

Judgment of the Court (Fourth Chamber) of 10 July 2014 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Fazenda Pública v Banco Mais SA

(Case C-183/13) ⁽¹⁾

(Taxation — VAT — Directive 77/388/EEC — Article 17(5), third subparagraph, point (c) — Article 19 — Deduction of input tax — Leasing transactions — Mixed use goods and services — Rule for determining the amount of the VAT deduction — Derogation — Conditions)

(2014/C 315/18)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Fazenda Pública

Defendant: Banco Mais SA

Operative part of the judgment

Point (c) of the third subparagraph of Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as not precluding a Member State, in circumstances such as those in the main proceedings, from requiring a bank, which, *inter alia*, carries out leasing activities, to include in the numerator and denominator of the fraction used to determine a single deductible proportion for all of its mixed use goods and services just the part of the rental payments made by customers as part of their leasing agreements that corresponds to interest, where that use of the goods and services is primarily caused by the financing and management of those contracts, that being a matter for the national court to ascertain.

⁽¹⁾ OJ C 189, 29.6.2013.

Judgment of the Court (Fifth Chamber) of 10 July 2014 (request for a preliminary ruling from the Juzgado de lo Social n^o1 de Benidorm — Spain) — Víctor Manuel Julian Hernández and Others v Puntal Arquitectura SL and Others

(Case C-198/13) ⁽¹⁾

(Protection of employees in the event of the insolvency of their employer — Directive 2008/94/EC — Scope — Employer's right to compensation from a Member State in respect of the remuneration paid to an employee during proceedings challenging that employee's dismissal beyond the 60th working day after the action challenging the dismissal was brought — No right to compensation in the case of invalid dismissals — Subrogation of the employee to the right to compensation of his employer in the event of that employer's provisional insolvency — Discrimination against employees who are the subject of an invalid dismissal — Charter of Fundamental Rights of the European Union — Scope — Article 20)

(2014/C 315/19)

Language of the case: Spanish

Referring court

Juzgado de lo Social n^o1 de Benidorm

Parties to the main proceedings

Applicants: Víctor Manuel Julian Hernández, Chems Eddine Adel, Jaime Morales Ciudad, Bartolomé Madrid Madrid, Martín Selles Orozco, Alberto Martí Juan, Said Debbaj

Defendants: Puntal Arquitectura SL, Obras Alteamar SL, Altea Diseño y Proyectos SL, Ángel Muñoz Sánchez, Vicente Orozco Miro, Subdelegación del Gobierno de España en Alicante

Operative part of the judgment

National legislation, such as that at issue in the main proceedings, according to which an employer can request from the Member State concerned payment of remuneration which has become due during proceedings challenging a dismissal after the 60th working day following the date on which the action was brought and according to which, where the employer has not paid that remuneration and finds itself in a state of provisional insolvency, the employee concerned may, by operation of legal subrogation, claim directly from that State the payment of that remuneration, does not come within the scope of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer and cannot, therefore, be examined in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and, in particular, of Article 20 thereof.

⁽¹⁾ OJ C 189, 29.6.2013.

Judgment of the Court (Second Chamber) of 10 July 2014 (request for a preliminary ruling from the Consiglio di Stato (Italy)) — *Impresa Pizzarotti & C. SpA v Comune di Bari, Giunta comunale di Bari and Consiglio comunale di Bari*

(Case C-213/13) ⁽¹⁾

(Reference for a preliminary ruling — Public works contracts — Directive 93/37/EEC — ‘Undertaking to let’ buildings which have not yet been constructed — Decision of a national court having the authority of res judicata — Scope of the principle of res judicata in the event of a situation which is incompatible with EU law)

(2014/C 315/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Impresa Pizzarotti & C. SpA

Defendants: Comune di Bari, Giunta comunale di Bari and Consiglio comunale di Bari

Intervening parties: Complesso Residenziale Bari 2 Srl, Commissione di manutenzione della Corte d'appello di Bari, Giuseppe Albenzio, acting as *Commissario ad acta*, Ministero della Giustizia and Regione Puglia

Operative part of the judgment

1. On a proper construction of Article 1(a) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, where the main object of a contract is the execution of a work corresponding to the requirements expressed by the contracting authority, that contract constitutes a public works contract and is not, therefore, covered by the exclusion referred to in Article 1(a)(iii) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, even if it contains an undertaking to let the work in question.