

Reference for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 4 December 2007 — Apis-Hristovich EOOD v Lakorda AD

(Case C-545/07)

(2008/C 51/57)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Claimant: Apis-Hristovich EOOD

Defendant: Lakorda AD

Questions referred

- How are the terms 'permanent transfer' and 'temporary transfer' to be interpreted and to be delimited in relation to each other for the purpose of:
 - determining whether extraction within the meaning of Article 7(2)(a) of Directive 96/9/EC ⁽¹⁾ from a database accessible by electronic means has taken place,
 - at what point in time is it to be assumed that extraction within the meaning of Article 7(2)(a) of Directive 96/9/EC from a database accessible by electronic means has taken place,
 - what is the significance, for the assessment of extraction, of the fact that the content of a database extracted in this way has served to create a new and amended database?
- Which criterion is to be applied in interpreting the concept 'extraction of a substantial part, evaluated quantitatively' if the databases are divided into separate subgroups and are used in these subgroups, which are independent commercial products? Is the size of the databases in the entire commercial product or the size of the databases in the relevant subgroup to be used as the criterion?
- In interpreting the concept 'a substantial part, evaluated qualitatively', is the fact that a certain type of data allegedly extracted was obtained by the database maker from a source which is not generally accessible, so that it was possible to procure the data only by extracting them from the databases of that very database maker, to be used as a criterion?
- What criteria are to be applied when determining whether extraction from a database accessible by electronic means has taken place? Can it be regarded as an indication that extraction has taken place if the maker's database has a particular structure, notes, references, commands, fields, hyper-

links and editorial text and these elements are also found in the database of the person who has committed the alleged infringement? In the carrying out of this assessment, are the various original organisational structures of the two opposing databases relevant?

- When determining whether extraction has taken place, is the computer program/the system for database management material if it is not part of the database?
- Since, according to Directive 96/9/EC and the case-law of the Court of Justice of the European Communities, 'a substantial part of the database from a quantitative and qualitative point of view' is linked to substantial investment in the obtaining, verification or presentation of a database: how are these concepts to be interpreted in relation to legislative measures, and measures having individual application, which have been adopted by executive State bodies and are publicly accessible, to their official translations and to case-law?

⁽¹⁾ Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20).

Action brought on 7 December 2007 — Commission of the European Communities v Republic of Poland

(Case C-547/07)

(2008/C 51/58)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

- by failing to classify as special protection areas (SPAs) for birds all areas which, on the application of ornithological criteria, appear to be the most appropriate for the conservation of bird species, the Republic of Poland has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409/EEC ⁽¹⁾ of 2 April 1979 on the conservation of wild birds;
- order the Republic of Poland to pay the costs.