

2. Is there a discontinuance in the case where, after the aircraft doors have been closed, the journey is not continued? From what point is there a discontinuance of the start, rather than a delayed start?

<sup>(1)</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

**Reference for a preliminary ruling from the Arbeitsgericht Munich (Germany) lodged on 28 March 2011 — Johann Odar v Baxter Deutschland GmbH**

(Case C-152/11)

(2011/C 204/24)

*Language of the case: German*

**Referring court**

Arbeitsgericht Munich

**Parties to the main proceedings**

*Applicant:* Johann Odar

*Defendant:* Baxter Deutschland GmbH

**Questions referred**

1. Is a national rule which provides that different treatment on the ground of age may be lawful if, in the framework of an occupational social security scheme, the management and the works council have excluded from social plan benefits employees who are financially secure because they are entitled to a pension after, as the case may be, drawing unemployment benefit, contrary to the prohibition of discrimination on the ground of age, laid down by Articles 1 and 16 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,<sup>(1)</sup> or is that unequal treatment justified under Article 6(1), second sentence, point (a), of Directive 2000/78/EC?
2. Is a national rule which provides that different treatment on the ground of age may be lawful if, in the framework of an occupational social security scheme, the management and the works council have excluded from social plan benefits employees who are financially secure because they are entitled to a pension after, as the case may be, drawing unemployment benefit, contrary to the prohibition of discrimination on the ground of disability laid down by Articles 1 and 16 of Directive 2000/78/EC?
3. Is a rule of an occupational social security scheme which provides that, in the case of employees older than 54 years of age who are made redundant on operational grounds, an alternative calculation will be made of the compensation on the basis of the earliest possible date on which their pension will begin and, by comparison with the more normal

method of calculation, will in particular take account of the length of service, whereby the smaller amount of compensation, of at least one half of the normal sum in compensation, will be paid, contrary to the prohibition of discrimination on the ground of age laid down by Articles 1 and 16 of Directive 2000/78/EC, or is that unequal treatment justified under Article 6(1), second sentence, point (a), of Directive 2000/78/EC?

4. Is a rule of an occupational social security scheme which provides that, in the case of employees older than 54 years of age who are made redundant on operational grounds, an alternative calculation will be made of the compensation on the basis of the earliest possible date on which their pension will begin and, by comparison with the more normal method of calculation, will in particular take account of the length of service, whereby the smaller amount of compensation, of at least one half of the normal sum in compensation, will be paid, the alternative method of calculation taking into account a retirement pension on the ground of disability, contrary to the prohibition of discrimination on the ground of disability laid down by Articles 1 and 16 of Directive 2000/78/EC?

<sup>(1)</sup> OJ 2000 L 303, p. 16.

**Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland) lodged on 1 April 2011 — Bawaria Motors Spółka z o.o. and Minister Finansów**

(Case C-160/11)

(2011/C 204/25)

*Language of the case: Polish*

**Referring court**

Naczelny Sąd Administracyjny

**Parties to the main proceedings**

*Appellants:* Bawaria Motors Spółka z o.o., Minister Finansów

**Question referred**

Are the provisions of Articles 313(1) and 314 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>(1)</sup> ('Directive 2006/112'), in conjunction with Articles 136 and 315 thereof, to be interpreted as permitting the application of the special 'margin' scheme for taxable dealers in relation to supplies of second-hand goods also where they resell the purchased passenger vehicles and other motor vehicles to which the tax exemption for the supply of passenger vehicles and other vehicles by taxable persons who only have a partial right to deduct input tax on the purchase thereof, as laid down in Article 86(3) of the

Ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (*Dziennik Ustaw* No 54, item 535, as amended; hereinafter: 'Law on VAT'), was applied pursuant to the Polish national provisions laid down in Paragraph 13(1)(5) of the Decree of the Minister for Finance of 28 November 2008 on the implementation of certain provisions of the Law on the tax on goods and services (*Dziennik Ustaw* No 212, item 1336, as amended), where those passenger vehicles and motor vehicles were second-hand goods within the meaning of Article 43(2) of the Law on VAT and Article 311(1)(1) of Directive 2006/112?

<sup>(1)</sup> OJ 2006 L 347 p. 1.

**Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 13 April 2011 — HID, BA v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General**

(Case C-175/11)

(2011/C 204/26)

*Language of the case: English*

**Referring court**

High Court of Ireland

**Parties to the main proceedings**

*Applicants:* HID, BA

*Defendants:* Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General

**Questions referred**

1. Is a Member State precluded by the provisions of Council Directive 2005/85/EC of 1st December, 2005 <sup>(1)</sup>, or by general principles of European Union Law from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure?
2. Is Article 39 of the above Council Directive when read in conjunction with its Recital (27) and Article 267 TFEU to be interpreted to the effect that the effective remedy thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to

the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements which involve some or all of the following:

- The retention by a government Minister of residual discretion to override a negative decision on an application;
- The existence of organisational or administrative links between the bodies responsible for first instance determination and the determination of appeals;
- The fact that the decision making members of the Tribunal are appointed by the Minister and serve on a part-time basis for a period of three years and are remunerated on a case by case basis;
- The retention by the Minister of powers to give directions of the kind specified in ss. 12, 16(2B)(b) and 16(11) of the above Act?

<sup>(1)</sup> OJ L 326, p. 13

**Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 22 April 2011 — Daniela Mühlleitner v Ahmad Yusufi and Wadat Yusufi**

(Case C-190/11)

(2011/C 204/27)

*Language of the case: German*

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Appellant:* Daniela Mühlleitner

*Respondents:* Ahmad Yusufi and Wadat Yusufi

**Question referred**

Does the application of Article 15(1)(c) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup> presuppose that the contract between the consumer and the undertaking has been concluded at a distance?

<sup>(1)</sup> OJ 2001 L 12, p. 1.