

Reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 27 July 2012 — Wolfgang Glatzel v Freistaat Bayern

(Case C-356/12)

(2013/C 9/41)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Wolfgang Glatzel

Defendant: Freistaat Bayern

Question referred

Is point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences⁽¹⁾ as amended by Commission Directive 2009/113/EC of 25 August 2009⁽²⁾ compatible with Article 20, Article 21(1) and Article 26 of the Charter of Fundamental Rights of the European Union in so far as that provision requires — without permitting any derogation — that applicants for Category C1 and Category C1E driving licences have a minimum visual acuity of 0.1 in their worse eye even if those persons use both eyes together and have a normal field of vision when using both eyes?

⁽¹⁾ OJ 2006 L 403, p. 18.

⁽²⁾ OJ 2009 L 223, p. 31.

Appeal brought on 3 September 2012 by the Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-396/09 Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case C-401/12 P)

(2013/C 9/42)

Language of the case: Dutch

Parties

Appellant: Council of the European Union (represented by: M. Moore and K. Michoel, Agents)

Other parties to the proceedings: Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht, European Commission, Kingdom of the Netherlands, European Parliament

Form of order sought

The Council claims that the Court should:

— set aside the judgment of 14 June 2012 in Case T-396/09;

— dismiss the action of the applicants at first instance in its entirety;

— order the applicants at first instance jointly and severally to pay the Council's costs in the present case.

Pleas in law and main arguments

The Council takes the view that the judgment of the General Court in the abovementioned case is vitiated by two errors of law. The Council is of the view that the General Court did not correctly interpret and apply the 'Nakajima'⁽¹⁾ and 'Fediol'⁽²⁾ case-law. Consequently, the Council is of the view that the General Court erred in finding that it could review the legality of Regulation (EC) No 1367/2006⁽³⁾ in the light of the Aarhus Convention⁽⁴⁾ on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Furthermore, the Council is of the view that the choice made by the legislature in Regulation No 1367/2006 is any event fully consistent with the Aarhus Convention. In this respect, the General Court's interpretation of Article 9(3) of the Aarhus Convention is incorrect, in so far as the General Court disregards the discretion afforded to the contracting parties.

The Council therefore requests the Court of Justice to set aside the judgment of the General Court in Case T-396/09, and to give final judgment in the matter by dismissing the action of the applicants at first instance in its entirety.

⁽¹⁾ Case C-69/89 *Nakajima v Council* [1991] ECR I-2169.

⁽²⁾ Case 70/87 *Fediol v Commission* [1989] ECR 1825.

⁽³⁾ Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

⁽⁴⁾ Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).