

Reference for a preliminary ruling from the Gerechtshof te Amsterdam by judgment of that court of 28 December 2004 in Kawasaki Motors Europe NV v Inspecteur van de Belastingdienst/Douane district Rotterdam

(Case C-15/05)

(2005/C 82/18)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by judgment of the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal) (Netherlands) of 28 December 2004, received at the Court Registry on 19 January 2005, for a preliminary ruling in the proceedings between Kawasaki Motors Europe NV and Inspecteur van de Belastingdienst/Douane district Rotterdam on the following questions:

1. Is Commission Regulation (EC) No 2518/98⁽¹⁾ of 23 November 1998 concerning the classification of certain goods in the Combined Nomenclature (OJ 1998 L 315) valid in so far as the new, four-wheel all terrain vehicles described at point 5 of the Annex thereto are classified as a vehicle designed for the transport of persons within the meaning of subheading 8703 21 of the CCT?
2. If the regulation is invalid, can the CCT be interpreted as meaning that the goods at issue can be classified under one of the subheadings of heading 8701 90 of the CCT?

⁽¹⁾ Commission Regulation (EC) No 2518/98 of 23 November 1998 concerning the classification of certain goods in the Combined Nomenclature (OJ 1998 L 315, p. 3).

Action brought on 25 January 2005 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-22/05)

(2005/C 82/19)

(Language of the case: French)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 25 January 2005 by the Commission of the European Communities, represented by G. Rozet and N. Yerrell, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by excluding persons working in fairground undertakings from the scope of national measures transposing Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time,⁽¹⁾ the Kingdom of Belgium has failed to fulfil its obligations under Articles 1(3) and 17 of that directive;
2. order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The exclusion of persons working in fairground undertakings from the scope of national legislation transposing Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time is not provided for by Article 1(3) of that directive defining its scope. According to that provision, the Directive applies to all sectors of activity, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training. The category of persons working in fairground undertakings is not referred to in that article and moreover does not satisfy the conditions of any of the derogations allowed by Article 17 of the Directive, which furthermore have not been relied on by the Belgian authorities. By introducing an exception which the Directive itself did not provide for, Belgium has incorrectly transposed that directive, thereby failing to fulfil its obligations.

⁽¹⁾ OJ L 307, 13.12.1993, p. 18

Action brought on 25 January 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-23/05)

(2005/C 82/20)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 25 January 2005 by the Commission of the European Communities, represented by G. Rozet and N. Yerrell, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that directive⁽¹⁾ or, in any event, by failing to communicate those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2(1) of that directive;
2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for transposition of the Directive into national law expired on 1 August 2003.

⁽¹⁾ OJ L 195, 01.08.2000, p. 41.

Reference for a preliminary ruling from the Landesgericht Korneuburg (Austria) by order of that court of 13 January 2005 in Plato Plastik Robert Frank GmbH v CAROPACK Handels GmbH

(Case C-26/05)

(2005/C 82/21)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht Korneuburg (Regional Court, Korneuburg) (Austria) of 13 January 2005, received at the Court Registry on 27 January 2005, for a preliminary ruling in the proceedings between Plato Plastik Robert Frank GmbH and CAROPACK Handels GmbH on the following questions:

1. Principal question: 'For the purposes of European Parliament and Council Directive 94/62/EC of 20 December 1994, is the producer of sales packaging, grouped packaging or transport packaging, namely the packaging producer, always the party which, in the course of the exercise of its professional activity, brings goods, or has goods brought, directly or indirectly together with the product intended as packa-

ging, and does this also apply to carrier bags? Is the producer (supplier) of products described in the first sentence of Article 3(1), namely products used for the containment, protection, handling, delivery and presentation of goods, and non-returnable items used for the same purposes, therefore a producer (supplier) of packaging materials (packaging products) and not a producer of sales packaging, grouped packaging or transport packaging (packaging producer; compare the corresponding terms in Article 3(11) of the directive)?'

2. First additional question, should the principal question be answered in the affirmative: 'Is the producer of a carrier bag accordingly not a producer of sales packaging, grouped packaging or transport packaging but a producer of packaging materials (packaging products)?'

3. Second additional question, should the first additional question be answered in the affirmative: 'Is it contrary to Community law, in particular to the principle of equality, to the prohibition on objectively unjustified restrictions on the freedom to carry on a business and to the prohibition on creating distortions of competition, for the legislation of a Member State to provide, on pain of a penalty, that the producer of packaging materials, particularly of carrier bags, must either accept their return or participate in a collection and recovery system in this regard, unless a party further down the distribution chain takes over that obligation and provides the producer of the packaging materials with a legally valid declaration on the matter?'

Reference for a preliminary ruling from the Finanzgericht Hamburg by order of that court of 5 January 2005 in Elfering Export GmbH v Hauptzollamt Hamburg-Jonas

(Case C-27/05)

(2005/C 82/22)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Hamburg (Finance Court, Hamburg) (Germany) of 5 January 2005, received at the Court Registry on 27 January 2005, for a preliminary ruling in the proceedings between Elfering Export GmbH and Hauptzollamt Hamburg-Jonas on the following question: