

2. Orders the Federal Republic of Germany to pay the costs.

(¹) OJ C 47 of 21.02.2004

JUDGMENT OF THE COURT

(Second Chamber)

of 1 December 2005

in Case C-14/04, Reference for a preliminary ruling from the Conseil d'État, Abdelkader Dellas and Others v Premier ministre and Others (¹)

(Social policy — Protection of the safety and health of workers — Directive 93/104/CE — Concept of 'working time' — Scope — National legislation providing for a ceiling more favourable to workers, in particular as regards maximum weekly working time — Determination of working time in certain social establishments — On-call duty where the worker is required to be present at the workplace — Periods of inactivity on the part of the worker in the context of such duty — National system of calculation of hours of presence differentiated according to the intensity of the activity)

(2006/C 36/13)

(Language of the case: French)

In Case C-14/04: reference for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 3 December 2003, received at the Court on 15 January 2004, in the proceedings between Abdelkader Dellas, Confédération générale du travail, Fédération nationale des syndicats des services de santé et des services sociaux CFDT, Fédération nationale de l'action sociale Force ouvrière and Premier ministre, Ministre des Affaires sociales, du Travail et de la Solidarité, in the presence of: Union des fédérations et syndicats nationaux d'employeurs sans but lucratif du secteur sanitaire, social et médico-social — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen (Rapporteur), R. Silva de Lapuerta, P. Kūris and G. Arestis, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 1 December 2005, in which it rules:

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time must be interpreted as precluding legislation of a Member State which, with respect to on-call duty performed by workers in certain social and medico-social establishments during which they are required to be physically present at their workplace, lays down, for the purpose of calculating the actual working time, a system of equivalence such as that at issue in the

main proceedings, where compliance with all the minimum requirements laid down by that directive in order to protect effectively the safety and health of workers is not ensured.

Where national law fixes a ceiling more favourable to workers, in particular for maximum weekly working time, the relevant thresholds or ceilings for ascertaining whether the protective rules laid down by that directive are complied with are exclusively those set out in the directive.

(¹) OJ C 59, 06.03.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 8 December 2005

in Case C-33/04: Commission of the European Communities v Grand Duchy of Luxembourg (¹)

(Failure of a Member State to fulfil obligations — Telecommunications — Directive 97/33/EC — Article 7(5) — Obligation to verify the compliance of cost accounting systems by a competent independent body and to publish a statement of compliance — Directive 98/10/EC — Article 18(1) and (2) — Failure to apply correctly the measures adopted as regards verification of the compliance of the cost accounting system by the national regulatory authority and the annual publication of a statement of compliance — Admissibility — Interest in bringing proceedings — Pre-litigation procedure — Rights of the defence — Directives 2002/19/EC, 2002/21/EC and 2002/22/EC — Transitional provisions — Member States to refrain, during the period laid down for transposition of a directive, from taking any measures liable seriously to compromise the result prescribed by that directive — Reference interconnection offers)

(2006/C 36/14)

(Language of the case: French)

In Case C-33/04, Commission of the European Communities (Agent: W. Wils and M. Shotton) v Grand Duchy of Luxembourg (Agents: M. Thill and S. Schreiner, assisted by A. Verheyden and F. Bimont, avocats,) — action under Article 226 EC for failure to fulfil obligations, brought on 29 January 2004 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, P. Kūris, G. Arestis (Rapporteur) and J. Klůčka, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 8 December 2005, in which it:

1. Declares that, by failing to comply with the obligations to verify the compliance of cost accounting systems by a competent independent body and to publish a statement of compliance for the years 1998 and 1999, in accordance with Article 7(5) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) and by failing to apply correctly in practice the measures relating to the verification of the compliance of the cost accounting system by the national regulatory authority or another competent body, independent of the telecommunications organisation and approved by that regulatory authority, for the year 2000, in accordance with the provisions of Article 18(1) and (2) of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment, as maintained by Article 27 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ('the Framework Directive'), read in conjunction with Article 16 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('the Universal Service Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations under those provisions;
2. Orders the Commission of the European Communities and the Grand Duchy of Luxembourg to bear their own costs.

(¹) OJ C 71 of 23.03.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 15 December 2005

in Case C-63/04: Reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division Centralan Property Ltd v Commissioners of Customs & Excise (¹)

(Sixth VAT Directive — Article 20(3) — Capital goods — Deduction of input tax — Adjustments of deductions — Immovable property — Disposal by means of two connected transactions, one exempt, the other taxable — Apportionment)

(2006/C 36/15)

(Language of the case: English)

In Case C-63/04: Reference for a preliminary ruling under Article 234 EC from the High Court of Justice of England and

Wales, Chancery Division (United Kingdom), made by decision of 21 February 2003, received at the Court on 13 February 2004, in the proceedings pending before that court between Centralan Property Ltd and Commissioners of Customs & Excise — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. La Pergola, J.-P. Puissochet, U. Löhmus and A. Ó Caoimh (Rapporteur), Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 15 December 2005, the operative part of which is as follows:

Article 20(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, is to be interpreted as meaning that, where a 999-year lease over capital goods is granted to a person against the payment of a substantial premium and the freehold reversion in that property is transferred three days later to another person at a much lower price, and where those two transactions

— are inextricably linked, and

— consist of a first transaction which is exempt and a second transaction which is taxable,

— and if those transactions, owing to the transfer of the right to dispose of those capital goods as owner, constitute supplies within the meaning of Article 5(1) of that directive,

the goods in question are regarded, until the expiry of the period of adjustment, as having been used in business activities which are presumed to be partly taxable and partly exempt in proportion to the respective values of the two transactions.

(¹) OJ C 85, 3.04.2004.

JUDGMENT OF THE COURT

(Grand Chamber)

of 6 December 2005

in Case C-66/04: United Kingdom of Great Britain and Northern Ireland v European Parliament, Council of the European Union (¹)

(Foods — Regulation (EC) No 2065/2003 — Smoke flavourings — Choice of legal basis)

(2006/C 36/16)

(Language of the case: English)

In Case C-66/04: Action for annulment under Article 230 EC, brought on 11 February 2004, United Kingdom of Great Britain and Northern Ireland (Agents: R. Caudwell and M.