

**Operative part of the judgment**

1. The concept of 'employment conditions' referred to in clause 4(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, and which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as meaning that it can act as a basis for a claim such as that at issue in the main proceedings, which seeks the grant to a fixed-term worker of a length-of-service allowance which is reserved under national law solely to permanent staff.
2. Clause 4(1) of the framework agreement must be interpreted as meaning that it precludes the introduction of a difference in treatment between fixed-term workers and permanent workers which is justified solely on the basis that it is provided for by a provision of statute or secondary legislation of a Member State or by a collective agreement concluded between the staff union representatives and the relevant employer.

(<sup>1</sup>) OJ C 257, 15.12.2005.

**Judgment of the Court (Grand Chamber) of 11 September 2007 — Commission of the European Communities v Federal Republic of Germany**

(Case C-318/05) (<sup>1</sup>)

*(Failure by a Member State to fulfil its obligations — Articles 18 EC, 39 EC, 43 EC and 49 EC — Income tax legislation — School fees — Tax deductibility limited to school fees paid to national private establishments)*

(2007/C 269/15)

Language of the case: German

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Gross and R. Lyal, Agents)

*Defendant:* Federal Republic of Germany (represented by: M. Lumma and U. Forsthoff, Agents)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Articles 18, 39, 43 and 49 EC — National income tax legislation which excludes without exception the possibility to deduct tax in respect of school fees of children who are receiving education abroad.

**Operative part of the judgment**

- 1) By generally excluding school fees for attending a school situated in another Member State from the tax deduction for special expenses under Article 10(1)(9) of the Law on Income Tax (Einkommensteuergesetz) in the version published on 19 October 2002, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18 EC, 39 EC, 43 EC and 49 EC.
- 2) The remainder of the action is dismissed.
- 3) The Federal Republic of Germany is ordered to pay the costs.

(<sup>1</sup>) OJ C 257, 15.10.2005.

**Judgment of the Court (Second Chamber) of 20 September 2007 — Commission of the European Communities v Italian Republic**

(Case C-388/05) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Special Protection Area 'Valloni e steppe pedegarganiche')*

(2007/C 269/16)

Language of the case: Italian

**Parties**

*Applicant:* Commission of the European Communities (represented by: A. Aresu and D. Recchiqa, Agents),

*Defendant:* (represented by: I. Braguglia, Agent, and G. Fiengo, Lawyer)

**Re:**

Failure of a Member State to fulfil obligations — Breach of Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and of Article 6(2), (3) and (4) and Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Obligation to take appropriate steps to avoid deterioration of natural habitats and species habitats within special areas of conservation — Industrial developments affecting the Gargano National Park

**Operative part of the judgment**

The Court:

1. Declares that, by failing to take appropriate steps to avoid, in the special protection area 'Valloni e steppe pedegarganiche', the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which that area was established, the Italian Republic failed, in respect of the period before 28 December 1998, to fulfil its obligations under Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and, in respect of the period after that date, has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;
2. Orders the Italian Republic to pay the costs.

(<sup>1</sup>) OJ C 22, 28.1.2006.

**Judgment of the Court (Grand Chamber) of 11 September 2007 (reference for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Merck Genericos-Produtos Farmacêuticos L.<sup>da</sup> v Merck & Co. Inc., Merck Sharp & Dohme, L.<sup>da</sup>**

(Case C-431/05) (<sup>1</sup>)

*(Agreement establishing the World Trade Organisation — Article 33 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) — Patents — Minimum term of protection — Legislation of a Member State providing for a lesser term — Article 234 EC — Jurisdiction of the Court — Direct effect)*

(2007/C 269/17)

Language of the case: Portugese

**Referring court**

Supremo Tribunal de Justiça

**Parties to the main proceedings**

Applicant: Merck Genéricos-Produtos Farmacêuticos L.<sup>da</sup>

Defendant: Merck & Co. Inc., Merck Sharp & Dohme, L.<sup>da</sup>

**Re:**

Reference for a preliminary ruling — Supremo Tribunal de Justiça — Interpretation of Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) annexed to the Agreement establishing the World Trade Organisation (OJ 1994 L 336, p. 214) — Jurisdiction in relation to interpretation — Direct effect

**Operative part of the judgment**

As Community legislation in the sphere of patents now stands, it is not contrary to Community law for Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation, signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), to be directly applied by a national court subject to the conditions provided for by national law.

(<sup>1</sup>) OJ C 36, 11.2.2006.

**Judgment of the Court (Third Chamber) of 13 September 2007 — Land Oberösterreich and Republic of Austria v Commission of the European Communities**

(Joined Cases C-439/05 P and C-454/05 P) (<sup>1</sup>)

*(Appeal — Directive 2001/18/EC — Decision 2003/653/EC — Deliberate release into the environment of genetically modified organisms — Article 95(5) EC — National provisions derogating from a harmonisation measure justified by new scientific evidence and by a problem specific to one Member State — Principle of the right to be heard)*

(2007/C 269/18)

Language of the case: German

**Parties**

Appellants: Land Oberösterreich (represented by G. Hörmanseder, Agent, and by F. Mittendorfer, Rechtsanwalt), Republic of Austria (represented by H. Dossi and A. Hable, Agents)

Other party to the proceedings: Commission of the European Communities (represented by: U. Wölker and M. Patakia, Agents)