Reference for a preliminary ruling from the Tribunal Superior de Justicia de Asturias (Spain) lodged on 27 December 2007 — José Manuel Blanco Pérez and Maria del Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios del Principado de Asturias and Celso Fernandez Gómez

(Case C-571/07)

(2008/C 79/24)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Asturias

Parties to the main proceedings

Applicants: José Manuel Blanco Pérez and Maria del Pilar Chao Gómez

Defendants: Consejería de Salud y Servicios Sanitarios del Principado de Asturias and Celso Fernandez Gómez

Question referred

Does Article 43 [EC] preclude the legislation of the Autonomous Community of the Principality of Asturias concerning authorisation for the establishment of pharmacies?

Reference for a preliminary ruling from the Krajský Soud v Ústí nad Labem (Czech Republic) lodged on 24 December 2007 — RLRE Tellmer Property s.r.o. v Finanční ředitelství v Ústí nad Labem

(Case C-572/07)

(2008/C 79/25)

Language of the case: Czech

Referring court

Krajský Soud v Ústí nad Labem

Parties to the main proceedings

Applicant: RLRE Tellmer Property s.r.o.

Defendant: Finanční ředitelství v Ústí nad Labem

Questions referred

1. Whether the provisions of Article 6 (Supply of services) and Article 13 (Exemptions within the territory of the country) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ([1]) can be interpreted as meaning that the letting of an apartment (and possibly of non-residential premises) on the one hand and the related cleaning of the common parts on the other hand can be regarded as independent, mutually-divisible taxable transactions.

2. If, as the referring court suspects, the answer to the first question is in the negative, it further asks the Court of Justice whether the provisions of Article 13 of that directive, and in particular the introduction and part B(b) thereof: (1) require; (2) preclude; or (3) leave to the determination of the Member State the application of VAT to payment for cleaning of the common parts of a rented apartment block.

([1]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 2 January 2008 — Amministrazione dell'Economia e delle Finanze Agenzia delle Entrate v Olimpiclub Srl

(Case C-2/08)

(2008/C 79/26)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Appellants: Amministrazione dell'Economia e delle Finanze, Agenzia delle Entrate

Respondent: Fallimento Olimpiclub Srl

Question referred

'Does Community law preclude the application of a provision of national law, such as Article 2909 of the [Italian] Civil Code, laying down the principle of *res judicata*, where the application of that provision would lead to a result incompatible with Community law, thereby thwarting its application, even in areas other than State aid (in relation to which, see Case C-119/05 *Lucchini SpA* [2007] ECR I-0000) and, in particular, in matters relating to VAT and with respect to the misuse of rights in order to obtain undue tax savings, in particular in the light also of the rules of national law — as interpreted in the case-law of this Court — according to which, in tax disputes, where a *giudicato*

esterno [a final judgment drawn up by another court in a case on the same subject] contains a finding on a fundamental issue common to other cases, it has binding authority as regards that issue, even if it was drawn up in relation to a different tax period?'

Reference for a preliminary ruling from the Tribunal du travail de Nivelles (Belgium) lodged on 8 January 2008 — Ketty Leyman v Institut national d'assurance maladie-invalidité (I.N.A.M.I.)

(Case C-3/08)

(2008/C 79/27)

Language of the case: French

Referring court

Tribunal du travail de Nivelles

Parties to the main proceedings

Applicant: Ketty Leyman

Defendant: Institut national d'assurance maladie-invalidité (I.N.A.M.I.)

Questions referred

1. Are Article 40(3)(b) of Regulation (EEC) No 1408/71 ([1]) and Article 93 of the Consolidated Laws of 14 July 1994 on medical care and sickness insurance benefit contrary to Article 18 of the EC Treaty in that, where a worker lives and works in a type A country (in this case, Belgium) and moves to a type B country (in this case, the Grand Duchy of Luxembourg), they do not permit, during the first year of incapacity for work, the grant of an allowance that takes into account the length of time worked and the period of contribution in the type A country (Belgium)?

2. Are Article 40(3)(b) of Regulation (EEC) No 1408/71 and Article 93 of the Consolidated Laws of 14 July 1994 on medical care and sickness insurance benefit contrary to Article 18 of the EC Treaty in that, where a worker lives and works in a type A country (in this case, Belgium) and moves to a type B country (in this case, the Grand Duchy of Luxembourg), they give rise to discrimination to the detriment of a worker exercising her right of free movement in not permitting the grant to her, during the first year of incapacity for work, of an allowance that takes into account the length of time worked and the period of contribution in the type A country (Belgium)?

([1]) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2), as amended.

Reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 4 January 2008 — Michael Mario Karl Kerner v Land Baden-Württemberg

(Case C-4/08)

(2008/C 79/28)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Appellant: Michael Mario Karl Kerner

Respondent: Land Baden-Württemberg

Questions referred

1. Does Article 8(4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences ([1]) preclude the application of a provision of national law which, in the event of a previous withdrawal of a driving licence in the Member State in question, makes possible recognition of a driving licence issued by another Member State on condition that it is established that the facts which originally led to the withdrawal of the driving licence no longer exist, even if

   — recognition of that driving licence is not required in the interest of giving effect to the fundamental freedom of free movement on the part of citizens of the Union,

   — the driving licence was issued in the other Member State in clear breach of the provisions of the Directive (residence requirement),

   — the issuing Member State itself, when issuing the driving licence, must have been aware of this clear breach of the provisions of the Directive,

   — according to the Member State of residence, the issuing Member State generally refuses to annul driving licences issued in breach of Community law,