Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Sicilia — Interpretation of Article 6 EU, Article 3 of the First Additional Protocol and Article 2 of the Fourth Additional Protocol to the European Convention on Human Rights and Article 25 of the International Covenant on Civil and Political Rights — Interpretation of Articles 17 EC and 18 EC — Compatibility of regional legislation restricting the right of an Italian national to be nominated for election on the basis of a requirement of residence in the region

Operative part of the order

1. *Articles 17 EC and 18 EC do not preclude national legislation which, in a situation such as that at issue in the main proceedings, includes among the requirements for eligibility for election to a regional assembly, the obligation to be residing in the region concerned at the time when nominations are put forward.*

2. *The Court of Justice of the European Communities clearly does not have jurisdiction to reply to the first question referred by the Tribunale Amministrativo Regionale per la Sicilia.*

([1]) OJ C 32, 7.2.2009.

Appeal brought on 10 February 2009 by the Kingdom of Belgium against the judgment of the Court of First Instance (Second Chamber) delivered on 24 April 2009 (fax: 22 April 2009) in Case T-388/03 Deutsche Post AG and DHL International v Commission of the European Communities

(Case C-148/09 P)

(2009/C 167/04)

Language of the case: German

Parties

Appellant: Kingdom of Belgium (represented by: C. Pochet and T. Materne, acting as Agents)

Other parties to the proceedings: Deutsche Post AG, DHL International, Commission of the European Communities

Form of order sought

— Set aside the judgment of the Court of First Instance of the European Communities of 10 February 2009 in Case T-388/03 *Deutsche Post AG and DHL International* v *Commission of the European Communities*

— Order Deutsche Post and DHL International to pay the costs.

Pleas in law and main arguments

The appellant puts forward three pleas in law in support if its appeal against the judgment of the Court of First Instance of 10 February 2009, by which a Commission Decision of 23 July 2003 raising no objections, following a preliminary examination procedure provided for in Article 88(3) EC, to a proposal announced on 3 December 2002 in increase La Poste's capital and to certain other measures adopted by the Belgium authorities in favour of La Poste was annulled. Those please seeking to have the judgment under appeal set aside.

By the first plea in law, the appellant claims that the judgment under appeal misinterpreted the procedural rules concerning the examination of State aids, in so far as it classified certain elements of the preliminary examination procedure and certain aspects of the Commission Decision of 23 July 2003 as objective and consistent evidence of 'serious difficulties', which should have necessitated the initiation of the formal investigation procedure under article 88(2) EC.

By the second plea in law, the appellant states that the judgment under appeal already partially reached a decision on the substantive correctness of the examination, undertaken in the Commission Decision of 23 July 2003, of the existence of State aid and its compatibility with the common market, in so far as it took the fourth and seventh pleas into consideration and also upheld them, although the fourth and seventh pleas should have been declared inadmissible as the applicant, even according to the judgment under appeal, had no corresponding standing to bring proceedings.

By the third plea in law, the appellant complains that he judgment under appeal breached the principle of legal certainty, in so far as it objects that the Commission, in its examination included in the decision of 23 July 2003, did not take account of the fourth criterion of the judgment of the Court of Justice of 24 July 2003 in the *Altmark* Case, which is the criterion of 'benchmarking' with the costs of a typical, well-run and appropriately-equipped undertaking, although that judgment was made only after the examination of the present case (and one day after the Commission had decided to raise no objections to the proposed increase to La Poste's capital), and the criterion in question was not, before that time, reflected in the case-law of the Court f Justice or the Court of First Instance or in the Commission's decision-making practice.

Reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras (Spain) lodged on 28 April 2009 — Federación de Servicios Públicos de la UGT (UGT-FSP) v Ayuntamiento de la Línea de la Concepción, María del Rosario Vecino Uribe and Others, and the Ministerio Fiscal

(Case C-151/09)

(2009/C 167/05)

Language of the case: Spanish

Referring court

Juzgado de lo Social Único de Algeciras

Parties to the main proceedings

Applicant: Federación de Servicios Públicos de la UGT (UGT-FSP)

Defendants: Ayuntamiento de la Línea de la Concepción, María del Rosario Vecino Uribe and Others,

the Ministerio Fiscal

Question referred

Is the requirement that autonomy be preserved — referred to in Article 6(1) of Directive 2001/23/EC [1] of 12 March 2001 — met in a factual situation (such as that in the main proceedings) in which, following the recovery of various outsourced public services by a municipal authority, the employees who were part of the staff of the actual undertakings which until then had provided the outsourced municipal services are taken on by that municipal administration and integrated into its staff, but it is those same employees (without exception) who continue to hold the same posts and carry out the same duties as before, in the same places of work and under the instruction of the same immediate superiors (hierarchical superiors), without significant changes in the working conditions, the sole difference being that now their overall managers (above the previous superiors) are the relevant publicly elected officials (councillors or mayor)?

[1] On the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Germany) lodged on 4 May 2009 — André Grootes v Amt für Landwirtschaft Parchim

(Case C-152/09)

(2009/C 167/06)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Claimant: André Grootes

Defendant: Amt für Landwirtschaft Parchim

Questions referred

1. Can hardship under Article 40(5) of Regulation (EC) No 1782/2003 [1] be recognised in relation to an area-based amount even where an agri-environmental measure ongoing on 15 May 2003 constitutes just retention of (permanent) use as pastureland, but it is connected seamlessly in time (or at any rate 'promptly') with a measure under which conversion from arable land to permanent pastureland has taken place?

2. If the first question should be answered in the affirmative:

   Can hardship under Article 40(5) of Regulation (EC) No 1782/2003 be recognised in relation to an area-based amount only where there has been a change of use of the area from arable land to pastureland on the basis of (and precisely because of) participation in an agri-environmental measure as referred to in the aforementioned provision?

3. Is recognition of hardship under Article 40(5) of Regulation (EC) No 1782/2003 contingent on the farmer making the application being the person who made the change of use, or can a farmer who later 'joins in on' the agri-environmental measure also successfully claim hardship under that provision?

[1] Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 21.10.2003, p. 1).

Action brought on 4 May 2009 — Commission of the European Communities v Hellenic Republic

(Case C-155/09)

(2009/C 167/07)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal, D. Triantafillou)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that the Hellenic Republic is in breach of its obligations under Articles 18, 39 and 43 EC in the light of Article 12 EC (and under Articles 28, 31 and 4 of the EEA Treaty), inasmuch as it is impeding the exercise of fundamental freedoms deriving from those provisions:

  — by granting exemption from tax on the transfer of immovable property solely to persons already permanently resident in Greece but not to persons who intend to settle in Greece in the future;

  — by granting, subject to conditions, exemption from tax on the transfer of immovable property in Greece solely to Greek nationals on the purchase of a first home in Greece, expressly discriminating against foreign residents who are not Greek nationals;

— order the Hellenic Republic to pay the costs.