

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat Salzburg by order of 16 January 2002 in the appeals concerning Dr Roman Moser, the Bürgermeister der Landeshauptstadt Salzburg, and the land transfer agent of the Land of Salzburg

(Case C-15/02)

(2002/C 84/89)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat Salzburg (Independent Administrative Chamber, Salzburg) of 16 January 2002, received at the Court Registry on 22 January 2002, for a preliminary ruling in the appeals concerning Dr Roman Moser, the Bürgermeister der Landeshauptstadt Salzburg, and the land transfer agent of the Land of Salzburg on the following question:

Are the provisions of Article 56 et seq. of the EC Treaty to be interpreted as precluding the application of Paragraphs 12, 36 and 43 of the Salzburger Grundverkehrsgesetz (Salzburg Land Transfer Law) of 1997 in the version published in LGBL No. 11/1999, whereby any person who wishes to acquire a building plot in the federal Land of Salzburg must comply with a notification or authorisation procedure in respect of the acquisition of that plot, with the consequence that one of the fundamental freedoms of the acquirer of title as guaranteed by the laws of the European Union has been infringed in this case?

Action brought on 5 February 2002 by the Commission of the European Communities against the Italian Republic

(Case C-32/02)

(2002/C 84/90)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 5 February 2002 by the Commission of the European Communities, represented by A. Aresu acting as Agent.

The applicant claims that the Court should:

- Declare that, by not adopting provisions in respect of employers engaged in non-profit-making activities, the Italian Republic has failed to fulfil its obligations under Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16);

- Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission claims that Directive 98/59 applies to collective redundancies carried out by any 'employer', that is by any natural or legal person who has created an employment relationship, regardless of whether he is engaged in profit-making activities. It follows, therefore, that the implementing Italian regulations, and in particular Law No 223/91, which restricts the application of the guarantees to employees of 'undertakings' alone, wrongfully exclude all employers engaged in non-profit-making activities.

Action brought on 6 February 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-33/02)

(2002/C 84/91)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 6 February 2002 by the Commission of the European Communities, represented by Josef Christian Schieferer, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, at Centre Wagner C 254, Kirchberg.

The applicant claims that the Court should:

- declare that the Republic of Austria has failed to fulfil its obligations under Article 3(3) and (4), Article 7(1) and (2), Article 11(3), and Article 13(1) in conjunction with Article 2(3) of Council Directive 94/67/EC of 16 December 1994 on the incineration of hazardous waste, by
 1. incorrectly transposing, in Paragraph 3 no. 3.2 and no. 3.3 of the Verordnung des Bundesministers für wirtschaftliche Angelegenheiten über die Verbrennung gefährlicher Abfälle in gewerblichen Betriebsanlagen (Regulation of the Federal Minister for Economic Affairs on the incineration of hazardous waste in commercial plants) (the 'BMWA Regulation'), the rule in Article 3(3) of the directive that the heat release from coincineration may not exceed 40 % of the total heat, in respect of 'the total heat released in the plant at each moment of its operation';

2. permitting non-binding emission guide values in certain cases, under Paragraph 8(3) of the BMwA Regulation, contrary to the requirement imposed by Article 3(4) of the directive concerning the determination of binding emission limit values;
 3. failing to set limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants under Paragraph 15(1) of the BMwA Regulation, contrary to Article 7(1) and (2) of the directive;
 4. laying down criteria for compliance with emission limit values in Paragraph 10(5) no. 2 of the BMwA Regulation which contravene Article 11(3) of the directive; and
 5. laying down transitional provisions in Paragraph 19(1) of the Verordnung des Bundesministers für Umwelt, Jugend und Familie über die Verbrennung von gefährlichen Abfällen (Regulation of the Federal Minister for Environment, Youth and the Family on the incineration of hazardous substances) and Paragraph 16(2) of the BMwA Regulation which exempt existing plants from the application of the directive for the period from 31 December 1996 to 1 February 1999, contrary to Article 13(1) in conjunction with Article 2(3) of the directive.
- order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission has reached the conclusion that the provisions in force in Austria do not fully comply with the provisions of Directive 94/67 EC, namely, in that they:

- Infringe Article 3(3) of the directive (for co-incineration, maximum of 40 % of total heat released in the plant):

Contrary to Article 3(3), which lays down a total heat release from a plant of a maximum of 40 % from the incineration of hazardous wastes 'at each moment of its operation', the provisions in force in Austria permit plants to operate with a total heat release of more than 40 %, and in certain circumstances exclusively, from the incineration of hazardous wastes, over lengthy operating periods (e.g. for a number of days or even weeks). (Calculation on the basis of quarterly averages)

- Infringe the second paragraph of Article 3(4) of the directive (determination of emission guide values):

Contrary to the second indent of Article 3(4) of the directive which provides that the permit for a co-incineration plant is only to be granted if it is demonstrated in the application that, according to calculations laid down

in Annex II, the provisions of Article 7, which contains the emission limit values for exhaust gases, have been complied with, the Austrian rules provide that for certain co-incineration plants, the authorities are, in individual cases, to lay down emission guide values for individual pollutants.

- Infringe Article 7(1) and (2) of the directive (failure to lay down limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants):

Contrary to Article 7(1) and (2) of the directive, the Republic of Austria has not laid down limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants in which waste is co-incinerated.

- Infringe the first paragraph of Article 11(3) of the directive (compliance criteria for limit values):

Contrary to the first indent of Article 11(3) which specifies the circumstances in which emission limit values are deemed to be complied with, the Austrian Government has laid down rules which provide that emission limit values are only exceeded where more than 3 % of the half-hourly averages exceed the emission limit value by more than 20 %. That threshold of 20 % is not, however, contained in the directive.

- Infringe Article 13(1) in conjunction with Article 18(1) of the directive (entry into force and transitional provisions for existing plants):

Contrary to the directive, Austria treats plants which were granted permits between 31 December 1996 and the date of transposition of the directive (1 February 1999) as 'existing plants'. Consequently, under Austrian law, incineration plants which were granted permits between 31 December 1996 and 1 February 1999 were covered by the transitional period until 30 June 2000, whereas, according to the directive, such plants should have fallen fully within the scope of the directive from the time of their authorisation.

Reference for a preliminary ruling by the Tribunale di Roma, Terza Sezione Lavoro by order of 24 January 2002 in the case of Sante Pasquini against INPS (Istituto Nazionale della Previdenza Sociale)

(Case C-34/02)

(2002/C 84/92)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Roma,