

as meaning that it prohibits the levying of a duty, such as that at issue in the main proceedings, on the issue of shares into a clearance service.

(<sup>1</sup>) OJ C 64, 8.3.2008.

**Judgment of the Court (Fourth Chamber) of 1 October 2009 (Reference for a preliminary ruling from the Tribunal du travail de Nivelles — Belgium) — Ketty Leyman v Institut national d'assurance maladie-invalidité (INAMI)**

(Case C-3/08) (<sup>1</sup>)

*(Reference for a preliminary ruling — Social security schemes — Invalidity benefits — Regulation (EEC) No 1408/71 — Article 40(3) — Different benefit schemes in the Member States — Disadvantages for migrant workers — Contributions on which there is no return)*

(2009/C 282/11)

Language of the case: French

#### Referring court

Tribunal du travail de Nivelles

#### Parties to the main proceedings

Applicant: Ketty Leyman

Defendant: Institut national d'assurance maladie-invalidité (INAMI)

#### Re:

Reference for a preliminary ruling — Tribunal du travail de Nivelles (Belgium) — Lawfulness, in the light of Article 18 EC, of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 149, p. 2) as amended — Invalidity allowance — Obstacle to the exercise of free movement as a result of the existence of different indemnification schemes

#### Operative part of the judgment

Article 39 EC must be interpreted as precluding application by the competent authorities of a Member State of national legislation which, in accordance with Article 40(3)(b) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, makes acquisition of the right to invalidity benefits subject to the condition that a period of primary incapacity of one year has elapsed, where such application has the result that a migrant worker has paid into the social security scheme of that

Member State contributions on which there is no return and is therefore at a disadvantage by comparison with a non-migrant worker.

(<sup>1</sup>) OJ C 79, 29.3.2008.

**Judgment of the Court (First Chamber) of 6 October 2009 (Reference for a preliminary ruling from the Juzgado de Primera Instancia No 4 de Bilbao — Spain) — Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira**

(Case C-40/08) (<sup>1</sup>)

*(Directive 93/13/EEC — Consumer contracts — Unfair arbitration clause — Measure void — Arbitration award which has become final — Enforcement — Whether the national court responsible for enforcement can consider of its own motion whether the unfair arbitration clause is null and void — Principles of equivalence and effectiveness)*

(2009/C 282/12)

Language of the case: Spanish

#### Referring court

Juzgado de Primera Instancia No 4 de Bilbao

#### Parties to the main proceedings

Applicant: Asturcom Telecomunicaciones SL

Defendant: Cristina Rodríguez Nogueira

#### Re:

Reference for a preliminary ruling — Juzgado de Primera Instancia No 4 de Bilbao — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Adequate and effective means to prevent the continued use of unfair terms — Application for the enforcement of a final arbitration award made in default on the basis of an unfair arbitration clause

#### Operative part of the judgment

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court or tribunal hearing an action for enforcement of an arbitration award which has become final and was made in the absence of the consumer is required, where it has available to it the legal and factual elements necessary for that task, to assess of its own motion whether an arbitration clause in a contract concluded between a seller or supplier and a consumer is unfair, in so far as, under national rules

of procedure, it can carry out such an assessment in similar actions of a domestic nature. If that is the case, it is for that court or tribunal to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that clause.

(<sup>1</sup>) OJ C 92, 12.4.2008.

**Judgment of the Court (First Chamber) of 1 October 2009**  
(reference for a preliminary ruling from the *Unabhängiger Verwaltungssenat des Landes Vorarlberg — Austria*) —  
*Arthur Gottwald v Bezirkshauptmannschaft Bregenz*

(Case C-103/08) (<sup>1</sup>)

*(Freedom of movement for persons — Citizenship of the Union — Article 12 EC — Issue of an annual toll disc in respect of a motor vehicle free of charge to disabled persons — Provisions restricting the issue of that disc to disabled persons resident or ordinarily resident in national territory)*

(2009/C 282/13)

Language of the case: German

#### Referring court

Unabhängiger Verwaltungssenat des Landes Vorarlberg

#### Parties to the main proceedings

*Applicant:* Arthur Gottwald

*Defendant:* Bezirkshauptmannschaft Bregenz

#### Re:

Reference for a preliminary ruling — *Unabhängiger Verwaltungssenat des Landes Vorarlberg (Austria)* — Interpretation of Article 12 of the EC Treaty — Discrimination on grounds of nationality — National legislation under which a toll disc made available free of charge to disabled persons is granted only to persons resident or ordinarily resident in national territory.

#### Operative part of the judgment

Article 12 EC must be interpreted as meaning that it does not preclude a national rule, such as that at issue in the main proceedings, which restricts the issue of an annual toll disc free of charge to those disabled persons who are resident or ordinarily resident in the territory of the Member State concerned, including also those persons who regularly travel to that State for professional or personal reasons.

(<sup>1</sup>) OJ C 142, 7.6.2008.

**Judgment of the Court (Grand Chamber) of 6 October 2009**  
(reference for a preliminary ruling from the *Rechtbank Amsterdam (Netherlands)*) — **European arrest warrant issued against Dominic Wolzenburg**

(Case C-123/08) (<sup>1</sup>)

*(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of the European arrest warrant — Implementation in national law — Person arrested a national of the issuing Member State — Non-execution of the European arrest warrant by the executing Member State conditional upon the person having spent a period of five years in its territory — Article 12 EC)*

(2009/C 282/14)

Language of the case: Dutch

#### Referring court

Rechtbank Amsterdam

#### Parties to the main proceedings

Dominic Wolzenburg

#### Re:

Reference for a preliminary ruling — Interpretation of Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Possibility for the executing judicial authority to refuse to execute a European arrest warrant issued for the purposes of execution of a custodial sentence against a person who is staying in or a resident of the executing Member State — Concepts of ‘resident’ and ‘staying in’ — Interpretation of Articles 12 EC, 17 EC and 18 EC — National legislation allowing different treatment by the executing judicial authority of the requested person if he refuses to be surrendered, depending on whether he is a national of the executing Member State or of another Member State

#### Operative part of the judgment

1. A national of one Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation, such as the Law on the surrender of persons (*Overleveringswet*), of 29 April 2004, which lays down the conditions under which the competent judicial authority can refuse to execute a European arrest warrant issued with a view to the enforcement of a custodial sentence.
2. Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration