

The Hellenic Republic submits that the Court of First Instance of the European Communities misinterpreted Article 15 of the initial memorandum of understanding in holding that, prior to signature of the additional memorandum, an agreement was implicitly concluded by the partners on 24 February 1997 to implement the project and in this way Article 15(1) essentially was set aside or was amended.

Action brought on 20 April 2007 — Commission of the European Communities v Ireland

(Case C-211/07)

(2007/C 155/21)

Language of the case: English

Reference for a preliminary ruling from the Bayerisches Landessozialgericht (Germany) lodged on 20 April 2007 — Petra von Chamier-Glisczinki v Deutsche Angestellten-Krankenkasse

(Case C-208/07)

(2007/C 155/20)

Language of the case: German

Referring court

Bayerisches Landessozialgericht

Parties to the main proceedings

Appellant: Petra von Chamier-Glisczinki

Respondent: Deutsche Angestellten-Krankenkasse

Questions referred

1. Should Article 19(1)(a) — in conjunction, as the case may be, with Article 19(2) — of Regulation (EEC) No 1408/71 ⁽¹⁾ be interpreted in the light of Article 18 EC and Articles 39 EC and 49 EC, in conjunction with Article 10 of Regulation (EEC) No 1612/68 ⁽²⁾, as meaning that an employed or self-employed person, or a member of that person's family, may not receive any cash benefits or reimbursement provided on behalf of the competent institution by the institution of the place of residence, if there is provision under the law applicable to the institution of the place of residence for persons insured by that institution to receive only cash benefits, and not benefits in kind?
2. If there is no such entitlement to benefits in kind, is there, in the light of Article 18 EC, or Articles 39 EC and 49 EC, any entitlement to payment — subject to prior approval — by the competent institution of the costs of in-patient care in a care home situated in another Member State, in the amount of the benefits payable in the competent Member State?

⁽¹⁾ OJ, English Special Edition 1971(II), p. 416.

⁽²⁾ OJ, English Special Edition 1968(II), p. 475.

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, Agent)

Defendant: Ireland

The applicant claims that the Court should:

- declare that in maintaining in force Sections 5.2 and 5.3 of the Motor Insurance Agreement of 31st May 2004 and in particular by i) excluding compensation to users of vehicles if all vehicles involved are uninsured, and ii) limiting the right to compensation in respect of persons in an uninsured vehicle which did not cause the damage or injury, the Republic of Ireland has failed to fulfil its obligations under Council Directive 84/5/EEC of 30th December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and in particular Article 1(4), third subparagraph thereof, and
- order Ireland to pay the costs.

Pleas in law and main arguments

Section 5.3 of the Agreement between the Minister of Transport and the Motor Insurers' Bureau of Ireland of 31st May 2004 ('the Agreement') provides for the exclusion of compensation for **all** drivers of uninsured vehicles, whether causing the accident or not), and thus goes beyond the permitted scope of the exclusion laid down in the third subparagraph of Article 1(4) of the directive.

As regards the situation of passengers travelling in uninsured vehicles, section 5.2 of the Agreement provides for a general exclusion from compensation in all cases where the injured person 'knew or ought reasonably to have known that there was not in force an approved policy of insurance'. **All** passengers in uninsured vehicles are accordingly treated identically, regardless of whether they were travelling in the vehicle causing the damage or injury or not. This is in clear contradiction with the wording of the third subparagraph of Article 1(4) of the directive, which

expressly distinguishes between these two situations and limits the exclusion of compensation in relation to those persons (including the driver) in the vehicle that **caused the damage or injury**.

Appeal brought on 23 April 2007 by Indorata-Serviços e Gestão, Lda against the judgment delivered on 15 February 2007 in Case T-204/04 Indorata-Serviços e Gestão, Lda v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-212/07 P)

(2007/C 155/22)

Language of the case: German

Parties

Appellant: Indorata-Serviços e Gestão, Lda (represented by: T. Wallentin, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

- set aside the judgment of the Court of First Instance of 15 February 2007 in Case T-204/04 ⁽¹⁾;
- order the respondent to pay the costs.

Pleas in law and main arguments

The appellant argues four grounds in support of its appeal against the above judgment of the Court of First Instance.

By its first ground of appeal, the appellant relies on infringement of Article 7(1)(b) of Regulation No 40/94. Contrary to the observations of the Court, the term HAIRTRANSFER is capable of registration since its fanciful nature gives it distinctive character and is therefore capable of distinguishing the goods and services of the appellant from those of other undertakings.

By its second ground of appeal, the appellant relies on infringement of Article 7(1)(c) of Regulation No 40/94. By its finding that the sign HAIRTRANSFER in respect of the goods applied for in Class 8 has a sufficiently direct and genuine link to the goods concerned and that the sign HAIRTRANSFER indicates

the intended purpose of the goods in Class 22 to the relevant public, and therefore in its entirety also shows a sufficiently direct and genuine link to the goods concerned in Class 22, the Court of First Instance misinterpreted and misapplied the provision at issue. In addition, HAIRTRANSFER cannot be descriptive in respect of the rejected goods per se, since an 'exclusively descriptive' function of goods is not appropriate for services (!)

By its third ground of appeal, the appellant relies on breach of the principle of equal treatment. Signs which are definitely similar to the set of words at issue have been the subject of decisions of OHIM on the registration of Community trade marks. The appellant stated in the proceedings before the Court of First Instance that the sign in the present case has distinctive character also on account of the settled practice of OHIM, the Austrian Patent Office and the Patent Offices of numerous Member States.

Finally, by its fourth ground of appeal, the appellant relies on breach of general principles of EC law. The judgement of the Court of First Instance under appeal infringes the requirement of objectivity and the principle of coherence in decision-making, inasmuch as within one and the same application for a Community trade mark registration a distinction is made which cannot be objectively applied. It is quite evident that 'hair thickening' in Class 44 and rejected by the Office is included in hair lengthening. Registration of the sign HAIRTRANSFER in respect of 'hair lengthening' and rejection in respect of 'hair thickening' is therefore objectively unjustified.

⁽¹⁾ OJ C 82 of 14.4.2007, p. 32.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 April 2007 — Verlag Schawe GmbH v Sächsisches Druck- und Verlagshaus AG

(Case C-215/07)

(2007/C 155/23)

Language of the case: German

Referring court

Bundesgerichtshof