

Judgment of the Court (Second Chamber) of 12 July 2012
(reference for a preliminary ruling from the Tribunale di Firenze — Italy) — Criminal proceedings against Maurizio Giovanardi and Others

(Case C-79/11) ⁽¹⁾

(Police and judicial cooperation in criminal matters — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Directive 2004/80/EC — Compensation to victims of crime — Liability of a legal person — Compensation in criminal proceedings)

(2012/C 287/15)

Language of the case: Italian

Referring court

Tribunale di Firenze

Parties in the main proceedings

Maurizio Giovanardi, Andrea Lastini, Filippo Ricci, Vito Pigionica, Massimiliano Pempori, Gezim Lakja, Elettrifer Srl, Rete Ferroviaria Italiana SpA

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Firenze — Interpretation of Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1) — Interpretation of Article 9 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15) — Criminal liability of legal persons — Right of a victim of a criminal act to be compensated, in the context of criminal proceedings, by a legal person indirectly liable for the harm suffered

Operative part of the judgment

Article 9(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that, under a system governing the liability of legal persons such as that at issue in the main proceedings, that provision does not preclude a situation in which the victim of a criminal act is not entitled to seek compensation for the harm directly caused by that act in the course of criminal proceedings from the legal person who committed an administrative offence.

⁽¹⁾ OJ C 120, 16.4.2011.

Judgment of the Court (Grand Chamber) of 3 July 2012
(reference for a preliminary ruling from the Bundesgerichtshof — Germany) — UsedSoft GmbH v Oracle International Corp.

(Case C-128/11) ⁽¹⁾

(Legal protection of computer programs — Marketing of used licences for computer programs downloaded from the internet — Directive 2009/24/EC — Articles 4(2) and 5(1) — Exhaustion of the distribution right — Concept of lawful acquirer)

(2012/C 287/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: UsedSoft GmbH

Defendant: Oracle International Corp.

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of first subparagraph of Article 4(2) and Article 5(1) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ 2009 L 111, p. 16) — Downloading of copies of computer programs from the internet with the rightholder's consent onto a data carrier on the basis of a software licence — Whether that action can be classified as exhausting the rightholder's distribution right with regard to the copies downloaded — Marketing of 'used' licences of programs downloaded by the first acquirer — Concept of 'lawful acquirer'

Operative part of the judgment

1. Article 4(2) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs must be interpreted as meaning that the right of distribution of a copy of a computer program is exhausted if the copyright holder who has authorised, even free of charge, the downloading of that copy from the internet onto a data carrier has also conferred, in return for payment of a fee intended to enable him to obtain a remuneration corresponding to the economic value of the copy of the work of which he is the proprietor, a right to use that copy for an unlimited period.
2. Articles 4(2) and 5(1) of Directive 2009/24 must be interpreted as meaning that, in the event of the resale of a user licence entailing the resale of a copy of a computer program downloaded from the copyright holder's website, that licence having originally been granted by that rightholder to the first acquirer for an unlimited period in return for payment of a fee intended to enable the rightholder to obtain a remuneration corresponding to the economic value of that copy of his work, the second acquirer of the licence, as well as any subsequent acquirer of it, will be able to

rely on the exhaustion of the distribution right under Article 4(2) of that directive, and hence be regarded as lawful acquirers of a copy of a computer program within the meaning of Article 5(1) of that directive and benefit from the right of reproduction provided for in that provision.

(¹) OJ C 194, 2.7.2011.

**Judgment of the Court (Third Chamber) of 12 July 2012
(reference for a preliminary ruling from the Oberster
Gerichtshof — Austria) — Compass-Datenbank GmbH v
Republik Österreich**

(Case C-138/11) (¹)

(Competition — Article 102 TFEU — Concept of ‘undertaking’ — Data of the companies register stored in a database — Activity of collection and making available of that data in return for remuneration — Refusal by the public authorities to authorise re-utilisation of that data — ‘Sui generis’ right provided for in Article 7 of Directive 96/9/EC)

(2012/C 287/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Compass-Datenbank GmbH

Defendant: Republik Österreich

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 102 TFEU — National rules providing for payment to be made for consultation of the companies register (Firmenbuch) and prohibiting any other commercial use of that register — Concept of economic activity — Abuse of a dominant position — Scope of the essential facilities doctrine

Operative part of the judgment

The activity of a public authority consisting in the storing, in a database, of data which undertakings are obliged to report on the basis of statutory obligations, in permitting interested persons to search for that data and/or in providing them with print-outs thereof does not constitute an economic activity, and that public authority is not, therefore, to be regarded, in the course of that activity, as an undertaking, within the meaning of Article 102 TFEU. The fact that those searches and/or that provision of print-outs are carried out in consideration for remuneration provided for by

law and not determined, directly or indirectly, by the entity concerned, is not such as to alter the legal classification of that activity. In addition, when such a public authority prohibits any other use of the data thus collected and made available to the public, by relying upon the sui generis protection granted to it as maker of the database pursuant to Article 7 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, or upon any other intellectual property right, it also does not exercise an economic activity and is not therefore to be regarded, in the course of that activity, as an undertaking, within the meaning of Article 102 TFEU.

(¹) OJ C 186, 25.6.2011.

**Judgment of the Court (Second Chamber) of 5 July 2012
(reference for a preliminary ruling from the Södertörns
tingsrätt — Sweden) — Torsten Hörnfeldt v Posten
Meddelande AB**

(Case C-141/11) (¹)

(Equal treatment in employment and occupation — Prohibition of discrimination on grounds of age — National legislation conferring on employees an unconditional right to work until the age of 67 and providing for automatic termination of the employment relationship at the end of the month in which the employee reaches that age — Account not taken of the amount of the retirement pension)

(2012/C 287/18)

Language of the case: Swedish

Referring court

Södertörns tingsrätt

Parties to the main proceedings

Applicant: Torsten Hörnfeldt

Defendant: Posten Meddelande AB

Re:

Reference for a preliminary ruling — Södertörns tingsrätt — Interpretation of the general principle of law on the prohibition of age discrimination and of Article 6 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation and collective agreement granting employees an unconditional right to work until the age of 67 and providing for automatic termination without notice of the employment relationship at the end of the month in which the employee turns 67, without taking account of the actual pension paid to him