

Parties to the main proceedings

Prosecutor: Åklagaren

Defendant: Hans Åkerberg Fransson

Re:

Request for a preliminary ruling — Haparanda tingsrätt — Interpretation of Article 6 TEU and Article 50 of the Charter of Fundamental Rights of the European Union — National case-law requiring a clear basis in the European Convention on Human Rights or the case-law of the European Court of Human Rights in order to disapply provisions of national law liable to be contrary to the *ne bis in idem* principle — National legislation under which the same conduct contrary to tax law may be punished both administratively by a tax surcharge and criminally by a term of imprisonment — Compatibility with the *ne bis in idem* principle of a national system involving two separate sets of proceedings to punish the same wrongful conduct

Operative part of the judgment

1. *The ne bis in idem principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.*
2. *European Union law does not govern the relations between the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law.*

European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice of the European Union, whether that provision is compatible with the Charter.

Judgment of the Court (Grand Chamber) of 26 February 2013 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Air France v Heinz-Gerke Folkerts, Luz-Tereza Folkerts

(Case C-11/11) ⁽¹⁾

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Articles 6 and 7 — Connecting flight(s) — Delay in arrival at the final destination — Delay equal to or in excess of three hours — A passenger's right to compensation)

(2013/C 114/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Air France

Defendants: Heinz-Gerke Folkerts, Luz-Tereza Folkerts

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 6 and 7 of 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) — Intercontinental flight consisting of several stages — Situation in which the flight arrives at the final destination ten hours late, although departure was delayed for a period within the limits set out in Article 6(1) of Regulation (EC) No 261/2004 — Possible right to compensation

Operative part of the judgment

Article 7 of 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 must be interpreted as meaning that compensation is payable, on the basis of that article, to a passenger on directly connecting flights who has been delayed at departure for a period below the limits specified in Article 6 of that regulation, but has arrived at the final destination at least three hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in Article 6 having been met.

⁽¹⁾ OJ C 72, 5.3.2011.

⁽¹⁾ OJ C 95, 26.3.2011.