

2. Article 8 of Directive 2008/94 must be interpreted as meaning that State pension benefits may not be taken into account in assessing whether a Member State has complied with the obligation laid down in that article.
3. Article 8 of Directive 2008/94 must be interpreted as meaning that, in order for that article to apply, it is sufficient that the pension scheme is underfunded as of the date of the employer's insolvency and that, on account of his insolvency, the employer does not have the resources to contribute sufficient money to the pension scheme to enable the pension benefits owed to the beneficiaries of that scheme to be satisfied in full. It is not necessary for those beneficiaries to prove that there are other factors giving rise to the loss of their entitlement to old-age benefits.
4. Directive 2008/94 must be interpreted as meaning that the measures adopted by Ireland following the judgment of the Court of Justice of the European Union of 25 January 2007 in Case C 278/05 *Robins and Others* do not fulfil the obligations imposed by that directive and that the economic situation of the Member State concerned does not constitute an exceptional situation capable of justifying a lower level of protection of the interests of employees as regards their entitlement to old-age benefits under a supplementary occupational pension scheme.
5. Directive 2008/94 must be interpreted as meaning that the fact that the measures taken by Ireland subsequent to *Robins and Others* have not brought about the result that the plaintiffs would receive in excess of 49 % of the value of their accrued old-age pension benefits under their occupational pension scheme is in itself a serious breach of that Member State's obligations.

<sup>(1)</sup> OJ C 290, 1.10.2011.

**Judgments of the Court (Grand Chamber) of 23 April 2013**  
 — Laurent Gbagbo (C-478/11 P), Katinan Justin Koné (C-479/11 P), Akissi Danièle Boni-Claverie (C-480/11 P), Alcide Djédjé (C-481/11 P), Affi Pascal N'Guessan (C-482/11 P) v Council of the European Union

(Joined Cases C-478/11 P to C-482/11 P) <sup>(1)</sup>

*(Appeals — Common foreign and security policy — Restrictive measures adopted against persons and entities — Sixth paragraph of Article 263 TFEU — Period allowed for commencing proceedings — Force majeure — Armed conflict)*

(2013/C 171/12)

Language of the case: French

#### Parties

*Appellants:* Laurent Gbagbo (C-478/11 P), Katinan Justin Koné (C-479/11 P), Akissi Danièle Boni-Claverie (C-480/11 P), Alcide Djédjé (C-481/11 P), Affi Pascal N'Guessan (C-482/11 P) (represented by: L. Bourthoumieux, lawyer)

*Other party to the proceedings:* Council of the European Union (represented by: B. Driessen and M. M. Joséphidès, Agents)

#### Re:

Appeals against the orders of the General Court of the European Union of 13 July 2011 in Cases T-348/11 *Gbagbo v Council*, T-349/11 *Koné v Council*, T-350/11 *Boni-Claverie v Council*, T-351/11 *Djédjé v Council* and T-352/11 *N'Guessan v Council* by which it dismissed as manifestly inadmissible the appellants' actions for the annulment of, first, Council Decisions 2011/17/CFSP of 11 January 2011 (OJ 2011 L 11, p. 31), 2011/18/CFSP of 14 January 2011 (OJ 2011 L 11, p. 36) and 2011/221/CFSP of 6 April 2011 (OJ 2011 L 93, p. 20), amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire, and, secondly, Council Regulations (EU) No 25/2011 of 14 January 2011 (OJ 2011 L 11, p. 1) and (EU) No 330/2011 of 6 April 2011 (OJ 2011 L 93, p. 10), amending Council Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire — No individual notification of the decision — Case of *force majeure*

#### Operative part of the judgment

The Court:

1. Dismisses the appeals;
2. Orders Mr Laurent Gbagbo, Mr Katinan Justin Koné, Ms Akissi Danièle Boni-Claverie, Mr Alcide Djédjé and Mr Affi Pascal N'Guessan to pay the costs.

<sup>(1)</sup> OJ C 6, 7.1.2012.

**Judgment of the Court (Tenth Chamber) of 25 April 2013**  
 — European Commission v Ireland

(Case C-55/12) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Directive 2003/96/EC — Taxation of energy products and electricity — Exemption from excise duty on fuel used by disabled persons for motor vehicles — Exemption maintained after the expiry of the transitional period — Infringement)*

(2013/C 171/13)

Language of the case: English

#### Parties

*Applicant:* European Commission (represented by: R. Lyal and W. Mölls, acting as Agents)

*Defendant:* Ireland (represented by: E. Creedon, acting as Agent)

**Re:**

Breach of Council Directive 2003/96/EC of 27 October 2003, on restructuring the Community framework of taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Exemption from excise duty on fuel used by disabled persons for motor vehicles — Exemption maintained after the expiry of the transitional period

**Operative part of the judgment**

The Court:

1. Declares that, by continuing to grant, after the expiry on 31 December 2006 of the transitional period referred to in the first subparagraph of Article 18(1) of Council Directive 2003/96/EC of 23 October 2003 restructuring the Community framework of taxation of energy products and electricity, as amended by Council Directive 2004/74/EC of 29 April 2004, and Annex II to that directive, an exemption from excise duty on fuel used by disabled persons for motor vehicles, Ireland has failed to fulfil its obligations under Article 4(1) of the directive;
2. Orders Ireland to pay the costs.

(<sup>1</sup>) OJ C 89, 24.3.2012.

**Judgment of the Court (Third Chamber) of 25 April 2013  
(request for a preliminary ruling from the Curtea de Apel  
Bucureşti — Romania) — Asociația ACCEPT v Consiliul  
Național pentru Combaterea Discriminării**

(Case C-81/12) (<sup>1</sup>)

*(Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Articles 2(2)(a), 10(1) and 17 — Prohibition of discrimination on grounds of sexual orientation — Concept of ‘facts from which it may be presumed that there has been discrimination’ — Modified burden of proof — Effective, proportionate and dissuasive sanctions — Person presenting himself and being perceived by public opinion as playing a leading role in a professional football club — Public statements ruling out the recruitment of a footballer presented as being homosexual)*

(2013/C 171/14)

Language of the case: Romanian

**Referring court**

Curtea de Apel Bucureşti

**Parties to the main proceedings**

Applicant: Asociația ACCEPT

Defendant: Consiliul Național pentru Combaterea Discriminării

**Re:**

Request for a preliminary ruling — Curtea de Apel Bucureşti — Interpretation of Articles 2(2)(a), 10(1) and 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Criteria used in the selection of football club staff discriminatory on grounds of sexual orientation — Applicability of the directive when statements are made in the press, in the absence of an actual recruitment procedure — Facts from which it may be presumed that there has been direct or indirect discrimination — Burden of proof — Body of penalties applicable when those provisions are infringed — Whether permissible for national legislation to preclude the imposition of a fine for infringement once the limitation period of six months has expired — Duty to impose effective, proportionate and dissuasive sanctions

**Operative part of the judgment**

1. Articles 2(2) and 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that facts such as those from which the dispute in the main proceedings are capable of amounting to ‘facts from which it may be presumed that there has been ... discrimination’ as regards a professional football club, even though the statements concerned come from a person presenting himself and being perceived in the media and among the general public as playing a leading role in that club without, however, necessarily having legal capacity to bind it or to represent it in recruitment matters;
2. Article 10(1) of Directive 2000/78 must be interpreted as meaning that, if facts such as those from which the dispute in the main proceedings arises were considered to be ‘facts from which it may be presumed that there has been direct or indirect discrimination’ based on sexual orientation during the recruitment of players by a professional football club, the modified burden of proof laid down in Article 10(1) of Directive 2000/78 would not require evidence impossible to adduce without interfering with the right to privacy;
3. Article 17 of Directive 2000/78 must be interpreted as meaning that it precludes national rules by virtue of which, where there is a finding of discrimination on grounds of sexual orientation within the meaning of that directive, it is possible only to impose a warning such as that at issue in the main proceedings where such a finding is made after the expiry of a limitation period of six months from the date on which the facts occurred where, under those rules, such discrimination is not sanctioned under substantive and procedural conditions that render the sanction effective, proportionate and dissuasive. It is for the national court to ascertain whether such is the case regarding the rules at issue in the main proceedings and, if necessary, to interpret the national law as far as possible in light of the wording and the purpose of that directive in order to achieve the result envisaged by it.

(<sup>1</sup>) OJ C 126, 28.4.2012.