

2. Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law even where the worker has been on sick leave for the whole or part of the leave year and where his incapacity to work has persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave.
3. Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that, on termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, which was the reason why he could not exercise his right to paid annual leave. For the calculation of the allowance in lieu, the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive.

(¹) OJ C 281, 18.11.2006.
OJ C 56, 10.3.2007.

Judgment of the Court (Grand Chamber) of 25 November 2008 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)) — Heemskerk BV, Firma Schaap v Productschap Vee en Vlees

(Case C-455/06) (¹)

(Regulations (EC) Nos 615/98, 1254/1999 and 800/1999 — Directive 91/628/EEC — Export refunds — Protection of bovine animals during transport — Power of an administrative authority of a Member State to find, contrary to the declaration of the official veterinarian, that the means of transport of the animals does not comply with Community legislation — Jurisdiction of national courts of Member States — Examination of their own motion of pleas in law derived from Community law — National rule prohibiting *reformatio in pejus*)

(2009/C 69/05)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Heemskerk BV, Firma Schaap

Defendant: Productschap Vee en Vlees

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Article 2(2) of Commission Regulation No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport (OJ 1998 L 82, p. 19), of Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organization of the market in beef and veal (OJ 1999 L 160, p. 21), of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) and of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11) — Power of an administrative authority of a Member State to find, contrary to the declaration of the official veterinarian, that the means of transport is not in accordance with Community provisions — Assessment based on criteria of the Member State concerned or of the Member State in which the vessel transporting the animals is registered — Powers of the courts of the Member States.

Operative part of the judgment

1. Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport, and, in particular, Articles 1 and 5(3) and (7) thereof, must be interpreted as meaning that a national authority with competence for export refunds is empowered to decide that a transport of animals was not carried out in accordance with the provisions of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Directive 95/29/EC of 29 June 1995, although, under Article 2(3) of that regulation, the official veterinarian had certified that that transport complied with the provisions of that directive. In order to reach that conclusion, that authority must rely on objective elements relating to the welfare of the animals such as to call into question the documents presented by the exporter, it being for the latter to show, in that case, that the elements relied on by the competent authority for its finding of non-compliance with Directive 91/628, as amended by Directive 95/29, are irrelevant.
2. Where a vessel has been authorised for the transport of animals in respect of a certain surface area by the Member State of registration of the vessel, the competent authority of the Member State of export must take that authorisation as a basis for assessing whether Community legislation on the welfare of animals during transport has been complied with.

3. The notion of 'compliance with the provisions established in Community legislation concerning animal welfare' referred to in Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal must be interpreted as meaning that, where it is established that the Community requirements relating to loading density laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628, as amended by Directive 95/29, were not complied with during the transport of the animals, it is necessary, in principle, to make a finding of non-compliance with those provisions in respect of all the live animals transported.
4. Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in pejus*.

(¹) OJ C 20, 27.1.2007.

**Judgment of the Court (First Chamber) of 22 January 2009
— Commission of the European Communities v
Portuguese Republic**

(Case C-150/07) (¹)

(Failure of a Member State to fulfil its obligations — Late payment of own resources — Default interest payable — Accounting rules — ATA system)

(2009/C 69/06)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and M. Afonso, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, J.A. Anjos and C. Guerra Santos, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 6(2), 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) — Refusal to pay default interest in the case of late payment of own resources under the ATA system — Accounting rules

Operative part of the judgment

The Court:

1. Declares that, by refusing to pay to the Commission of the European Communities the default interest payable on account of the late payment of own resources under the ATA system, the Portuguese Republic has failed to fulfil its obligations under Articles 2, 6(2) and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources;
2. Dismisses the remainder of the action;
3. Orders the Portuguese Republic to bear its own costs and to pay three quarters of the costs of the Commission of the European Communities;
4. Orders the Commission of the European Communities to bear the remainder of its own costs.

(¹) OJ C 117, 26.5.2007.

**Judgment of the Court (Eighth Chamber) of 9 October 2008 — Commission of the European Communities v
Kingdom of the Netherlands**

(Case C-230/07) (¹)

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Electronic communications — Single European emergency call number — Caller location — Failure to transpose within the period prescribed)

(2009/C 69/07)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and M. Shotter, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels)

Intervener in support of the defendant: Republic of Lithuania (represented by: D. Kriauciūnas, agent)