

JUDGMENT OF THE COURT

(Fifth Chamber)

of 20 November 2003

in Case C-212/01 (Reference for a preliminary ruling from the Landesgericht Innsbruck): Margarete Unterpertinger v Pensionsversicherungsanstalt der Arbeiter ⁽¹⁾

(Sixth VAT Directive — Exemption for medical care provided in the exercise of the medical and paramedical professions — Expert medical report)

(2004/C 7/08)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-212/01: Reference to the Court under Article 234 EC by the Landesgericht Innsbruck (Austria) for a preliminary ruling in the proceedings pending before that court between Margarete Unterpertinger and Pensionsversicherungsanstalt der Arbeiter, on the interpretation of Article 13A(1)(c) 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) and the Court's case-law resulting, in particular, from Case C-384/98 D. v W. [2000] ECR I-6795, the Court (Fifth Chamber), composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 13A(1)(c) 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, is to be interpreted as meaning that the exemption from value added tax under that provision does not apply to the services of a doctor consisting of making an expert report on a person's state of health in order to support or exclude a claim for payment of a disability pension. The fact that the medical expert was instructed by a court or pension insurance institution is irrelevant in that respect.

⁽¹⁾ OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

of 18 November 2003

in Case C-216/01 (Reference for a preliminary ruling from the Handelsgericht Wien): Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH ⁽¹⁾

(Protection of geographical indications and designations of origin — Bilateral convention between a Member State and a non-member country protecting indications of geographical source from that non-member country — Articles 28 EC and 30 EC — Regulation (EEC) No 2081/92 — Article 307 EC — Succession of States in respect of treaties)

(2004/C 7/09)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-216/01: Reference to the Court under Article 234 EC by the Handelsgericht Wien (Austria) for a preliminary ruling in the proceedings pending before that court between Budějovický Budvar, národní podnik and Rudolf Ammersin GmbH on the interpretation of Articles 28 EC, 30 EC and 307 EC, and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3), the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans (Rapporteur), C. Gulmann and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissechot, R. Schintgen, N. Colneric and S. von Bahr, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 18 November 2003, in which it has ruled:

1. Article 28 EC and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as amended by Council Regulation (EC) No 535/97 of 17 March 1997, do not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.
2. Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of

the product that it designates is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

3. The first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State, subject to the findings to be made by that court having regard *inter alia* to the criteria set out in this judgment, to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the EC Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating that accession and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.

(¹) OJ C 245 of 1.9.2001.

ruling in the criminal proceedings before that court against Piergiorgio Gambelli and Others on the interpretation of Articles 43 EC and 49 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward (Rapporteur), R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it has ruled:

National legislation which prohibits on pain of criminal penalties the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or authorisation from the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 and 49 EC respectively. It is for the national court to determine whether such legislation, taking account of the detailed rules for its application, actually serves the aims which might justify it, and whether the restrictions it imposes are disproportionate in the light of those objectives.

(¹) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

of 6 November 2003

in Case C-243/01 (Reference for a preliminary ruling from the Tribunale di Ascoli Piceno): Piergiorgio Gambelli and Others (¹)

(Right of establishment — Freedom to provide services — Collection of bets on sporting events in one Member State and transmission by internet to another Member State — Prohibition enforced by criminal penalties — Legislation in a Member State which reserves the right to collect bets to certain bodies)

(2004/C 7/10)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-243/01: Reference to the Court under Article 234 EC by the Tribunale di Ascoli Piceno (Italy) for a preliminary

JUDGMENT OF THE COURT

of 25 November 2003

in Case C-278/01: Commission of the European Communities v Kingdom of Spain (¹)

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing such failure — Non-compliance — Article 228 EC — Financial penalties — Penalty payment — Quality of bathing water — Directive 76/160/EEC)

(2004/C 7/11)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-278/01, Commission of the European Communities (Agent: G. Valero Jordana) v Kingdom of Spain (Agent: S. Ortiz Vaamonde): Application, first, for a declaration that, by not