

Operative part of the judgment

Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses, generally and in all circumstances, to pay to its nationals a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State throughout the period of payment of the benefit, but in the territory of another Member State.

⁽¹⁾ OJ C 20, 27.1.2007.

Judgment of the Court (Sixth Chamber) of 15 May 2008 — Commission of the European Communities v Italian Republic

(Case C-503/06) ⁽¹⁾

(Failure of a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Derogations from the system of protection of wild birds — Region of Liguria)

(2008/C 171/13)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia, Agent)

Defendant: Italian Republic (represented by: I. Braguglia, Agent and G. Fiengo, avvocato dello Stato)

Re:

Failure by a Member State to fulfil its obligations — Adoption and application, by the region of Liguria, of legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds (OJ 1979 L 103, p. 1)

Operative part of the judgment

1. By adopting and applying, for the region of Liguria, legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under that directive.

2. The Italian Republic is ordered to bear the costs, including those linked to the interlocutory proceedings.

⁽¹⁾ OJ C 82, 14.4.2007.

Judgment of the Court (Third Chamber) of 22 May 2008 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy)) — Ampliscentifica Srl, Amplifin SpA v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-162/07) ⁽¹⁾

(Sixth VAT directive — Taxable persons — Second subparagraph of Article 4(4) — Parent companies and subsidiaries — Implementation by the Member State of the single taxable person scheme — Conditions — Consequences)

(2008/C 171/14)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ampliscentifica Srl, Amplifin SpA

Defendant: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Re:

Reference for a Preliminary Ruling — Interpretation of the second subparagraph of Article 4(4) of 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 (OJ 1977 L 145, p. 1) — 'Persons who, while legally independent, are closely bound to one another by financial, economic and organisational links' — Concept sufficiently precise to enable the Member States to apply the VAT scheme set out? — Concept of link — National provision requiring that a link exist for a minimum period of time in order to prevent the abuse or rights

Operative part of the judgment

1. The second subparagraph of Article 4(4) 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 is

a provision which, in order to be implemented by a Member State, requires prior consultation by that State of the Advisory Committee on value added tax and the adoption of national legislation authorising persons, in particular companies, established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links, no longer to be treated as separate taxable persons for the purposes of value added tax in order to be treated as a single taxable person to whom a single value added tax identification number is allocated and, accordingly, the sole person entitled to submit value added tax declarations. It is for the national court to determine whether national legislation, such as that at issue in the main proceedings, satisfies those criteria, subject to the qualification that, where there has been no prior consultation of the Advisory Committee on value added tax, national legislation which meets those criteria constitutes legislation adopted in breach of the procedural requirement laid down in the second subparagraph of Article 4(4) of Sixth Directive 77/388.

2. The principle of fiscal neutrality does not preclude national legislation which simply treats taxable persons wishing to opt for a mechanism to simplify value added tax declarations and payments differently according to whether the parent company or body has held more than 50 % of the share capital or stock of the persons with whom it is linked since at least the beginning of the calendar year preceding that in which the declaration was made or, on the contrary, satisfies those conditions only after that date. It is for the national court to determine whether national legislation, such as that at issue in the main proceedings, constitutes such a provision. Moreover, neither the principle prohibiting the abuse of rights nor the principle of proportionality precludes such legislation.

⁽¹⁾ OJ C 140, 23.6.2007.

**Judgment of the Court (Fifth Chamber) of 22 May 2008
(reference for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v Ecco Sko A/S**

(Case C-165/07) ⁽¹⁾

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Heading 6403 — Footwear with uppers of leather — Heading 6404 — Footwear with uppers of textile materials)

(2008/C 171/15)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: Ecco Sko A/S

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 (formerly No 2263/2000) of 13 October 2000, amending Annex I to Council Regulation (EEC) No 2658/87 — Compatibility of Additional Note 1 to Chapter 64 of the Combined Nomenclature, which was incorporated by Commission Regulation No 3800/92 of 23 December 1992 amending Council Regulation No 2658/87, with Note 4(a) to that same Chapter — Footwear with outer soles of rubber, plastics, leather or composition leather — Classification under Combined Nomenclature heading 6403 (footwear with uppers of leather) or under heading 6404 (footwear with uppers of textile materials)

Operative part of the judgment

1. The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, must be interpreted as meaning that a sandal such as that in question in the main proceedings, with an outer sole of rubber, whose upper is made up of two leather sections glued to the inner sole and linked to each other by leather fastening straps covered with Velcro strips, with the leather making up around 71 % of the upper's external surface area and the elastic textile material underneath the leather remaining exposed in places, falls within:

— heading 6404 of the Combined Nomenclature if the textile material of the upper of the sandal, without the leather sections, fulfils the purpose of an upper, that is to say, provides sufficient support for the foot to enable the wearer to walk in the sandal;

— heading 6403 of the Combined Nomenclature if the textile material of the upper of the sandal, without the leather sections, does not fulfil the purpose of an upper, that is to say, does not provide sufficient support for the foot to enable the wearer to walk in the sandal.

2. Additional Note 1 to Chapter 64 of the Combined Nomenclature, inserted by Commission Regulation (EEC) No 3800/92 of 23 December 1992 amending Regulation No 2658/87, is compatible with Note 4(a) to that chapter.

⁽¹⁾ OJ C 129, 9.6.2007.