2. Is it compatible with EU law for a Danish court, in a case between an employee and a private employer concerning payment of a severance allowance which the employer under national law as described in question 1 is exempt from having to pay but where that result is not compatible with the general EU law principle prohibiting discrimination on grounds of age, to undertake a weighing-up of that principle and its direct effect with the principle of legal certainty and the related principle of the protection of legitimate expectations and, following that weighing-up, reaches the conclusion that the principle of legal certainty must prevail over the principle prohibiting discrimination on grounds of age, with the result that under national law the employer is exempt from having to pay the severance allowance? Guidance is also sought as to whether the fact that the employee, depending on the circumstances, may claim compensation from the State as a result of the Danish legislation's incompatibility with EU law has an impact on the issue of whether such a weighing-up may be considered.

Appeal brought on 25 September 2014 by Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg i. L. against the judgment of the General Court (Fifth Chamber) delivered on 16 July 2014 in Case T-309/12 Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg v European Commission

(Case C-447/14 P)

(2014/C 421/35)

Language of the case: German

Parties

Appellant: Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg i. L. (represented by: A. Kerkmann, Rechtsanwältin)

Other parties to the proceedings: European Commission, Saria Bio-Industries AG & Co. KG, SecAnim GmbH, Knochen-und Fett-Union GmbH (KFU)

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union in Case T-309/12 *Zweckverband Tierkörperbeseitigung* v *Commission* ([1]) and, if the Court of Justice takes the view that it has all the necessary information to be able to itself give final judgment in the matter, annul Commission Decision of 25 April 2012 on State aid SA.25051 (C-19/2010, ex NN 23/2010) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg, Document C(2012) 2557 final, and order the Commission to pay the entire costs of the appeal and of the proceedings before the General Court;

2. in the alternative, set aside the judgment under appeal and refer the case back to the General Court, and reserve the decision on costs.

Pleas in law and main arguments

In support of its appeal, the appellant relies, essentially, on the following pleas in law:

The General Court wrongly classified the financing of the epidemic reserve by the contribution payments of the appellant's members as State aid by holding that, with regard to the activity of providing animal epidemic reserve capacity in its area of competence, the appellant must be treated as an undertaking within the meaning of Article 107(1) TFEU. It is true that the General Court correctly states first of all that activities which fall within the exercise of public powers are not of an economic nature justifying the application of the TFEU rules of competition. The General Court also correctly states that it is necessary to examine each of the appellant's activities separately in order to determine whether they may be a public activity. However, the General Court wrongly concluded that the provision of the epidemic reserve capacity does not fall within the exercise of public powers, but is an economic activity which classifies the appellant as a whole as an undertaking.

In addition, in finding that the appellant did not incur any net costs for the provision of the epidemic reserve, the General Court infringed the obligation to state the grounds of judgments. It also failed to examine the appellant's evidence proving that a cross-subsidisation of economic activities by contribution payments is excluded.

Contrary to the findings of the General Court, the provision of an epidemic reserve capacity, including its organisation and financing by the appellant, constitutes a service of general economic interest (SGEI). The judgment under appeal therefore infringes Article 106(2) and Article 107(1) TFEU.

In addition, the General Court also infringed Article 107(1) TFEU by finding both that the appellant obtained an advantage because the criteria of the *Altmark* ([2]) judgment of the Court of Justice were not met and that the contribution payments used for the rehabilitation of inherited waste constituted aid.

The General Court also infringed Article 106(2) TFEU by finding that the appellant should not have alleged infringement of Article 106(2) TFEU without challenging the Union SGEI guidelines applied by the Commission.

([1]) ECLI:EU:T:2014:676
([2]) Judgment in *Altmark*, C-280/00, ECLI:EU:C:2003:415.