works are distributed to the public on the territory of that Member State in the context of a sale, aimed specifically at the public of that State, concluded in another Member State where those works are not protected by copyright or the protection conferred on them is not enforceable as against third parties.

⁽¹⁾ OJ C 103, 2.4.2011.

Judgment of the Court (Fourth Chamber) of 21 June 2012 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Leopold Sommer v Landesgeschäftsstelle des Arbeitsmarktservice Wien

(Case C-15/11) ⁽¹⁾

(Accession of new Member States — Republic of Bulgaria — Member State legislation making the grant of a work permit to Bulgarian nationals subject to an examination of the situation of the labour market — Directive 2004/114/EC — Conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service)

(2012/C 250/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Leopold Sommer

Defendant: Landesgeschäftsstelle des Arbeitsmarktservice Wien

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Council Directive 2004/114/EC of 13

December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004 L 375, p. 12), particularly of Article 17 thereof, and of paragraph 14 of Annex VI of the list referred to in Article 20 of the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157, p. 104) — Rules of a Member State which make the grant of a work permit to Bulgarian nationals subject to an examination of the situation of the labour market — Possible application of Directive 2004/114/EC

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1. Paragraph 14 of Point 1 of Annex VI to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union must be interpreted to mean that the conditions of access to the labour market by Bulgarian students, at the time of the events in the main proceedings, may not be more restrictive than those set out in Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.
2. National legislation such as that at issue in the main proceedings provides for a more restrictive treatment of Bulgarian nationals than that given to third-country nationals under Directive 2004/114.

⁽¹⁾ OJ C 113, 9.4.2011.

Judgment of the Court (Fifth Chamber) of 21 June 2012 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Federación de Asociaciones Sindicales (FASGA), Federación de Trabajadores Independientes de Comercio (Fetico), Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT, Federación del Comercio, Hostelería y Turismo de CC.OO.

(Case C-78/11) ⁽¹⁾

(Directive 2003/88/EC — Organisation of working time — Entitlement to paid annual leave — Sick leave — Annual leave coinciding with sick leave — Entitlement to take paid annual leave at another time)

(2012/C 250/07)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Defendants: Federación de Asociaciones Sindicales (FASGA), Federación de Trabajadores Independientes de Comercio (Fetico), Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT, Federación del Comercio, Hostelería y Turismo de CC.OO.

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 7(1) of European Parliament and Council Directive 2003/88/EC of 4 November 2003, concerning certain aspects of the organisation of working time (OJ L 299, p. 9) — Leave coincides with periods of temporary incapacity for work during periods of sick leave — National regulations do not allow the interruption of paid annual leave and its subsequent recovery in its entirety or for the remaining period

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Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national provisions under which a worker who becomes unfit for work during a period of paid annual leave is not entitled subsequently to the paid annual leave which coincided with the period of unfitness for work.

(¹) OJ C 152, 21.5.2011.

Judgement of the Court (Third Chamber) of 21 June 2012 (references for a preliminary ruling from the Baranya Megyei Bíróság and the Jász-Nagykun-Szolnok Megyei Bíróság — Hungary) — Mahagében kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága (C-80/11) and Péter Dávid v Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága (C-142/11)

(Joined Cases C-80/11 and C-142/11) (¹)

(Taxation — VAT — Sixth Directive — Directive 2006/112/EC — Right to deduct — Conditions governing the exercise of that right — Article 273 — National measures to combat fraud — Practice of the national tax authorities — Refusal of the right to deduct in the event of improper conduct on the part of the issuer of the invoice relating to the goods or services in respect of which the exercise of that right is sought — Burden of proof — Obligation of the taxable person to satisfy himself as to the propriety of the conduct of the issuer of that invoice and to provide proof thereof)

(2012/C 250/08)

Language of the cases: Hungarian

Referring courts

Baranya Megyei Bíróság, Jász-Nagykun-Szolnok Megyei Bíróság

Parties to the main proceedings

Applicants: Mahagében kft (C-80/11), Péter Dávid (C-142/11)

Defendants: Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága (C-80/11), Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága (C-142/11)

Re:

Request for a preliminary ruling — Baranya Megyei Bíróság — Interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Conditions for exercising the right to deduct input tax according to the practice of the national tax authorities — Obligation of the taxable person to prove that the transaction listed on the invoice actually occurred and that the company issuing the invoice acted properly

Operative part of the judgment

- Articles 167, 168(a), 178(a), 220(1) and 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national practice whereby the tax authority refuses a taxable person the right to deduct, from the value added tax which he is liable to pay, the amount of the value added tax due or paid in respect of the services supplied to him, on the ground that the issuer of the invoice relating to those services, or one of his suppliers, acted improperly, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.
- Articles 167, 168(a), 178(a) and 273 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards declaration and payment of value added tax, or on the ground that, in addition to that invoice, that taxable person is not in possession of other documents capable of demonstrating that those conditions were fulfilled, although the substantive and formal conditions laid down by Directive 2006/112 for exercising the right to deduct were fulfilled and the taxable person is not in possession of any material justifying the suspicion that irregularities or fraud have been committed within that invoice issuer's sphere of activity.

(¹) OJ C 179, 18.6.2011.