

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 7 February 2019 — TV Play Baltic AS v Lietuvos radijo ir televizijos komisija

(Case C-87/19)

(2019/C 155/32)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: TV Play Baltic AS

Defendant: Lietuvos radijo ir televizijos komisija

Questions referred

1. Is Article 2(m) of Directive 2002/21/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) to be interpreted as meaning that the 'provision of an electronic communications network' does not cover activities of television rebroadcasting over satellite networks owned by third parties, such as those carried out by the applicant?
2. Is Article 31(1) of Directive 2002/22/EC ⁽²⁾ of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC ⁽³⁾ of the European Parliament and of the Council of 25 November 2009, to be interpreted as precluding Member States from imposing a 'must carry' obligation (to broadcast a television channel over satellite networks owned by third parties and to provide access for end-users to that broadcast) on economic operators, such as the applicant, which (1) broadcast a television channel protected by a conditional access system over satellite networks owned by third parties, to that end receiving signals of television programmes (channels) broadcast at that time, converting them, encrypting them and transmitting them to an artificial Earth satellite from which they are uninterruptedly transmitted back to Earth, and (2) offer television channel packages to customers, to that end providing access to that protected television broadcast (or part thereof) by conditional access devices in return for remuneration?
3. Is Article 31(1) of Directive 2002/22, as amended by Directive 2009/136, to be interpreted as meaning that, for the purposes of the application of that provision, a significant number of end-users are not considered to use electronic communications networks (in the present case, a satellite broadcasting network) as their principal source (means) to receive television broadcasts where those networks are used as that principal source (means) by only approximately 6 % of all end-users (in the present case, households)?
4. When assessing whether application of Article 31(1) of Directive 2002/22, as amended by Directive 2009/136, is justified, is regard to be had to the internet users who may, free of charge, view the television programmes in question (or part thereof) live online?

5. Is Article 56 of the Treaty on the Functioning of the European Union to be interpreted as precluding Member States from imposing a mandatory obligation on economic operators, such as the applicant, to rebroadcast a television channel over electronic communications networks free of charge where the broadcaster for whose benefit that obligation is laid down is fully capable of broadcasting those television channels itself over the same network with its own funds?
6. Is Article 56 of the Treaty on the Functioning of the European Union to be interpreted as precluding Member States from imposing a mandatory obligation on economic operators, such as the applicant, to rebroadcast a television channel over electronic communications networks free of charge where that obligation would cover only approximately 6 % of all households and those households have the possibility of viewing that television channel by means of the terrestrial broadcasting network or the internet?

⁽¹⁾ OJ 2002 L 108, p. 33.

⁽²⁾ OJ 2002 L 108, p. 51.

⁽³⁾ OJ 2009 L 337, p. 11.

Appeal brought on 6 February 2019 by the European External Action Service against the judgment of the General Court (First Chamber) delivered on 27 November 2018 in Case T-315/17, Hebberecht v EEAS

(Case C-93/19P)

(2019/C 155/33)

Language of the case: French

Parties

Appellant: European External Action Service (represented by: S. Marquardt and R. Spac, Agents)

Other party to the proceedings: Chantal Hebberecht

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of 27 November 2018 in Case T-315/17;
- dismiss the action at first instance as unfounded;
- order the other party to pay the costs.

Pleas in law and main arguments

According to the EEAS, the General Court erred in law in basing its judgment on an infringement of Article 1d(2) of the Staff Regulations of Officials and in considering that that provision contains a principle directly applicable to individual decisions adopted by the institution pursuant to those regulations (paragraphs 93 and 94 of the judgment under appeal).

In addition, even if Article 1d(2) of the Staff Regulations were to impose a directly applicable obligation, that provision could not apply in the present case, given the nature of the decision at issue, which concerned only the applicant in her capacity as Head of Delegation, and which was not suitable for the application of the principle of gender equality.
