Appeal brought on 5 July 2007 by Koldo Gorostiaga Atxalandabaso against the order of the Court of First Instance (Second Chamber) delivered on 24 April 2007 in Case T-132/06, Gorostiaga Atxalandabaso v European Parliament

(Case C-308/07 P)

(2007/C 211/43)

Language of the case: French

Parties

Appellant: Koldo Gorostiaga Atxalandabaso (represented by: D. Rouget, lawyer)

Other party to the proceedings: European Parliament

Form of order sought

— declare this appeal to be well-founded and, consequently, annul the order of the Court of First Instance of 24 April 2007;

— give a definitive ruling on the proceedings and annul the decision of the Secretary General of the European Parliament of 22 March 2006, ordering the reimbursement by the appellant of a sum of EUR 118 360,18 and proceeding to make a deduction from various parliamentary allowances owed to the appellant by the Parliament;

— order the defendant to pay its own costs and those incurred by the appellant.

Pleas in law and main arguments

The appellant makes six pleas in support of his appeal.

In his first plea, the appellant challenges the use of Article 111 of the Rules of Procedure of the Court of First Instance, which he claims denies him the right to a fair trial since he has neither been given prior opportunity to express his views before the Court of First Instance nor been able to reply to the Parliament's arguments.

In his second plea, the appellant submits that the principle of impartiality has been infringed since the same judges ruled on the substance of the two successive actions which he brought in Cases T-146/04 and T-132/06 — which gave rise, respectively, to the judgment of 22 December 2005 and to the order of 24 April 2007. That principle demands that a judge cannot hear and determine, even at the same level of jurisdiction, a case based on facts which are identical, or sufficiently connected, to those of a case on which he has ruled previously.

In his third plea, the appellant claims that the Court incorrectly interpreted the scope of the judgment of 22 December 2005. Since the decision taken by the Secretary General of the Parliament on 24 February 2004 had been annulled as *ultra vires*, the appellant in fact had no reason to lodge an appeal against that judgment before the Court of Justice, since the effect of the finding of *ultra vires* by the Court of First Instance was that the flawed decision did not exist.

In his fourth plea, the appellant challenges the Court's automatic refusal to take into account the arguments which he had put forward to obtain the annulment of the decision of the Secretary General of the Parliament of 22 March 2006. He submits that that last decision is in fact a new decision, separate from the decision of 24 February 2004, and the Court therefore had a duty to examine all the pleas, of substance and procedure, which he had put forward to challenge it.

In his fifth plea, the appellant criticises the Court for having refused to consider the plea alleging *force majeure*, even though no such plea had been raised in the action brought against the decision of 24 February 2004.

Lastly, in his sixth plea the appellant criticises the Court for having misinterpreted the principle of sound administration by refusing, inter alia, any reference to the Code of Good Administrative Behaviour adopted by the Parliament on 6 September 2001.

Reference for a preliminary ruling from the Lunds Tingsrätt (Sweden) lodged on 28 June 2007 — Svenska staten genom Tillsynsmyndigheten i konkurser v Anders Holmqvist

(Case C-310/07)

(2007/C 211/44)

Language of the case: Swedish

Referring court

Lunds Tingsrätt

Parties to the main proceedings

Applicant: Svenska staten genom Tillsynsmyndigheten i konkurser

Defendant: Anders Holmqvist

Questions referred

1. Is Article 8a of Council Directive 80/987/EEC ([1]) of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, most recently amended by Directive 2002/74/EC ([2]) of the European Parliament and of the Council, to be interpreted as meaning that, for an undertaking to be regarded as having activities in the territory of a particular Member State, it is necessary for that undertaking to have a subsidiary or a permanent place of business in that Member State?

2. If the answer to Question 1 is negative, what conditions must be met for an undertaking to be regarded as having activities in several Member States?

3. If the company is to be regarded as having activities in the territory of several Member States and an employee performs work for the company in several of those Member States, what criteria determine where the work is usually performed?

4. Does Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, most recently amended by Directive 2002/74/EC of the European Parliament and of the Council, have direct effect?

([1]) OJ 1980 L 283, p. 23.
([2]) OJ 2002 L 270, p. 10.

Action brought on 5 July 2007 — Commission of the European Communities v Republic of Austria

(Case C-311/07)

(2007/C 211/45)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and B. Schima, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that the Republic of Austria has failed to fulfil its obligations under Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems ([1]), by failing to lay down a time-limit in accordance with that provision for the inclusion of medicinal products in the yellow or green sections of the 'Erstattungskodex' (Reimbursement Code);

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

Directive 89/105/EEC aims, *inter alia*, to remove disparities in national measures of an economic nature which are adopted by the Member States in order to control public health expenditure on medicinal products. That includes measures to limit the range of products covered by national health insurance systems. In order to prevent such disparities from hindering intra-Community trade in medicinal products, the Directive lays down certain requirements in respect of the procedure for including products within the list of medicinal products covered by national health insurance systems. Accordingly, Article 6(1) of the Directive sets a time-limit for decisions on the inclusion of medicinal products in that 'positive list'.

In Austria, there are three different categories of reimbursement within the list of products covered by the health insurance system. The 'green section' covers medicinal products, the prescription and reimbursement of which without prior approval by the social security authority is appropriate and justified on medical and economic grounds. The costs of medicinal products listed in the 'yellow section' are reimbursed only in specific well-founded cases after prior approval by the social security authority. Finally, the 'red section' covers medicinal products in respect of which there is an application pending for inclusion in the yellow or green sections. The costs of medicinal products listed in the red section are reimbursed in specific well-founded cases after prior approval by the social security authority, provided that there is no alternative in the yellow or green sections. A valid application for inclusion of a medicinal product in the yellow or green sections of the Reimbursement Code thus necessarily means that that product is included in the red list for a certain period of time. Under the Austrian rules, medicinal products in the red section can remain in that section for no more than 24 months. If the average EU price cannot be established, the time-limit is extended to 36 months.

That rule is incompatible with Article 6(1) of Directive 89/10/EEC, because there is no guarantee that a decision on the inclusion of a medicinal product in the yellow or green sections, as required under that provision of the Directive, will be taken within 90 or 180 days.