

**Reference for a preliminary ruling by the Oberste Gerichtshof by order of that court of 21 July 2004 in the case of Land Oberösterreich against ČEZ a.s.**

(Case C-343/04)

(2004/C 251/14)

Reference has been made to the Court of Justice of the European Communities by order of the Oberste Gerichtshof of 21 July 2004 received at the Court Registry on 10 August 2004, for a preliminary ruling in the case of Land Oberösterreich against ČEZ a.s. on the following question:

Is the term 'proceedings which have as their object rights in rem in immovable property' in Article 16(1)(a) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters ('the Brussels Convention') to be interpreted as including a (preventive) action for an injunction, pursuant to Paragraph 364(2) of the Allgemeines bürgerliches Gesetzbuch ('the ABGB') (the General Civil Code), prohibiting emissions from a property located in a neighbouring State — which is not a Member State of the European Union — affecting land owned by the claimant (in this case, ionising radiation emitted from a nuclear plant in the Czech Republic)?

**Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), by order of that court dated 14 July 2004, in the case of The Queen on the application of International Air Transport Association against Department for Transport and in the case of The Queen on the application of European Low Fares Airline Association and Hapag-Lloyd Express GmbH against Department for Transport**

(Case C-344/04)

(2004/C 251/15)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), dated 14 July 2004, which was received at the Court Registry on 12 August 2004 for a preliminary ruling in the case of The Queen on the application of International Air Transport Association against Department for Transport and in the case of The Queen on the application of European Low Fares Airline Association and Hapag-Lloyd Express GmbH against Department for Transport on the following questions:

1. Whether Article 6 of Regulation 261/2004<sup>(1)</sup> is invalid on grounds that it is inconsistent with the Convention for the Unification of Certain Rules for International Carriage by Air known as the Montreal Convention 1999, and in particular Articles 19, 22 and 29 of the Montreal Convention 1999, and whether this (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

2. Whether the amendment of Article 5 of the Regulation during consideration of the draft text by the Conciliation Committee was done in a manner that is inconsistent with the procedural requirements provided for in Article 251 EC and, if so, whether Article 5 of the Regulation is invalid and, if so, whether this (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
3. Whether Articles 5 and 6 of Regulation 261/2004 (or part thereof) are invalid on grounds that they are inconsistent with the principle of legal certainty, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
4. Whether Articles 5 and 6 of Regulation 261/2004 (or part thereof) are invalid on grounds that they are not supported by any or any adequate reasoning, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
5. Whether Articles 5 and 6 of Regulation 261/2004 (or part thereof) are invalid on grounds that they are inconsistent with the principle of proportionality required of any Community measure, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
6. Whether Articles 5 and 6 of Regulation 261/2004 (or part thereof) are invalid on grounds that they discriminate, in particular, against the members of the second Claimant organisation in a manner that is arbitrary or not objectively justified, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
7. Is Article 7 of the Regulation (or part thereof) void or invalid on grounds that the imposition of a fixed liability in the event of flight cancellation for reasons that are not covered by the extraordinary circumstances defence is discriminatory, fails to meet the standards of proportionality required of any Community measure, or is not based on any adequate reasoning, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?
8. In circumstances where a national court has granted permission to bring a claim in that national court, which raises questions as to the validity of provisions of a Community instrument and which it considers is arguable and not unfounded, are there any principles of Community law in connection with any test or threshold which the national court should apply when deciding under Article 234(2) EC whether to refer those questions of validity to the ECJ?

<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 (Text with EEA relevance) — Common Statement (OJ L 46, 17.2.2004, p. 1).