

Re:

Failure by a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to ensure the application of Articles 2 and 3 of the Commission decision of 11 July 2001 concerning the State aid scheme implemented by Spain in favour of undertakings in the province of Álava in the form of a tax credit of 45 % of the investments made (notified under No C(2001)1759) (OJ 2002 L 296, p. 1) — Tax measures in the historic territory of Álava — Obligation to recover aid already paid and obligation to abolish future payments

Operative part of the judgment

The Court:

1. Declares that by failing to adopt within the prescribed period all of the measures necessary to comply with Articles 2 and 3 of each of the following decisions:

- Commission Decision 2002/820/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Álava in the form of a tax credit amounting to 45 % of investments (Case C-485/03);
- Commission Decision 2002/892/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Álava (Case C-488/03);
- Commission Decision 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Vizcaya in the form of a tax credit amounting to 45 % of investments (Case C-487/03);
- Commission Decision 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Vizcaya (Case C-490/03);
- Commission Decision 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Guipúzcoa in the form of a tax credit amounting to 45 % of investments (Case C-486/03), and
- Commission Decision 2002/540/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (Case C-489/03),

the Kingdom of Spain has failed to fulfil its obligations under those decisions;

2. Orders the Kingdom of Spain to pay the costs.

(¹) OJ C 21, 24.1.2004.

Judgment of the Court (Grand Chamber) of 5 December 2006 (references for a preliminary ruling from the Corte d'appello di Torino and the Tribunale di Roma — Italy) — Federico Cipolla v Rosaria Fazari, née Portolese, C-94/04 and Stefano Macrino, Claudia Capodarte v Roberto Meloni (C-202/04)

(Joined Cases C-94/04 and C-202/04) (¹)

(Community competition rules — National rules concerning lawyers' fees — Setting of professional scales of charges — Freedom to provide services)

(2006/C 331/03)

Language of the case: Italian

Referring court

Corte d'appello di Torino

Parties to the main proceedings

Applicants: Federico Cipolla (C-94/04) and Stefano Macrino, Claudia Capodarte (C-202/04)

Defendants: Rosaria Fazari, née Portolese (C-94/04), Roberto Meloni (C-202/04)

Re:

Reference for a preliminary ruling — Corte d'appello di Torino — Applicability of Community competition rules to lawyers' services — National rules laying down scales of fees to which no exceptions can be made and under which any agreement between client and lawyer concerning professional fees is void

Reference for a preliminary ruling — Tribunale di Roma — Comparability with Articles 10 EC and 81 EC of national rules approving a tariff of fees encompassing services provided by lawyers in the area of legal representation and legal consultation which may also be provided by non-lawyers — Tariff proposed by the professional body of lawyers

Operative part of the judgment

1. Articles 10 EC, 81 EC and 82 EC do not preclude a Member State from adopting a legislative measure which approves, on the basis of a draft produced by a professional body of lawyers such as the Consiglio nazionale forense (National Lawyers' Council), a scale fixing a minimum fee for members of the legal profession from which there can generally be no derogation in respect of either services reserved to those members or those, such as out-of-court services, which may also be provided by any other economic operator not subject to that scale.

2. Legislation containing an absolute prohibition of derogation, by agreement, from the minimum fees set by a scale of lawyers' fees, such as that at issue in the main proceedings, for services which are (a) court services and (b) reserved to lawyers constitutes a restriction on freedom to provide services laid down in Article 49 EC. It is for the national court to determine whether such legislation, in the light of the detailed rules for its application, actually serves the objectives of protection of consumers and the proper administration of justice which might justify it and whether the restrictions it imposes do not appear disproportionate having regard to those objectives.

⁽¹⁾ OJ C 94, 17.4.2004.
OJ C 179, 10.7.2004.

2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of copyright and related rights in the information society, the distribution of a signal by means of television sets by a hotel to customers staying in its rooms, whatever technique is used to transmit the signal, constitutes communication to the public within the meaning of Article 3(1) of that directive.

2. The private nature of hotel rooms does not preclude the communication of a work by means of television sets from constituting communication to the public within the meaning of Article 3(1) of Directive 2001/29.

⁽¹⁾ OJ C 257, 15.10.2005.

Judgment of the Court (Third Chamber) of 7 December 2006 (reference for a preliminary ruling from the Audiencia Provincial de Barcelona — Spain) — Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA

(Case C-306/05) ⁽¹⁾

(Copyright and related rights in the information society — Directive 2001/29/EC — Article 3 — Concept of communication to the public — Works communicated by means of television sets installed in hotel rooms)

(2006/C 331/04)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Sociedad General de Autores y Editores de España (SGAE)

Defendant: Rafael Hoteles SA

Re:

Reference for a preliminary ruling — Audiencia Provincial de Barcelona — Interpretation of Directive 2001/29/EEC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, page 10) — Meaning of 'act of communication to the public' (Article 3 of the directive) — Meaning of 'strictly domestic location' — Works made available on television sets installed in hotel rooms

Operative part of the judgment

1. While the mere provision of physical facilities does not as such amount to communication within the meaning of Directive

Judgment of the Court (Grand Chamber) of 12 December 2006 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division, United Kingdom) — Test Claimants in Class IV of the ACT Group Litigation v Commissioners of Inland Revenue

(Case C-374/04) ⁽¹⁾

(Freedom of establishment — Free movement of capital — Corporation tax — Payment of dividends — Tax credit — Separate treatment of resident and non-resident shareholders — Bilateral double taxation conventions)

(2006/C 331/05)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Chancery Division

Parties to the main proceedings

Applicants: Test Claimants in Class IV of the ACT Group Litigation

Defendant: Commissioners of Inland Revenue

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Chancery Division — National legislation on corporation tax — Retention at source ('advance corporation tax') applied to the profits distributed by a subsidiary to a parent company — Tax credit designed to take account of a retention made upstream — Benefit of the tax credit limited to residents and to residents of certain other Member States party to a convention for avoiding double taxation containing a clause to that effect — Liability of a Member State for breach of Community law — Form of redress