

Erroneous application of Article 81(3) EC

According to the contested judgment the Commission failed in its assessment of the causal link between parallel trade and innovation and between article 4 of the General Sales Conditions and innovation. The CFI also held that the Commission's conclusions regarding the effect of the currency fluctuations on the parallel trade between Spain and the UK were erroneous. The applicant submits that the Commission's appraisal regarding these points was entirely correct and that there was no manifest error of assessment and that the CFI therefore wrongly interpreted article 81(3) EC.

Finally the applicant submits that the CFI reversed the burden of proof regarding article 81(3) EC and did not correctly analyse the Commission's evaluation of the second, third and fourth conditions of that article. The applicant maintains that the four conditions for granting an exemption under article 81(3) are cumulative and therefore the non-fulfilment of only one of these conditions is sufficient grounds for the Commission to reject the application for exemption. As a consequence the CFI cannot annul a negative decision if it has not previously completely assessed the Commission's analysis of the four conditions contained in article 81(3) and concluded that the Commission committed manifest errors of assessment as regards those conditions.

Reference for a preliminary ruling from House of Lords (United Kingdom) made on 20 December 2006 — Stringer and others v Her Majesty's Revenue and Customs

(Case C-520/06)

(2007/C 56/33)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Stringer and others

Defendant: Her Majesty's Revenue and Customs

Questions referred

1. Does Article 7(1) of Directive 2003/88/EC⁽¹⁾ mean that a worker on indefinite sick leave is entitled (i) to designate a

future period as paid annual leave and (ii) to take paid annual leave, in either case during a period that would otherwise be sick leave?

2. If a Member State exercises its discretion to replace the minimum period of paid annual leave with an allowance in lieu on termination of employment under Article 7(2) of Directive 2003/88/EEC, in circumstances in which a worker has been absent on sick leave for all or part of the leave year in which the employment relationship is terminated, does Article 7(2) impose any requirements or lay down any criteria as to whether the allowance is to be paid or how it is to be calculated?

⁽¹⁾ OJ L 299, p. 9.

Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 28 December 2006 — Heinz Huber v Federal Republic of Germany

(Case C-524/06)

(2007/C 56/34)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicant: Heinz Huber

Defendant: Federal Republic of Germany

Questions referred

Is the general processing of personal data of foreign citizens of the Union in a central register of foreign nationals compatible with

- (a) the prohibition of discrimination on grounds of nationality against citizens of the Union who exercise their right to move and reside freely within the territory of the Member States (first paragraph of Article 12 EC in conjunction with Articles 17 EC and 18(1) EC),

- (b) the prohibition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State (first paragraph of Article 43 EC),
- (c) the requirement of necessity under Article 7(e) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾?

⁽¹⁾ OJ L 281, 1995, p. 31.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 27 December 2006 — R.H.H. Renneberg v Staatssecretaris van Financiën

(Case C-527/06)

(2007/C 56/35)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: R.H.H. Renneberg

Respondent: Staatssecretaris van Financiën

Question referred

Must Articles 39 EC and 56 EC be interpreted as precluding, either individually or jointly, a situation in which a taxpayer who, in his country of residence, has (on balance) negative income from a dwelling owned and occupied by him and obtains all of his positive income, specifically work-related income, in a Member State other than that in which he resides is not permitted by that other Member State (the State of employment) to deduct the negative income from his taxed work-related income, even though the State of employment does allow its own residents to make such a deduction?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 29 December 2006 — Emm. G. Lianakis AE, Sima Anonimi Techniki Etairia Meleton kai Epivlepseon and Nikolaos Vlachopoulos v Dimos Alexandroupolis, Planitiki A.E., Aikaterini Georgoula, Dim. Vasios, N. Loukatos & Sinergates Anonimi Etairia Meleton, Eratosthenis Meletitiki A.E., A. Pantazis — Pan. Kirio-poulou & Sinergates ('Filon') O.E. and Nikolaos Sideris

(Case C-532/06)

(2007/C 56/36)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias (Council of State)

Parties to the main proceedings

Applicants: Emm. G. Lianakis AE, Sima Anonimi Techniki Etairia Meleton kai Epivlepseon and Nikolaos Vlachopoulos

Defendants: Dimos Alexandroupolis, Planitiki A.E., Aikaterini Georgoula, Dim. Vasios, N. Loukatos & Sinergates Anonimi Etairia Meleton, Eratosthenis Meletitiki A.E., A. Pantazis — Pan. Kirio-poulou & Sinergates ('Filon') O.E. and Nikolaos Sideris

Question referred

If the tender notice for the award of a contract for services makes provision only for the order of priority of the award criteria, without stipulating the weighting factors for each criterion, does Article 36 of Directive 92/50/EEC ⁽¹⁾ relating to the coordination of the procedures for the award of public service contracts allow criteria to be weighted by the evaluation committee at a later date and, if so, under what conditions?

⁽¹⁾ OJ L 209, 24.7.1992, p. 1.

Reference for a preliminary ruling from Court of Appeal (United Kingdom) made on 28 December 2006 — 02 Holdings Limited & 02 (UK) Limited v Hutchinson 3G UK Limited

(Case C-533/06)

(2007/C 56/37)

Language of the case: English

Referring court

Court of Appeal