

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 49 EC and 50 EC — National legislation requiring principals and contractors, on pain of a fine, to withhold 15 % of the amount billed by contracting partners not registered in Belgium and to pay the sum withheld to the Belgian authorities, in order to ensure that the tax debts of those contracting partners are paid — Joint and several liability of principals and contractors for the tax debts of their contracting partners who are not registered

Operative part of the judgment

The Court:

1. Declares that, by obliging principals and contractors who have recourse to foreign contracting partners not registered in Belgium to withhold 15 % of the sum payable for work carried out and by imposing on those principals and contractors joint and several liability for the tax debts of such contracting partners, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 EC and 50 EC;
2. Orders the Kingdom of Belgium to pay the costs.

⁽¹⁾ OJ C 300, 04.12.2004.

Judgment of the Court (Grand Chamber) of 14 November 2006 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Gent (Belgium)) — Mark Kerckhaert, Bernadette Morres v Belgische Staat

(Case C-513/04) ⁽¹⁾

(Income tax — Dividends — Tax burden on dividends from shareholdings in companies established in another Member State — No possibility in the State of residence to set off income tax levied at source in another Member State)

(2006/C 326/12)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Gent

Parties to the main proceedings

Applicants: Mark Kerckhaert, Bernadette Morres

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Gent — Interpretation of Article 56(1) EC — Restriction

resulting from a national income tax provision — Domestic and foreign dividends — Uniform tax rate — Tax burden higher in regard to dividends from shareholdings in companies established in another Member State — Taxation at source — Not taken into account — Free movement of capital — Discrimination

Operative part of the judgment

Article 73b(1) of the EC Treaty (now Article 56(1) EC) does not preclude legislation of a Member State, such as Belgian tax legislation, which, in the context of tax on income, makes dividends from shares in companies established in the territory of that State and dividends from shares in companies established in another Member State subject to the same uniform rate of taxation, without providing for the possibility of setting off tax levied by deduction at source in that other Member State.

⁽¹⁾ OJ C 57, 5.3.2005.

Judgment of the Court (First Chamber) of 9 November 2006 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Pirkko Marjatta Turpeinen

(Case C-520/04) ⁽¹⁾

(Freedom of movement for persons — Income tax — Retirement pension — Higher rate of tax for retired persons residing in another Member State)

(2006/C 326/13)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Pirkko Marjatta Turpeinen

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 12 EC and 39 EC and of Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28) — National legislation under which the income of non-residents is subject to a withholding tax — Pension paid to a retired person resident in another Member State subject to a higher rate of tax than if that person had been resident in the Member State concerned