Parties to the main proceedings

Applicant: Land Oberösterreich

Defendant: ČEZ a.s.

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Article 16(1)(a) of the Brussels Convention — Exclusive jurisdiction for 'proceedings which have as their object rights *in rem* in immovable property' — Action for cassation of a nuisance caused, or likely to be caused to agricultural land by a neighbouring nuclear plant located on the territory of a non-contracting State

Operative part of the judgment

The Court:

Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended most recently by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that an action which, like that brought under Paragraph 364(2) of the Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code) in the main proceedings, seeks to prevent a nuisance affecting or likely to affect land belonging to the applicant, caused by ionising radiation emanating from a nuclear power station situated on the territory of a neighbouring State to that in which the land is situated, does not fall within the scope of that provision.

([1]) OJ C 251, 9.10.2004.

Judgment of the Court (Grand Chamber) of 16 May 2006 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) — The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust, Secretary of State for Health

(Case C-372/04) ([1])

(Social security — National health system funded by the State — Medical expenses incurred in another Member State — Articles 48 EC to 50 EC and 152(5) EC — Article 22 of Regulation (EEC) No 1408/71)

(2006/C 165/11)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Applicants: The Queen, on the application of Yvonne Watts

Defendants: Bedford Primary Care Trust, Secretary of State for Health

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Articles 48, 49, 50, 55 and 152(5) EC and Article 22 of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, and of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 118/97 — Conditions for reimbursement of the costs of hospital treatment incurred without prior authorisation in a Member State other than that of the competent authority

Operative part of the judgment

1. *The second subparagraph of Article 22(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, must be interpreted as meaning that, in order to be entitled to refuse to grant the authorisation referred to in Article 22(1)(c)(i) of that regulation on the ground that there is a waiting time for hospital treatment, the competent institution is required to establish that that time does not exceed the period which is acceptable on the basis of an objective medical assessment of the clinical needs of the person concerned in the light of all of the factors characterising his medical condition at the time when the request for authorisation is made or renewed, as the case may be.*

2. *Article 49 EC applies where a person whose state of health necessitates hospital treatment goes to another Member State and there receives such treatment for consideration, there being no need to determine whether the provision of hospital treatment within the national health service with which that person is registered is in itself a service within the meaning of the Treaty provisions on the freedom to provide services.*

   Article 49 EC must be interpreted as meaning that it does not preclude reimbursement of the cost of hospital treatment to be provided in another Member State from being made subject to the grant of prior authorisation by the competent institution.

   A refusal to grant prior authorisation cannot be based merely on the existence of waiting lists intended to enable the supply of hospital care to be planned and managed on the basis of predetermined general clinical priorities, without carrying out an objective medical assessment of the patient's medical condition, the history and probable course of his illness, the degree of pain he is in and/or the nature of his disability at the time when the request for authorisation was made or renewed.

Where the delay arising from such waiting lists appears to exceed an acceptable time having regard to an objective medical assessment of the abovementioned circumstances, the competent institution may not refuse the authorisation sought on the grounds of the existence of those waiting lists, an alleged distortion of the normal order of priorities linked to the relative urgency of the cases to be treated, the fact that the hospital treatment provided under the national system in question is free of charge, the obligation to make available specific funds to reimburse the cost of treatment to be provided in another Member State and/or a comparison between the cost of that treatment and that of equivalent treatment in the competent Member State.

3. *Article 49 EC must be interpreted as meaning that where the legislation of the competent Member State provides that hospital treatment provided under the national health service is to be free of charge, and where the legislation of the Member State in which a patient registered with that service was or should have been authorised to receive hospital treatment at the expense of that service does not provide for the reimbursement in full of the cost of that treatment, the competent institution must reimburse that patient the difference (if any) between the cost, objectively quantified, of equivalent treatment in a hospital covered by the service in question up to the total amount invoiced for the treatment provided in the host Member State and the amount which the institution of the latter Member State is required to reimburse under Article 22(1)(c)(i) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, on behalf of the competent institution pursuant to the legislation of that Member State.*

Article 22(1)(c)(i) of Regulation No 1408/71 must be interpreted as meaning that the right which it confers on the patient concerned relates exclusively to the expenditure connected with the healthcare received by that patient in the host Member State, namely, in the case of hospital treatment, the cost of medical services strictly defined and the inextricably linked costs relating to his stay in the hospital.

Article 49 EC must be interpreted as meaning that a patient who was authorised to go to another Member State to receive there hospital treatment or who received a refusal to authorise subsequently held to be unfounded is entitled to seek from the competent institution reimbursement of the ancillary costs associated with that cross-border movement for medical purposes provided that the legislation of the competent Member State imposes a corresponding obligation on the national system to reimburse in respect of treatment provided in a local hospital covered by that system.

4. *The obligation of the competent institution under both Article 22 of Regulation No 1408/71, as amended and updated by Regulation No 118/97, and Article 49 EC to authorise a patient registered with a national health service to obtain, at that institution's expense, hospital treatment in another Member State where the waiting time exceeds an acceptable period having regard to an objective medical assessment of the condition and clinical requirements of the patient concerned does not contravene Article 152(5) EC.*

([1]) OJ C 273, 6.11.2004.

Judgment of the Court (Third Chamber) of 11 May 2006 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) — Commissioners of Customs & Excise, Attorney General v Federation of Technological Industries and Others

(Case C-384/04) ([1])

(Sixth VAT Directive — Articles 21(3) and 22(8) — National measures to combat fraud — Joint and several liability for the payment of VAT — Provision of security for VAT payable by another trader)

(2006/C 165/12)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Appellants: Commissioners of Customs & Excise, Attorney General

Respondents: Federation of Technological Industries and Others

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation 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 (OJ 1977 L 145, p. 1) — Scope of Article 21(3) whereby Member States may provide that a person other than the taxpayer is jointly and severally liable for payment of the tax — 'Carousel' type frauds

Operative part of the judgment

1. *Article 21(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 Directives 2000/65/EC of 17 October 2000 and 2001/115/EC of 20 December 2001, is to be interpreted as allowing a Member State to enact legislation, such as that in issue in the main proceedings, which provides that a taxable person, to whom a supply of goods*