

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) lodged on 17 May 2019 — MK v Autoridade Tributária e Aduaneira

(Case C-388/19)

(2019/C 270/22)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: MK

Defendant: Autoridade Tributária e Aduaneira

Question referred

Should Articles 12, 56, 57 and 58 of the Treaty Establishing the European Community [now Articles 18, 63, 64 and 65 of the Treaty on the Functioning of the European Union], taken together, be interpreted as precluding national legislation, such as that in dispute in the present case (Article 43(2) of the Income Tax Code, approved by Decree-Law 442-A/88 of 30 November 1988, as amended by Law 109-B/2001 of 27 December 2001), with the amendments introduced by Law 67-A/2007 of 31 December 2007, which inserted paragraphs 7 and 8 (now paragraphs 9 and 10) into Article 72 of the Income Tax Code, the purpose of which is to enable the capital gains realised from the sale of immovable property situated in a Member State (Portugal) by a resident of another Member State of the European Union (France) not to be subject, **by election**, to a tax burden greater than that which would be applicable for the same type of transaction to capital gains realised by a resident of the State in which that immovable property is situated?

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 21 May 2019 — VG Bild-Kunst v Stiftung Preußischer Kulturbesitz

(Case C-392/19)

(2019/C 270/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: VG Bild-Kunst

Respondent in the appeal on a point of law: Stiftung Preußischer Kulturbesitz

Question referred

Does the embedding of a work — which is available on a freely accessible website with the consent of the rightholder — in the website of a third party by way of framing constitute communication to the public of that work within the meaning of Article 3(1) of Directive 2001/29/EC⁽¹⁾ where it occurs through circumvention of protection measures against framing taken or instigated by the rightholder?

⁽¹⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Action brought on 24 May 2019 — Republic of Poland v European Parliament and Council of the European Union

(Case C-401/19)

(2019/C 270/24)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as agent, W. Gonatarski, adwokat)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC; ⁽¹⁾
- order European Parliament and Council of the European Union to pay the costs.

Pleas in law and main arguments

The Republic of Poland seeks the annulment of Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ EU L 130 of 17.5.2019, p. 92) and an order that the European Parliament and the Council of the European Union are to pay the costs.

In the alternative, should the Court find that the contested provisions cannot be deleted from Article 17 of Directive (EU) 2019/790 without substantively changing the rules contained in the remaining provisions of that article, the Republic of Poland claims that the Court should annul Article 17 of Directive (EU) 2019/790 in its entirety.