

Action brought on 5 April 2005 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-152/05)

(2005/C 132/33)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 5 April 2005 by the Commission of the European Communities, represented by R. Lyal and K. Gross, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by excluding, in the first sentence of Paragraph 2(1) of the *Eigenheimzulagengesetz* (Law on allowances for owner-occupied homes), the grant, to persons subject to unlimited taxation, of owner-occupied home allowance in respect of properties situated in other Member States irrespective of whether comparable assistance can be claimed there, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18, 39 and 43 of the EC Treaty;
2. order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

In the European Commission's view, the owner-occupied home allowance granted by the German State has discriminatory features. Persons subject to unlimited taxation in Germany who acquire a flat or house for the purpose of habitation in Germany are entitled to owner-occupied home allowance. Persons subject to unlimited taxation in Germany who live outside Germany and want to acquire a property there for the purpose of habitation are, by contrast, not granted owner-occupied home allowance.

Three groups of people are placed at a disadvantage by the German rules: (i) State employees who are resident abroad; (ii) frontier workers at least 90 % of whose income is subject to German income tax; and (iii) diplomats and European Union officials from Germany.

The Commission regards this, according to the status of the affected group of persons, as infringing freedom of movement for workers (Article 39 EC), freedom of establishment (Article 43 EC) or freedom of movement under Article 18 EC. All the cases have a sufficient cross-border element to justify the applicability of the relevant Treaty provision.

The Commission considers that the decision of the Court of Justice in Case C-279/93 *Schumacker* can be transposed to the present instance. Every person who is subject to unlimited taxation in Germany — and thus in principle pays tax on his worldwide income in Germany and in this way participates in the financing of Germany society — must be able to benefit

from advantages financed out of taxation in the same way as a person resident in Germany. It is necessary to avoid a situation where the persons concerned are not granted advantages connected with their personal situation either in the State where they reside or in the State where they pursue their occupation.

In practice it is not very likely that a person subject to unlimited taxation in Germany will subject to unlimited taxation in another State. Account can be taken of that exceptional situation by prohibiting concurrent receipt of the German owner-occupied home allowance and comparable foreign assistance.

The restriction of owner-occupied home allowance to properties situated in Germany is not justified. The housing situation in Germany can also be improved if, for example, frontier workers acquire residential property not far over the border instead of moving to Germany. The German Government did not explain adequately in the pre-litigation procedure what purpose is ultimately served by limiting the assistance to German territory. Even if it were permissible for a Member State to promote housing construction in its territory alone, the German rules are not in themselves logical. If the Federal Republic of Germany wishes to promote every form of housing construction in Germany, it is not evident why the assistance is restricted to persons subject to unlimited taxation in Germany. Persons subject to limited taxation in Germany can also acquire residential accommodation there and thus promote housing construction.

Community law does not in any way require that the acquisition of second homes in other Member States be supported financially. It is for the national legislature alone to determine the scope of the assistance. Its freedom of decision is, however, limited by the fundamental freedoms enshrined in the EC Treaty.

Action brought on 5 April 2005 by the Commission of the European Communities against the Hellenic Republic

(Case C-156/05)

(2005/C 132/34)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 5 April 2005 by the Commission of the European Communities, represented by Eleni Tserepa-Lacombe and Nicola Yerrell, of its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt or, in any event, to notify to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2000/34/EC ⁽¹⁾ 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, the Hellenic Republic has failed to fulfil its obligations under the Directive;
2. order the Hellenic Republic 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, 1.8.2000, p. 41.

Action brought on 6 April 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-159/05)

(2005/C 132/35)

(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 6 April 2005 by the Commission of the European Communities, represented by D. Maidani, acting as Agent, 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 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ⁽¹⁾ and, in any event, by failing to communicate them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period allowed for transposition of the Directive into national law expired on 27 December 2003.

⁽¹⁾ OJ L 168, 27.06.2002, p. 43.

Action brought on 7 April 2005 by the Commission of the European Communities against the Italian Republic

(Case C-161/05)

(2005/C 132/36)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 7 April 2005 by the Commission of the European Communities, represented by C. Cattabriga, member of the Commission's Legal Service.

The applicant claims that the Court should:

1. declare that, by failing to notify the data referred to in Articles 15(4) and 18(1) of Council Regulation (EEC) No 2847/93 ⁽¹⁾ of 12 October 1993 establishing a control system applicable to the common fisheries policy, the Italian Republic has failed to fulfil its obligations under those provisions;
2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

Articles 15(4) and 18(1) of Regulation No 2847/93 require the Member States to notify by computer transmission and within a certain period the Commission of certain data. The Italian authorities did not notify within the prescribed periods the data in question for 1999 and 2000. The Italian Republic has therefore infringed its notification obligations under those provisions.

⁽¹⁾ OJ 1993 L 261 of 20.10.1993, p. 1.