

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Land Baden-Württemberg v Metin Bozkurt**(Case C-303/08) <sup>(1)</sup>

*(EEC-Turkey Association Agreement — Family reunification — Article 7, first paragraph, of Decision No 1/80 of the Association Council — Spouse of a Turkish worker who has cohabited with her for more than five years — Continuing existence of the right of residence after divorce — Conviction of the person concerned for violence towards his ex-wife — Abuse of rights)*

(2011/C 55/02)

Language of the case: German

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

Applicant: Land Baden-Württemberg

Defendant: Metin Bozkurt

Intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

**Re:**

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of the second indent of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey — Right of residence acquired, as a family member, by a Turkish national as the spouse of a Turkish worker duly registered as belonging to the labour force of a Member State — Retention of the right of residence in the case of divorce preceded by physical attacks on the ex-spouse which resulted in a criminal conviction

**Operative part of the judgment**

1. *The first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council created by the Agreement establishing an Association between the European Economic Community and Turkey, is to be interpreted as meaning that a*

*Turkish national such as the applicant in the main proceedings, who, as a member of the family of a Turkish worker who is duly registered as belonging to the labour force of a Member State and as a result of his residing with his spouse for a continuous period of at least five years, enjoys the rights relating to the legal status conferred on the basis of the second indent of that provision, does not lose those rights on account of his divorce, which took place after those rights were acquired.*

2. *It is not an abuse of rights for a Turkish national such as the applicant in the main proceedings to rely on a right legally acquired pursuant to the first paragraph of Article 7 of Decision No 1/80 even though the person concerned, after acquiring that right through his former wife, committed a serious offence against her which gave rise to a criminal conviction.*

*By contrast, Article 14(1) of Decision No 1/80 does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.*

<sup>(1)</sup> OJ C 247, 27.9.2008.

**Judgment of the Court (Grand Chamber) of 7 December 2010 (reference for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebwerkers ‘VEBIC’ VZW v Raad voor de Mededinging, Minister van Economie**

(Case C-439/08) <sup>(1)</sup>

*(Competition policy — National proceedings — National competition authorities participating in judicial proceedings — Hybrid national competition authority being judicial and administrative in nature — Appeal against the decision of such an authority — Regulation (EC) No 1/2003)*

(2011/C 55/03)

Language of the case: Dutch

**Referring court**

Hof van beroep te Brussel

**Parties to the main proceedings**

**Appellant:** VZW Vlaamse federatie van verenigingen van Brood-en Banketbakkers, Ijsbereiders en Chocoladebewerkeres 'VEBIC' VZW

**Respondents:** Raad voor de Mededinging, Minister van Economie

**Re:**

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Articles 2, 5, 15(1) and 35(3) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1) — Submission by national competition authorities of written observations and arguments of fact and of law in the course of an appeal against their decision — Plurality of authorities in a Member State

**Operative part of the judgment**

Article 35 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty must be interpreted as precluding national rules which do not allow a national competition authority to participate, as a defendant or respondent, in judicial proceedings brought against a decision that the authority itself has taken. It is for the national competition authorities to gauge the extent to which their intervention is necessary and useful having regard to the effective application of European Union competition law. However, if the national competition authority consistently fails to enter an appearance in such judicial proceedings, the effectiveness of Articles 101 TFEU and 102 TFEU is jeopardised.

In the absence of European Union rules, the Member States remain competent, in accordance with the principle of procedural autonomy, to designate the body or bodies of the national competition authority which may participate, as a defendant or respondent, in proceedings brought before a national court against a decision which the authority itself has taken, while at the same time ensuring that fundamental rights are observed and that European Union competition law is fully effective.

<sup>(1)</sup> OJ C 313, 6.12.2008.

**Judgment of the Court (First Chamber) of 16 December 2010 — Kahla/Thüringen Porzellan GmbH v Freistaat Thüringen, Federal Republic of Germany, European Commission**

(Case C-537/08 P) <sup>(1)</sup>

**(Appeal — State aid — Commission decision finding aid to be incompatible with the common market and ordering its recovery — Principles of legal certainty and of the protection of legitimate expectations)**

(2011/C 55/04)

Language of the case: German

**Parties**

**Appellant:** Kahla/Thüringen Porzellan GmbH (represented by: M. Schütte, S. Zühlke and P. Werner, Rechtsanwälte)

**Other parties to the proceedings:** Freistaat Thüringen (represented by: A. Weitbrecht and M. Núñez Müller, Rechtsanwälte), Federal Republic of Germany (represented by: M. Lumma and W. D. Plessing, acting as Agents), European Commission (represented by: V. Kreuschitz and K. Gross, acting as Agents, assisted by C. Koenig, professor)

**Re:**

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) delivered on 24 September 2008 in Case T-20/03 Kahla/Thüringen Porzellan GmbH, by which the Court of First Instance dismissed an action for the annulment of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ 2003 L 227, p. 12), in so far as that decision concerns the financial assistance granted to Kahla/Thüringen Porzellan GmbH — Infringement of the principles of legal certainty and protection of legitimate expectations

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders Kahla Thüringen Porzellan GmbH to pay the costs.

<sup>(1)</sup> OJ C 44, 21.2.2009.

**Judgment of the Court (Second Chamber) of 9 December 2010 (reference for a preliminary ruling from the Rechtbank Assen — Netherlands) — Combinatie Spijker Infrabouw-De Jonge Konstruktie, van Spijker Infrabouw BV, de Jonge Konstruktie BV v Provincie Drenthe**

(Case C-568/08) <sup>(1)</sup>

**(Public contracts — Procedures for reviewing the award of public works contracts — Directive 89/665/EEC — Duty of Member States to make provision for a review procedure — National legislation permitting a court hearing an application for interim measures to authorise a decision awarding a public contract which may subsequently be held contrary to European Union legal rules by the court hearing the substance of the case — Compatibility with the directive — Award of damages to the tenderers harmed — Conditions)**

(2011/C 55/05)

Language of the case: Dutch

**Referring court**

Rechtbank Assen