

5. In light of Article 59 of the Vienna convention on the law of the Treaties, is the TRIPS agreement on trade-related aspects of intellectual property rights (OJ 1994 L 336), which was concluded within the context of the World Trade Organisation and entered into force on 1 January 1996, thus after the Community Agreement of 1993 (OJ 1994 L 337) entered into force, to be interpreted as meaning that its provisions governing homonyms in vine names apply in place of those of the Community Agreement of 1993 where there is inconsistency between the two, given that the parties to both agreements are the same?
6. In the case of two names that are homonyms and refer to two different wines produced in two different countries both party to the TRIPS Agreement (and both where the homonym relates to two geographical names used in both the countries party to TRIPS and where it relates to a geographical name in one country and the like name relates to a vine traditionally cultivated in another country party to TRIPS), must Articles 22 to 24 of the Third Part of Annex C to the Treaty Establishing the World Trade Organisation, which contains the TRIPS Agreement (OJ 1994 L 336), which entered into force on 1 January 1996, be interpreted as meaning that both the names may continue to be used provided that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 (Article 24(4)) and each name clearly indicates the country or region or area of the origin of the wine to which it refers in such a way as not to mislead consumers?

Reference for a preliminary ruling by the Arbeitsgericht Düsseldorf by order of that court of 5 May 2004 in the case of Ms Gül Demir against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG.

(Case C-233/04)

(2004/C 201/20)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Düsseldorf (Labour Court, Düsseldorf) (Germany) of 5 May 2004, received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Ms Gül Demir against Securicor Aviation

Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG, on the following question:

1. In examining whether there is — irrespective of the question of ownership — a transfer of a business within the meaning of Article 1 of Directive 2001/23/EC ⁽¹⁾ in the context of a fresh award of a contract, does the transfer of the assets from the original contractor to the new contractor — having regard to all the facts — presuppose their transfer for independent commercial use by the transferee? By extension, is conferment on the contractor of a right to determine the manner in which the assets are to be used in its own commercial interest the essential criterion for a transfer of assets? On that basis, is it necessary to determine the operational significance of the contracting authority's assets for the service provided by the contractor?
2. If the Court answers Question 1 in the affirmative:
 - (a) Is it precluded to classify assets as being for independent commercial use if they are made available to the contractor by the contracting authority solely for their use and responsibility for maintaining those assets, including the associated costs, is borne by the contracting authority?
 - (b) Is there independent commercial use by the contractor when, for the purpose of conducting airport security checks, it uses the walk-through metal detectors, hand-held metal detectors and X-ray equipment supplied by the contracting authority?

⁽¹⁾ OJ L 82, 22.3.2001, p. 16.

Action brought on 4 June 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-235/04)

(2004/C 201/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 4 June 2004 by the Commission of the European Communities, represented by D.M. van Beek and Gregorio Valero Jordana, acting as Agents, with an address for service in Luxembourg.