

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 March 2004

in Case C-71/02 (reference for a preliminary ruling from the Oberster Gerichtshof): **Herbert Karner Industrie-Auktionen GmbH v Troostwijk GmbH** ⁽¹⁾

(2004/C 106/10)

(‘Free movement of goods — Article 28 EC — Measures having equivalent effect — Advertising restrictions — Reference to the commercial origin of goods — Goods from an insolvent company — Directive 84/450/EEC — Fundamental rights — Freedom of expression — Principle of proportionality’)

(Language of the case: German)

(2004/C 106/09)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-71/02: reference to the Court under Article 234 EC from the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between **Herbert Karner Industrie-Auktionen GmbH** and **Troostwijk GmbH** on the interpretation of Article 28 EC. The Court (Fifth Chamber), composed of: C.W.A. Timmermans, acting as President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; S. Alber, Advocate General; F. Contet, Principal Administrator, for the Registrar, gave a judgment on 25 March 2004, the operative part of which is as follows:

Article 28 EC does not preclude national legislation which, irrespective of the truthfulness of the information, prohibits any reference to the fact that goods come from an insolvent estate, where, in public announcements or notices intended for a larger circle of persons, notices given of the sale of goods which originate from, but no longer constitute part of, the insolvent estate.

⁽¹⁾ OJ C 144, 15.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 April 2004

in Case C-90/02 (reference for a preliminary ruling from the Bundesfinanzhof): **Finanzamt Gummersbach v Gerhard Bockemühl** ⁽¹⁾

(‘Reference for a preliminary ruling — Interpretation of Article 18(1) of the Sixth VAT Directive — Conditions for exercise of the right to deduct input VAT — Recipient of a

service referred to in Article 9(2)(e) of the Sixth VAT Directive — Supply of staff by a taxable person established abroad — Recipient liable for VAT as the person to whom the supply was made — Requirement to hold an invoice — Content of the invoice’)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-90/02: reference to the Court under Article 234 EC by the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between **Finanzamt Gummersbach** and **Gerhard Bockemühl** – on the interpretation of Articles 18(1) and 22(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1) and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47) – the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 1 April 2004, in which it ruled:

A taxable person who is liable, as the recipient of services, for the value added tax relating thereto, in accordance with Article 21(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax, is not obliged to be in possession of an invoice drawn up in accordance with Article 22(3) of that directive in order to be able to exercise his right to deduct.

⁽¹⁾ OJ C 169 of 13.7.2002.