

Pleas in law and arguments

(Case C-69/04)

The period for transposition of the directive into national law expired on 27 November 2002.

(2004/C 94/47)

⁽¹⁾ OJ No L 309, 27.11.2001, p. 1.

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Civitavecchia (District Court, Civitavecchia) of 12 January 2004, received at the Court Registry on 16 February 2004, for a preliminary ruling in the case of Fallimento LIGABUE Gate Gourmet Roma s.p.a. against LSG Sky Chefs s.p.a. on the following questions:

Action brought on 13 February 2004 by the Commission of the European Communities against the Hellenic Republic

(Case C-68/04)

(2004/C 94/46)

Does Article 18 of Council Directive 96/97/EC ⁽¹⁾ of 15 October 1996, considered in conjunction with the principles of Community law, and in particular those of Article 49 (previously 59) of the Treaty, constitute an obstacle to the application of Article 14 of Legislative Decree No 18 of 13 January 1999, in so far as it imposes on providers of airport services the obligation to take on staff, thereby restricting their power of decision regarding entrepreneurial strategies concerning the choice, number and remuneration of employees?

⁽¹⁾ OJ L 272 of 25.10.1996, p. 36.

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 13 February 2004 by the Commission of the European Communities, represented by Gregorio Valerio Jordana and Minas Konstantinidis, of its Legal Service.

The Commission claims that the Court should:

- declare that, by failing to adopt, or in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2001/81/EC ⁽¹⁾ of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, the Hellenic Republic has failed to fulfil its obligations under that directive;
- order the Hellenic Republic to pay the costs.

Action brought on 16 February 2004 by the Swiss Confederation against the Commission of the European Communities

(Case C-70/04)

(2004/C 94/48)

Pleas in law and arguments

The period for transposition of the directive into national law expired on 27 November 2002.

⁽¹⁾ OJ No L 309, 27.11.2001, p. 22.

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 16 February 2004 by the Swiss Confederation, represented by Simon Hirsbrunner and Ulrich Soltész, Rechtsanwälte, Brussels (Belgium).

The applicant claims that the Court should:

1. annul, in accordance with Article 231(1) EC, the Decision of the Commission of 5 December 2003 (Case TREN/AMA/11/03 – German measures relating to the approaches to Zurich Airport); ⁽¹⁾
2. order the Commission to pay the applicant's costs in accordance with Article 69(2) of the Rules of Procedure of the Court of Justice.

Reference for a preliminary ruling by the Tribunale di Civitavecchia by order of that Court of 12 January 2004 in the case of Fallimento LIGABUE Gate Gourmet Roma s.p.a. against LSG Sky Chefs s.p.a.

Pleas in law and main arguments

The contested decision of the European Commission should be annulled on the following grounds:

The Commission errs by proceeding from the assumption in its decision of 5 December 2003 that the Agreement on air transport which was signed by the European Community and the Swiss Confederation on 21 June 1999 simply provides for an exchange of traffic rights. The Agreement in fact extends the internal air traffic market to the Swiss Confederation with the result that the airlines of the Swiss Confederation and the European Union have equal rights of access to the market. That also means in particular that the Swiss Confederation and Swiss companies falling within the scope of the Agreement can rely on the freedom to provide services in the air traffic sector.

The Commission was wrong to deny infringement of the freedom to provide services. Contrary to the Commission's decision, the 213th Regulation for the implementation of the Air Traffic Regulations of the Federal Republic of Germany affects the freedom of Swiss International Air Lines (hereinafter also 'SWISS') to provide services, because it hinders the operation of flights to and from Zurich.

The Commission was wrong to deny that there was discrimination against Swiss companies was caused by the 213th Regulation. The Swiss airline SWISS is disadvantaged in competition because it is subject to stricter limitations on the use of its hub at Zurich than its direct competitor Lufthansa suffers in using its own hubs at Frankfurt-am-Main and Munich. SWISS is also affected more severely than the other airlines flying to Zurich, since it is the 'home carrier' and the operator of the Zurich air traffic hub and as such is particularly vulnerable to limitations on the operation of Zurich airport. In addition, the German measures treat the Zurich international airport operated by UNIQUE Flughafen Zürich AG less favourably than similar airports in Germany, to which no even roughly similarly drastic flight limitations apply or may be applied.

Contrary to the Commission's opinion, those limitations must be measured against the principle of proportionality. That principle is applicable in connection with the Air Transport Agreement. It is infringed by the German 213th Regulation. That regulation is not based on any compelling ground of general interest and the limitations it contains are neither necessary nor appropriate. The Federal Republic has at its disposal, contrary to the Commission's view, alternative means by which to achieve its aims.

The Commission was wrong to deny infringement of the duty of honest cooperation.

Furthermore, in the proceedings the Commission has breached the right to a fair hearing. The Commission began with preconceived opinions and did not examine the arguments of the Swiss Confederation in an unprejudiced manner or clarify the facts of the matter. As a result the requirement for fairness was breached. The reasons given for the decision do not satisfy the requirements laid down in the case-law.

(¹) OJ 2004 L 4, p. 13.

Reference for a preliminary ruling by the Tribunal Supremo, Contentious-Administrative Chamber, Third Division, by order of that Court of 22 December 2003, rectified by order of 22 January 2004, in the case of Administración del Estado against Junta de Galicia

(Case C-71/04)

(2004/C 94/49)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Supremo (Supreme Court), Contentious-Administrative Chamber, Third Division, of 22 December 2003, rectified by order of 22 January 2004, received at the Court Registry on 16 February 2004, for a preliminary ruling in the case of Administración del Estado against Junta de Galicia on the following question:

Do Article 87(1) and (3)(c) and (d) (previously Article 92(1) and (3)(c) and (d)) and Article 88(3) (previously Article 93(3)) of the EC Treaty, in conjunction with Council Directive 90/684/EEC of 21 December 1990 (¹) on aid to shipbuilding, permit the adoption, without prior notification to the Commission of the European Communities, of national rules – of the kind contained in Decree 217/1994 of 23 June 1994 of the Xunta de Galicia – which establish a 'new system of aid' for a specific shipbuilding and ship conversion sector, being precisely that sector which, by virtue of the gross tonnage, power and other characteristics of the vessels concerned, does not fall within the scope of the said Directive 90/684?

(¹) OJ L 380 of 31.12.1990, p. 27.

Action brought on 17 February 2004 by the Commission of the European Communities against the Republic of Finland

(Case C-72/04)

(2004/C 94/50)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 17 February 2004 by the Commission of the European Communities, represented by G. Zavvos and M. Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that the Republic of Finland has failed to fulfil its obligations under Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries (¹), since it has not brought into force the laws, regulations and administrative provisions necessary to comply with the directive, or at least has not informed the Commission of them;