

**Judgment of the Court (Third Chamber) of 11 September 2008 (references for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain)) — Unión General de Trabajadores de La Rioja (UGT-Rioja) (C-428/06), Comunidad Autónoma de La Rioja (C-429/06) v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de La Rioja (C-430/06), Comunidad Autónoma de Castilla y León (C-433/06) v Diputación Foral de Álava, Juntas Generales de Álava, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de La Rioja (C-431/06), Comunidad Autónoma de Castilla y León (C-432/06) v Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de Castilla y León (C-434/06) v Diputación Foral de Vizcaya, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask)**

(Case C-428/06 to C-434/06) <sup>(1)</sup>

*(State aid — Tax measures adopted by a regional or local authority — Selective nature)*

(2008/C 285/08)

*Language of the case: Spanish*

#### Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco, Spain

#### Parties to the main proceedings

*Applicants:* Unión General de Trabajadores de La Rioja (UGT-Rioja) (C-428/06), Comunidad Autónoma de La Rioja (C-429/06), Comunidad Autónoma de La Rioja (C-430/06), Comunidad Autónoma de Castilla y León (C-433/06), Comunidad Autónoma de La Rioja (C-431/06), Comunidad Autónoma de Castilla y León (C-432/06), Comunidad Autónoma de Castilla y León (C-432/06)

*Defendants:* Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask), Diputación Foral de Álava, Juntas Generales de Álava, Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao

#### Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco — State aid — Interpretation of Article 87(1) EC — Tax measures adopted by an infra-State body — Rate of tax lower than national rate and provision for specific tax deductions

#### Operative part of the judgment

Article 87(1) EC is to be interpreted as meaning that, for the purpose of assessing whether a measure is selective, account is to be taken of the institutional, procedural and economic autonomy enjoyed by the authority adopting that measure. It is for the national court, which alone has jurisdiction to identify the national law applicable and to interpret it, as well as to apply Community law to the cases before it, to determine whether the Historical Territories and the Autonomous Community of the Basque Country have such autonomy, which, if so, would have the result that the laws adopted within the limits of the areas of competence granted to those infra State bodies by the Spanish Constitution of 1978 and the other provisions of Spanish law are not of a selective nature within the meaning of the concept of State aid as referred to in Article 87(1) EC.

<sup>(1)</sup> OJ C 326, 30.12.2006.

**Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Hof van Beroep te Gent (Belgium)) — Hans Eckelkamp, Natalie Eckelkamp, Monica Eckelkamp, Saskia Eckelkamp, Thomas Eckelkamp, Jessica Eckelkamp, Joris Eckelkamp v Belgische Staat**

(Case C-11/07) <sup>(1)</sup>

*(Free movement of capital — Articles 56 EC and 58 EC — Inheritance tax — National rules concerning the assessment of duties on the transfer of immovable property which do not allow for mortgage-related charges relating to the immovable property to be deducted from the value of that property on the ground that, at the time of death, the person whose estate is being administered was residing in another Member State — Restriction — Justification — None)*

(2008/C 285/09)

*Language of the case: Dutch*

#### Referring court

Hof van Beroep te Gent

#### Parties to the main proceedings

*Applicants:* Hans Eckelkamp, Natalie Eckelkamp, Monica Eckelkamp, Saskia Eckelkamp, Thomas Eckelkamp, Jessica Eckelkamp, Joris Eckelkamp

*Defendant:* Belgische Staat

**Re:**

Preliminary ruling — Hof van beroep te Gent — Interpretation of Articles 12 EC, 17 EC, 18 EC, 56 EC and 58 EC — National legislation on the calculation of duty payable in respect of the acquisition, through inheritance, of immovable property which does not allow for deduction, from the value of the immovable property, of mortgage-related charges relating to that property on the ground that the testator, at the time of death, was resident in another Member State

**Operative part of the judgment**

The combined provisions of Articles 56 EC and 58 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, concerning the assessment of inheritance and transfer duties payable in respect of an immovable property situated in a Member State, which makes no provision for the deductibility of debts secured on such property where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was, at that time, residing in the first-mentioned Member State, in which the immovable property included in the estate is situated.

(<sup>1</sup>) OJ C 56, 10.3.2007.

**Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — D.M.M.A. Arens-Sikken v Staatssecretaris van Financiën**

(Case C-43/07) (<sup>1</sup>)

**(Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC respectively) — National rules concerning inheritance duties and transfer duties which do not provide for the deduction, in the assessment of those duties, of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was not residing, at the time of death, in the Member State in which the immovable property included in the estate is situated — Restriction — Justification — None — No bilateral agreement for the prevention of double taxation — Consequences for the restriction of the free movement of capital of a lower level of compensation to prevent double taxation in that person's Member State of residence)**

(2008/C 285/10)

Language of the case: Dutch

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Applicant:* D.M.M.A. Arens-Sikken

*Defendant:* Staatssecretaris van Financiën

**Re:**

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 56 EC and 58 EC — National rules on the calculation of inheritance duty payable on immovable property which do not allow for deduction, from the value of immovable property, of debts associated with the testamentary partition in the case where the testator was resident in another Member State at the time of his death — Method of comparison applicable for the purpose of determining the amount of inheritance duty in the case where the testator was resident, at the time of his death, in the Member State in which the immovable property is situated — Bilateral convention designed to prevent double taxation

**Operative part of the judgment**

- Articles 73b and 73d of the Treaty (subsequently, Articles 56 EC and 58 EC respectively) must be interpreted as precluding national rules, such as those at issue in the main proceedings, concerning the assessment of inheritance duties and transfer duties payable in respect of an immovable property situated in a Member State, which, for the assessment of those duties, makes no provision for the deductibility of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was residing, at the time of death, in the first-mentioned Member State, in which the immovable property included in the estate is situated, in so far as such rules apply a progressive rate of taxation and in so far as the combination of (i) the failure to take into account such debts and (ii) that progressive rate could result in a greater tax burden for heirs who are not in a position to rely on such deductibility.
- The answer set out in point 1 of the operative part of this judgment is not affected by the fact that the rules of the Member State in which the person whose estate is being administered was residing at the time of death provide unilaterally for the possibility that a tax credit may be granted in respect of inheritance duties payable in another Member State on immovable property situated in that other State.

(<sup>1</sup>) OJ C 69, 24.3.2007.