

ORDER OF THE COURT OF JUSTICE**(Third Chamber)****of 1 April 2004****in Case C-229/03 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Monica Herbstrith v Republic of Austria ⁽¹⁾****(Preliminary ruling — Inadmissibility)**

(2004/C 118/58)

(Language of the case: German)

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

In Case C-229/03: reference to the Court under Article 234 EC from the Landesgericht für Zivilrechtssachen Wien (Austria) for a preliminary ruling in the proceedings pending before that court between Monica Herbstrith and Republic of Austria, on, first, the direct effect of 'Community law concerning equal treatment of men and women at work and, more specifically, of Council Directive 76/207/EEC' of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) or the circumstances in which a Member State may be liable to pay compensation for prejudice suffered by individuals as a result of infringements of Community law, and, second, 'the rules on the burden of proof laid down in Article 4 of Council Directive 97/80/EC of 15 December 1997' on the burden of proof in cases of discrimination based on sex (OJ 1998 L 14, p. 6) – the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; J. Kokott, Advocate General; R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

The reference for a preliminary ruling made by the Landesgericht für Zivilrechtssachen Wien by order of 7 April 2003 is inadmissible.

⁽¹⁾ OJ C 47 of 21. 2. 2004.

Reference for a preliminary ruling by the Bundesfinanzhof, by order of that court of 3 February 2004 in the case of Deutsches Milch-Kontor GmbH against Hauptzollamt Hamburg-Jonas

(Case C-136/04)

(2004/C 118/59)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof of 3

February 2004, received at the Court Registry on 15 March 2004, for a preliminary ruling in the case of Deutsches Milch-Kontor GmbH against Hauptzollamt Hamburg-Jonas on the following question:

Must Regulation (EEC) No 3445/89 ⁽¹⁾ and Regulation (EEC) No 1706/89 ⁽²⁾ be interpreted as meaning that cheese under subheading 0406 90 of the Combined Nomenclature, intended for processing in a third country and therefore to be classified for customs tariff purposes under subheading 0406 90 11 of the Combined Nomenclature in the version in Regulation (EEC) No. 2886/89 ⁽³⁾, is excluded from the grant of an export refund?

⁽¹⁾ OJ L 336, p. 1.

⁽²⁾ OJ L 166, p. 36.

⁽³⁾ OJ L 282, p. 1.

Reference for a preliminary ruling by the Commissione Tributaria Provinciale di Genova by order of that court of 11 February 2004 in the case of Unicredito Italiano SpA and Agenzia Entrate Ufficio Genova ⁽¹⁾

(Case C-148/04)

(2004/C 118/60)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Provinciale di Genova (Provincial Tax Commission, Genoa) of 11 February 2004, received at the Court Registry on 23 March 2004, for a preliminary ruling in the case of Unicredito Italiano SpA and Agenzia Entrate Ufficio Genova on the following questions:

1. Is Commission Decision 2002/581/EC ^(?) of 11 December 2001 (OJ 2002 L 184, p. 27) invalid and incompatible with Community law, in that the provisions of the Ciampi Law and the related legislative decree regarding banks are compatible with the Common Market, contrary to the opinion of the European Commission, or do they in any case fall within the scope of the derogations provided for by Article 87(3)(b) and (c) of the EC Treaty?
2. In particular, is Article 4 of the above-mentioned decision invalid and incompatible with Community law, in that the Commission:
 - a) failed in its duty to provide adequate reasons in accordance with Article 253 of the EC Treaty; and/or
 - b) infringed the principle of legitimate expectations; and/or
 - c) infringed the principle of proportionality?