

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Wien) (Higher Administrative Court, Vienna) by order of that court of 18 December 1997 in the case of Safet Eyüp v. Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg (Regional office of the Vorarlberg employment service)

(Case C-65/98)

(98/C 137/24)

Reference has been made to the Court of Justice of the European Communities by an order of the Verwaltungsgerichtshof (Wien) of 18 December 1997, which was received at the Court Registry on 5 March 1998, for a preliminary ruling in the case of Safet Eyüp v. Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg on the following questions.

1. Is the concept of members of the family in the first sentence of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey to be interpreted as meaning that the partner (in a relationship resembling marriage with no formal matrimonial bond) of a Turkish worker also meets the relevant objective requirements?

2. If a partner is not to be regarded as a member of the family:

is the second indent of the first sentence of Article 7 of Decision No 1/80 to be interpreted as meaning that, to meet the objective requirements, the formal matrimonial bond between the Turkish worker and the family member must have lasted for five years without interruption, or is it permissible for periods during which there is a formal matrimonial bond with a partner to be interrupted by many years of cohabitation with the same partner?

3. Is the second indent of the first sentence of Article 7 of Decision No 1/80 to be interpreted as meaning that the formal dissolution of the matrimonial bond (for instance by divorce) with the Turkish worker invalidates all previous periods of compliance, as a member of the family, with the conditions as to time?

4. Does Community law require that the (directly effective) rights deriving from Articles 6 and 7 of Decision No 1/80 in a Member State for the group of people designated therein be safeguarded by providing provisional legal protection in certain cases in the form of positive (prescriptive) interim measures?

5. If question 4 is answered in the affirmative:

is there a need for positive (prescriptive) interim measures on the basis of Community law to the effect that in certain cases (where an applicant invokes rights within the meaning of Articles 6 and 7 of Decision No 1/80) the freedom of movement sought on the basis of the association agreement is provisionally granted for the duration of the proceedings before the competent administrative authority, before the court

reviewing the decision of that authority or before the Court of Justice of the European Communities when a question is referred for a preliminary ruling, until legal protection is finally granted, to prevent serious and irreparable damage, and does the fact that a binding decision as to whether the objective requirements are met for freedom of movement under the association agreement is not taken immediately, but at a later date in certain cases, constitute such damage?

Action brought on 11 March 1998 by the Commission of the European Communities against the Italian Republic

(Case C-66/98)

(98/C 137/25)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 11 March 1998 by the Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with:

— Commission Directive 93/18/EEC of 5 April 1993 adapting for the third time to technical progress Council Directive 88/379/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽¹⁾,

— European Parliament and Council Directive 94/60/EC of 20 December 1994 amending for the 14th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations ⁽²⁾,

or by failing to inform the Commission thereof, the Italian Republic has failed to fulfil its obligations within the meaning of the EC Treaty, and

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments adduced in support:

Within the meaning of Article 189 of the EC Treaty, according to which a directive is to be binding, as to the

result to be achieved, on each Member State to which it is addressed, Member States are required to observe the time limits laid down in directives for their transposition. That time limit expired on 1 July 1994 in respect of Directive 93/18/EEC and on 20 December 1994 in respect of Directive 94/60/EC without the Italian Republic having brought into force the necessary provisions in order to comply therewith.

⁽¹⁾ OJ L 104, 29.4.1993, p. 46.

⁽²⁾ OJ L 365, 31.12.1994, p. 1.

Removal from the register of C-261/97 ⁽¹⁾

(98/C 137/26)

By order of 11 February 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-261/97 (reference for a preliminary ruling from the Cour d'Appel, Douai): Karl Heinz Baumann v. Urssaf Lille.

⁽¹⁾ OJ C 271, 6.9.1997.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 1998

in Case T-183/95: Giuseppe Carraro v. Commission of the European Communities ⁽¹⁾

(Officials — Article 24 of the Staff Regulations — Duty to provide assistance — Decision implicitly rejecting a request)

(98/C 137/27)

(Language of the case: Italian)

In Case T-183/95: Giuseppe Carraro, an official of the Commission of the European Communities, assigned to the Joint Research Centre, Ispra, residing at Ispra (Italy), represented by Giuseppe Marchesini, advocate with a right of audience before the Italian Court of Cassation, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 rue Mathias Hardt, v. Commission of the European Communities (Agent: Gianluigi Valsesia) — application, first, for annulment of the decision of the Commission implicitly rejecting the request for assistance submitted by the applicant on 28 July 1994 and, second, for compensation — the Court of First Instance (Third Chamber), composed of: V. Tiili, President, and C. P. Briët and A. Potocki, Judges; B. Pastor, Principal Administrator, for the Registrar, has given a judgment on 17 March 1998, in which it:

1. *annuls the decision of the Commission implicitly rejecting the request for assistance submitted by the applicant on 28 July 1994;*
2. *orders the Commission to pay the applicant the token sum of ECU 1 by way of compensation for the non-material damage suffered;*
3. *dismisses the remainder of the action;*

4. *orders the Commission to pay the costs.*

⁽¹⁾ OJ C 333, 9.12.1995.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 March 1998

in Case T-74/96: Georges Tzoanos v. Commission of the European Communities ⁽¹⁾

(Officials — Decision ordering removal from post — Action for annulment — Concurrent disciplinary proceedings and criminal proceedings — Errors of assessment — Right to a fair hearing — Articles 12, 13, 14, 21 and 86 of the Staff Regulations — Principle of proportionality — Principle of equal treatment — Misuse of powers)

(98/C 137/28)

(Language of the case: French)

In Case T-74/96: Georges Tzoanos, a former official of the Commission of the European Communities, residing in Brussels, represented by Eric Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2, rue du Fort Rheinsheim, v. Commission of the European Communities (Agents: Gianluigi Valsesia, Denis Waelbroeck and Olivier Speltdoorn) — application for annulment of the decision of the Commission of 22 June 1995 removing the applicant from his post without loss of entitlement to a retirement pension and for annulment of the decision of 19 February 1996 expressly rejecting the complaint lodged by the applicant on 21 September 1995 against the decision of 22 June 1995 — the Court of First Instance (Fourth Chamber), composed of: P. Lindh, President, and K. Lenaerts and J. D. Cooke, Judges; B. Pastor, Principal Administrator, for the Registrar, has given a judgment on 19 March 1998, in which it: