

- in the alternative, annul the contested directive as unlawful, as applied for in the application, and order the defendants to pay the costs;
- declare furthermore that, inasmuch as the order of 22 January 2008 determines an action which was brought on 21 July 2004, the order amounts to a violation of Article 6 of the ECHR owing to the excessive duration of the proceedings and that, on that ground alone, the applicant is to be granted legal redress.

### Pleas in law and main arguments

The appellant's appeal against the order of the Court referred to above is based on the erroneous interpretation of the fourth paragraph of Article 230 EC and on the procedural irregularities which occurred in the course of the proceedings.

The Court of First Instance dismissed the application as inadmissible on the ground that the appellant was not directly and individually concerned by the contested measure within the meaning of the fourth paragraph of Article 230 EC.

That view is incorrect in law. The Court fails to recognise that interference with intellectual property in itself gives rise to an individual and direct concern, which results in an individual and direct concern within the meaning of the fourth paragraph of Article 230 EC. The nature of a patent is such that a particular person is granted an exclusive right for a limited period of time. Such a right can necessarily be conferred only on a particular person. No one else may exercise those rights; therefore interference with that right through a Community law measure necessarily has the effect of establishing individual and direct concern.

The Court's argument that there are also other providers of electronic road toll systems besides the appellant who, in certain circumstances, would be affected in the same way as the appellant, and that therefore the appellant is not directly and individually concerned, is not convincing. Direct and individual concern within the meaning of the fourth paragraph of Article 230 EC cannot be ruled out by the fact that there are other persons affected by the contested measure if such persons do not in fact have a patent.

The rejection of the appellant's statement, from which it emerges that the appellant is developing an ISO-CALM Infrared standard for which it has won the State Prize, is invoked as an infringement of the right to a fair hearing. Finally, the four-year duration of the proceedings is also unacceptable and in itself constitutes a serious procedural irregularity.

### Reference for a preliminary ruling from the **Arbeitsgericht Hamburg (Germany) lodged on 10 April 2008 — Jürgen Römer v Freie und Hansestadt Hamburg**

(Case C-147/08)

(2008/C 171/26)

*Language of the case: German*

### Referring court

Arbeitsgericht Hamburg

### Parties to the main proceedings

*Applicant:* Jürgen Römer

*Defendant:* Freie und Hansestadt Hamburg

### Questions referred

1. Are supplementary pension payments, governed by the *Erstes Ruhegeldgesetz* (First law on retirement pensions or 'First RGG') of the Freie und Hansestadt Hamburg, to former employees of the Freie und Hansestadt Hamburg and their survivors 'payments of any kind made by state schemes or similar, including state social security or social protection schemes' within the meaning of Article 3(3) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation<sup>(1)</sup>, with the consequence that the matters governed by the First RGG fall outside the scope of that directive ('the Directive')?
2. If the above question is answered in the negative:
  - 2.1 Are the provisions of the First RGG which differentiate, in calculating the amount of pension payable, between married pensioners and all other pensioners, that is, which treat married pensioners more favourably than, specifically, persons who have formed a civil partnership (*Lebenspartnerschaft*) with a person of the same sex in accordance with the *Lebenspartnerschaftsgesetz* (Law on civil partnership) of the Federal Republic of Germany, 'laws on marital status and the benefits dependent thereon' within the meaning of recital 22 in the preamble to the Directive?
  - 2.2 If the above question is answered in the affirmative:
 

Does it follow that the Directive does not apply to those provision of the First RGG, even though the Directive itself contains no limitation of its scope corresponding to recital 22 in the preamble?
3. If Question 2.1 or Question 2.2 is answered in the negative:
 

In relation to a person who has a formed a civil partnership with a person of the same sex and who is not permanently separated from the latter, does Paragraph 10(6) of the First RGG, under which the pension entitlements of married, not permanently separated, pensioners are calculated on the basis of the notional application of tax category III/0 (more favourable to a taxable person) but the pension entitlements

of all other pensioners are calculated on the basis of the notional application of tax category I (less favourable to a taxable person), constitute an infringement of Article 1 in conjunction with Article 2 and with Article 3(1)(c) of the Directive?

4. If Question 1 or Question 2(2) is answered in the affirmative or Question 3 is answered in the negative:

Does Paragraph 10(6) of the First RGG infringe Article 141 EC or a general principle of Community law by reason of the provision or legal effect described in Question 3?

5. If Question 3 or Question 4 is answered in the affirmative:

Does it follow that — until such time as Paragraph 10(6) of the First RGG is amended to remove the unequal treatment complained of — in relation to the calculation of his pension entitlement a pensioner who has formed a civil partnership and is not permanently separated from his partner is entitled to insist that the defendant treats him in the same manner as it does as a married, not permanently separated, pensioner? If so — if the Directive is applicable and Question 3 is answered in the affirmative — does this entitlement apply even before the expiry of the transposition period prescribed in Article 18(1) of the Directive?

6. If Question 5 is answered in the affirmative:

Is that subject to the qualification — in accordance with the grounds of the Court's judgment in Case C-262/88 Barber — that in the calculation of pension entitlement the principle of equal treatment is to be applied only in respect of that proportion of pension entitlement earned by the pensioner for the period from 17 May 1990?

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

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 14 April 2008 — Siebrand BV, other party: Staatssecretaris van Financiën**

(Case C-150/08)

(2008/C 171/27)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden (Netherlands)

**Parties to the main proceedings**

*Appellant in cassation:* Siebrand BV

*Other party to the proceedings:* Staatssecretaris van Financiën

**Questions referred**

1. Can a beverage which contains a certain amount of distilled alcohol but which otherwise corresponds to the definition of

heading 2206 of the Combined Nomenclature (CN) be classified under that heading if the beverage in question is a fermented beverage which, as a result of the addition of water and particular ingredients, has lost the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product?

2. In the event of a positive answer to Question 1, what criterion should govern the determination as to whether the beverage is nevertheless to be classified under heading 2208 of the CN on the ground that it contains distilled alcohol?

**Reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain) lodged on 15 April 2008 — Real Sociedad de Fútbol SAD and Nihat Kahveci v Consejo Superior de Deportes and Real Federación Española de Fútbol**

(Case C-152/08)

(2008/C 171/28)

*Language of the case: Spanish*

**Referring court**

Tribunal Superior de Justicia de Madrid

**Parties to the main proceedings**

*Applicants:* Real Sociedad de Fútbol SAD and Nihat Kahveci

*Defendants:* Consejo Superior de Deportes and Real Federación Española de Fútbol

**Question referred**

Does Article 37 of the EEC-Turkey Association Agreement (<sup>1</sup>), signed in Ankara on 12 September 1963 and approved by Council Decision 64/732/EEC, and its Additional Protocol of 23 November 1970 (<sup>2</sup>), preclude a sporting federation from applying a rule to a professional sportsman of Turkish nationality, lawfully employed by a Spanish football club, as in the main proceedings, under which clubs may use only a limited number of players from non-member States not belonging to the European Economic Area in national competitions?

(<sup>1</sup>) Agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1964 217, p. 3685).

(<sup>2</sup>) Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ L 293, p. 1).