

*Pleas in law and main arguments:*

Workers who are nationals of a non-Member State and are to be posted to Germany in order to provide a service require a 'work visa', which is only issued if the worker was employed by the undertaking making the posting for a minimum of one year prior to the posting.

In the view of the Commission, both (1) the practice based on an internal administrative instruction, of requiring a work permit in advance and (2) the issuing of such a permit only 'Stammarbeitnehmer' (regular/core workers) constitute an unjustified and disproportionate restriction on the freedom to provide services.

**Reference for a preliminary ruling by the Arbeitsgericht Regensburg (Germany) by order of that court of 16 June 2004 in the case of Gerhard Schmidt against Sennebogen Maschinenfabrik GmbH**

(Case C-261/04)

(2004/C 228/41)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Regensburg (Germany) of 16 June 2004, which was received at the Court Registry on 21 June 2004, for a preliminary ruling in the case of Gerhard Schmidt against Sennebogen Maschinenfabrik GmbH.

The Arbeitsgericht Regensburg asks the Court of Justice to give a preliminary ruling on the following questions:

- (a) Is Clause 8(3) of the Framework Agreement (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) <sup>(1)</sup> to be interpreted as prohibiting, in the course of the implementation of that agreement in national law, any reduced protection as a result of a reduction in the age limit from 60 to 58?
- (b) Is Clause 5(1) of the Framework Agreement (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) to be interpreted as precluding a provision of national law which — like the provision at issue in this case — does not contain any of the three restrictions set out in paragraph 1 of that clause?
- (c) Is Article 6 of Council Directive 2000/78/EC of 27 November 2000 <sup>(2)</sup> establishing a general framework for equal treatment in employment and occupation to be interpreted as precluding a provision of national law under which — as under the provision at issue in this case — fixed-term employment contracts may be concluded,

without any objective reason, with workers aged 52 and over and which thus runs counter to the principle of justification on objective grounds?

- (d) If one of those three questions is answered in the affirmative:

Must the national court refuse to apply the provision of national law which conflicts with Community law and, in that case, does the general principle laid down in national law apply, under which fixed terms of employment are permissible only if they are justified on an objective ground?

<sup>(1)</sup> OJ 1999 L 175, p. 43.

<sup>(2)</sup> OJ 2000 L 303, p. 16.

**Reference for a preliminary ruling by the Amtsgericht Breisach (Germany) by decision of that court of 7 June 2004 in the case of Badischer Winzerkeller eG against Land Baden-Württemberg**

(Case C-264/04)

(2004/C 228/42)

Reference has been made to the Court of Justice of the European Communities by decision of the Amtsgericht Breisach (Germany), of 7 June 2004, which was received at the Court Registry on 22 June 2004, for a preliminary ruling in the case of Badischer Winzerkeller eG against Land Baden-Württemberg.

The Amtsgericht Breisach (Germany) asks the Court of Justice to give a preliminary ruling on the following question:

1. Must Council Directive 69/335/EEC <sup>(1)</sup> of 17 July 1969 concerning indirect taxes on the raising of capital, in the version resulting from Council Directive 73/79/EEC <sup>(2)</sup> of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the Directive concerning indirect taxes on the raising of capital, Council Directive 73/80/EEC <sup>(3)</sup> of 9 April 1973 fixing common rates of capital duty, Council Directive 74/553/EEC <sup>(4)</sup> of 7 November 1974 amending Article 5(2) of Directive No 69/335/EEC concerning direct taxes on the raising of capital, and Council Directive 85/303/EEC <sup>(5)</sup> of 10 June 1985 amending Directive 69/335/EEC concerning indirect taxes on the raising of capital (hereinafter referred to as 'the directive') be interpreted as meaning that all operations referred to in Article 10(c) of the directive fall within the prohibition thereby enacted, irrespective of the conditions in Article 4?