

Parties to the main proceedings

Applicant: Kattner Stahlbau GmbH

Defendant: Maschinenbau- und Metall- Berufsgenossenschaft

Re:

Reference for a preliminary ruling — Sächsisches Landessozialgericht — Interpretation of Articles 81 EC and 82 EC and of other provisions of Community law — National legislation establishing a compulsory insurance scheme against the risk of accidents at work and occupational diseases, consisting of a number of associations for the prevention of accidents at work ('Berufsgenossenschaft') and which provides for undertakings to be compulsorily affiliated to the association having the requisite territorial and occupational competence — Whether such associations for the prevention of accidents at work, which are able to fix the level of their subscriptions independently, without any upper limit being prescribed by national legislation, constitute an 'undertaking' within the meaning of Articles 81 EC and 82 EC

Operative part of the judgment

1. *Articles 81 EC and 82 EC are to be interpreted to the effect that a body such as the employers' liability insurance association at issue in the main proceedings, to which undertakings in a particular branch of industry and a particular territory must be affiliated in respect of insurance against accidents at work and occupational diseases, is not an undertaking within the meaning of those provisions, but fulfils an exclusively social function, where such a body operates within the framework of a scheme which applies the principle of solidarity and is subject to State supervision, which it is for the referring court to verify.*
2. *Articles 49 EC and 50 EC are to be interpreted to the effect that they do not preclude national legislation such as that at issue in the main proceedings, pursuant to which undertakings in a particular branch of industry and a particular territory must be affiliated to a body such as the employers' liability insurance association at issue in the main proceedings, to the extent that that scheme does not go beyond what is necessary to achieve the objective of ensuring the financial equilibrium of a branch of social security, which it is for the referring court to verify.*

(¹) OJ C 269, 10.11.2007.

Judgment of the Court (Third Chamber) of 5 March 2009 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom)) — The Queen, The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform

(Case C-388/07) (¹)

(Directive 2000/78 — Equal treatment in employment and occupation — Age discrimination — Dismissal by reason of retirement — Justification)

(2009/C 102/08)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: The Queen, The Incorporated Trustees of the National Council on Ageing (Age Concern England)

Defendant: Secretary of State for Business, Enterprise and Regulatory Reform

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Interpretation of Articles 2(2) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Scope — National rules allowing employers to dismiss employees aged 65 or over by reason of their retirement

Operative part of the judgment

1. *National rules such as those set out in Regulations 3, 7(4) and (5) and 30 of the Employment Equality (Age) Regulations 2006 fall within the scope of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.*

2. Article 6(1) of Directive 2000/78 must be interpreted as meaning that it does not preclude a national measure which, like Regulation 3 of the Regulations at issue in the main proceedings, does not contain a precise list of the aims justifying derogation from the principle prohibiting discrimination on grounds of age. However, Article 6(1) offers the option to derogate from that principle only in respect of measures justified by legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training. It is for the national court to ascertain whether the legislation at issue in the main proceedings is consonant with such a legitimate aim and whether the national legislative or regulatory authority could legitimately consider, taking account of the Member States' discretion in matters of social policy, that the means chosen were appropriate and necessary to achieve that aim.
3. Article 6(1) of Directive 2000/78 gives Member States the option to provide, within the context of national law, for certain kinds of differences in treatment on grounds of age if they are 'objectively and reasonably' justified by a legitimate aim, such as employment policy, or labour market or vocational training objectives, and if the means of achieving that aim are appropriate and necessary. It imposes on Member States the burden of establishing to a high standard of proof the legitimacy of the aim relied on as a justification. No particular significance should be attached to the fact that the word 'reasonably' used in Article 6(1) of the directive does not appear in Article 2(2)(b) thereof.

(¹) OJ C 283, 24.11.2007.

**Judgment of the Court (Third Chamber) of 5 March 2009
— French Republic v Council of the European Union**

(Case C-479/07) (¹)

(Action for annulment — Regulation (EC) No 809/2007 — Definition of the concept of drift nets — 'Thonaille' — Duty to state reasons — Infringement of the principles of proportionality and non-discrimination)

(2009/C 102/09)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and A.-L. During, Agents)

Defendant: Council of the European Union (represented by: A. De Gregorio Merino, M.-M. Joséphidès and E. Chaboureau, Agents)

Intervener in support of the defendant: Commission of the European Communities (represented by: M. Nolin, M. van Heezik and M.T. van Rijn, Agents)

Re:

Action for annulment — Annulment of Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets (OJ 2007 L 182, p. 1) — Concept of 'drift nets' — Inclusion in that concept of stabilised nets such as the 'thonaille' — Infringement of the duty to provide reasons and of the principles of proportionality and non-discrimination

Operative part of the judgment

The Court:

1. dismisses the action;
2. orders the French Republic to pay the costs;
3. orders the Commission of the European Communities to bear its own costs.

(¹) OJ C 297,8.12.2007.

**Judgment of the Court (Fourth Chamber) of 5 March 2009
(reference for a preliminary ruling from the Sofiyski gradski sad (Bulgaria)) — Apis-Hristovich EOOD v Lakorda AD**

(Case C-545/07) (¹)

(Directive 96/9/EC — Legal protection of databases — Sui generis right — Obtaining, verification or presentation of the contents of a database — Extraction — Substantial part of the contents of a database — Database containing official legal data)

(2009/C 102/10)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: Apis-Hristovich EOOD

Defendant: Lakorda AD