



30807517

THE  
ALL ENGLAND  
LAW REPORTS  
2009

European Cases

---

*Editor*

KAREN WIDDICOMBE, Solicitor



LexisNexis®



30807517

THE  
ALL ENGLAND  
LAW REPORTS  
2009

European Cases

---

*Editor*

KAREN WIDDICOMBE, Solicitor



LexisNexis®

## Members of the LexisNexis Group worldwide

United Kingdom	LexisNexis, a Division of Reed Elsevier (UK) Ltd, Halsbury House, 35 Chancery Lane, London, WC2A 1EL, and London House, 20-22 East London Street, Edinburgh EH7 4BQ
Australia	LexisNexis Butterworths, Chatswood, New South Wales
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, Vienna
Benelux	LexisNexis Benelux, Amsterdam
Canada	LexisNexis Canada, Markham, Ontario
China	LexisNexis China, Beijing and Shanghai
France	LexisNexis SA, Paris
Germany	LexisNexis Deutschland GmbH, Munster
Hong Kong	LexisNexis Hong Kong, Hong Kong
India	LexisNexis India, New Delhi
Italy	Giuffrè Editore, Milan
Japan	LexisNexis Japan, Tokyo
Malaysia	Malayan Law Journal Sdn Bhd, Kuala Lumpur
New Zealand	LexisNexis NZ Ltd, Wellington
Poland	Wydawnictwo Prawnicze LexisNexis Sp, Warsaw
Singapore	LexisNexis Singapore, Singapore
South Africa	LexisNexis Butterworths, Durban
USA	LexisNexis, Dayton, Ohio

© Reed Elsevier (UK) Ltd 2009

Published by LexisNexis

This is a Butterworths title

All rights reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication) without the written permission of the copyright owner except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency Ltd, Saffron House, 6-10 Kirby Street, London, EC1N 8TS. Applications for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher.

Warning: The doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland. Any European material in this work which has been reproduced from EUR-lex, the official European Communities legislation website, is European Communities copyright.

A CIP Catalogue record for this book is available from the British Library.

**ISBN for this volume**

ISBN 9781405743143

**ISBN for complete set of volumes**

ISBN 9780406996435

Typeset by Letterpart Ltd, Reigate, Surrey

Printed in the United Kingdom by CPI William Clowes Ltd, Beccles, NR34 7TL

ISBN 978-1-4057-4314-3



Visit LexisNexis at: [www.lexisnexis.co.uk](http://www.lexisnexis.co.uk)

## CITATION

These reports are cited thus:

**[2009] All ER (EC)**

## REFERENCES

These reports contain references to the following major work of legal reference described in the manner indicated below.

### **Halsbury's Laws of England**

The reference 14 *Halsbury's Laws* (4th edn) para 185 refers to paragraph 185 on page 90 of volume 14 of the fourth edition of *Halsbury's Laws of England*.

The reference 10 *Halsbury's Laws* (4th edn reissue) para 370 refers to paragraph 370 on page 163 of reissue volume 10 of the fourth edition of *Halsbury's Laws of England*.

The reference 11(1) *Halsbury's Laws* (4th edn) (2006 reissue) para 9 refers to paragraph 9 on page 27 of the 2006 reissue of volume 11(1) of the fourth edition of *Halsbury's Laws of England*.

The reference 79 *Halsbury's Laws* (5th edn) (2008) para 435 refers to paragraph 435 on page 299 of the 2008 issue of volume 79 of the fifth edition of *Halsbury's Laws of England*.

# Cases reported in European Cases volume

	Page		Page
Åklagaren v Mickelsson (Case C-142/05) [ECJ] . . . . .	842	Emirates Airlines—Direktion für Deutschland v Schenkel (Case C-173/07) [ECJ] . . . . .	436
Apothekerkammer des Saarlandes v Saarland (DocMorris NV, joined party) (Joined cases C-171/07 and C-172/07) [ECJ] . . . . .	1001	Emm G Lianakis AE v Municipality of Alexandroupolis (Case C-532/06) [ECJ] . . . . .	991
Arbeitsgemeinschaft (ARGE) Nürnberg 900, Vatsouras v (Joined cases C-22/08 and C-23/08) [ECJ] . . . . .	747	EU Council (supported by the UK, intervening), Othman v (Case T-318/01) [CFI] . . . . .	873
Avides Media AG, Dynamic Medien Vertriebs GmbH v (Case C-244/06) [ECJ] . . . . .	1098	EU Council (supported by the UK, intervening), People's Mojahedin Organisation of Iran v (Case T-256/07) [CFI] . . . . .	1221
Azelvandre, Commune de Sausheim v (Case C-552/07) [ECJ] . . . . .	1028	EU Council, Lindorfer v (Case C-227/04 P) [ECJ] . . . . .	569
Bartsch v Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH (Case C-427/06) [ECJ] . . . . .	113	European Commission (supported by the Czech Republic, intervening) v Germany (supported by Denmark, intervening) (Case C-132/05) [ECJ] . . . . .	58
Beef Industry Development Society Ltd, Competition Authority v (Case C-209/07) [ECJ] . . . . .	367	European Commission v Italy (Case C-110/05) [ECJ] . . . . .	796
Belgium (Diehl Remscheid GmbH & Co, intervening), Varec SA v (Case C-450/06) [ECJ] . . . . .	772	European Commission v Italy (supported by Greece, intervening) (Case C-531/06) [ECJ] . . . . .	1141
Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH, Bartsch v (Case C-427/06) [ECJ] . . . . .	113	European Commission v Luxembourg (Case C-319/06) [ECJ] . . . . .	1049
Cartesio Oktató és Szolgáltató bt (Civil proceedings concerning) (Case C-210/06) [ECJ] . . . . .	269	European Parliament (supported by Spain, intervening), Ireland (supported by Slovakia, intervening) v (Case C-301/06) [ECJ] . . . . .	1181
Civil proceedings concerning Cartesio Oktató és Szolgáltató bt (Case C-210/06) [ECJ] . . . . .	269	Finanzamt für Körperschaften III in Berlin v Krankenhaus Ruhesitz am Wannsee-Seniorenheimstatt GmbH (Case C-157/07) [ECJ] . . . . .	513
Commune de Mesquer v Total France SA (Case C-188/07) [ECJ] . . . . .	525	Finanzamt Lüdenscheid, Persche v (Case C-318/07) [ECJ] . . . . .	673
Commune de Sausheim v Azelvandre (Case C-552/07) [ECJ] . . . . .	1028	Flemish Government, Government of the French Community v (Case C-212/06) [ECJ] . . . . .	187
Competition Authority v Beef Industry Development Society Ltd (Case C-209/07) [ECJ] . . . . .	367	Förster v Hoofddirectie van de Informatie Beheer Groep (Case C-158/07) [ECJ] . . . . .	399
Criminal proceedings against Gysbrechts (Case C-205/07) [ECJ] . . . . .	711	Front Comor, The (Case C-185/07) [ECJ] . . . . .	491
Deutsche Rentenversicherung Bund, Schultz-Hoff v (Joined cases C-520/06 and C-350/06) [ECJ] . . . . .	906	Germany (supported by Denmark, intervening), European Commission (supported by the Czech Republic, intervening) v (Case C-132/05) [ECJ] . . . . .	58
Dynamic Medien Vertriebs GmbH v Avides Media AG (Case C-244/06) [ECJ] . . . . .	1098	Germany, Huber v (Case C-524/06) . . . . .	239
Elgafaji v Staatssecretaris van Justitie (Case C-465/07) [ECJ] . . . . .	651		
Elliniko Dimosio, Motosyklistiki Omospondia Ellados NPID (MOTOE) v (Case C-49/07) [ECJ] . . . . .	150		

<i>Page</i>	<i>Page</i>
GlaxoSmithKline AVEE Farmakeftikon Proionton (formerly Glaxowellcome AEVE), Sot Lelos kai Sia EE v (Joined cases C-468–478/06) [ECJ]. . . . . 1	Othman v EU Council (supported by the UK, intervening) (Case T-318/01) [CFI] . . . . . 873
Government of the French Community v Flemish Government (Case C-212/06) [ECJ] . . . . . 187	Passenheim-van Schoot v Staatssecretaris van Financiën (Joined cases C-155/08 and C-157/08) [ECJ]. . . . . 888
Gysbrechts (Criminal proceedings against) (Case C-205/07) [ECJ] . . . . . 711	People's Mojahedin Organisation of Iran v EU Council (supported by the UK, intervening) (Case T-256/07) [CFI] . . . . . 1221
HM Revenue and Customs, Stringer v (Joined cases C-520/06 and C-350/06) [ECJ]. . . . . 906	Persche v Finanzamt Lüdenscheld (Case C-318/07) [ECJ] . . . . . 673
Hoofddirectie van de Informatie Beheer Groep, Förster v (Case C-158/07) [ECJ] . . . . . 399	R (on the application of Payir) v Secretary of State for the Home Dept (Case C-294/06) [ECJ] . . . . . 964
Huber v Germany (Case C-524/06) . . . . . 239	R (on the application of the Incorporated Trustees of the National Council on Ageing (Age Concern England)) v Secretary of State for Business, Enterprise and Regulatory Reform (Case C-388/07) [ECJ]. . . . . 619
Hütter v Technische Universität Graz (Case C-88/08) [ECJ] . . . . . 1129	Riksåklagaren, Rosengren v (Case C-170/04) [ECJ] . . . . . 455
Impact v Minister for Agriculture and Food (Case C-268/06) [ECJ] . . . . . 306	Riunione Adriatica di Sicurtà SpA, West Tankers Inc v, The Front Comor (Case C-185/07) [ECJ]. . . . . 491
Ireland (supported by Slovakia, intervening) v European Parliament (supported by Spain, intervening) (Case C-301/06) [ECJ] . . . . . 1181	Rosengren v Riksåklagaren (Case C-170/04) [ECJ] . . . . . 455
Italy (supported by Greece, intervening), European Commission v (Case C-531/06) [ECJ] . . . . . 1141	Saarland (DocMorris NV, joined party), Apothekerkammer des Saarlandes v (Joined cases C-171/07 and C-172/07) [ECJ] . . . . . 1001
Italy, European Commission v (Case C-110/05) [ECJ]. . . . . 796	Schenkel, Emirates Airlines—Direktion für Deutschland v (Case C-173/07) [ECJ]. . . . . 436
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH, Finanzamt für Körperschaften III in Berlin v (Case C-157/07) [ECJ] . . . . . 513	Schultz-Hoff v Deutsche Rentenversicherung Bund (Joined cases C-520/06 and C-350/06) [ECJ]. . . . . 906
Lindorfer v EU Council (Case C-227/04 P) [ECJ] . . . . . 569	Secretary of State for Business, Enterprise and Regulatory Reform, R (on the application of the Incorporated Trustees of the National Council on Ageing (Age Concern England)) v (Case C-388/07) [ECJ] . . . . . 619
Luxembourg, European Commission v (Case C-319/06) [ECJ] . . . . . 1049	Secretary of State for the Home Dept, R (on the application of Payir) v (Case C-294/06) [ECJ] . . . . . 964
Metock v Minister for Justice, Equality and Law Reform (Case C-127/08) [ECJ]. . . . . 40	Sot Lelos kai Sia EE v GlaxoSmithKline AVEE Farmakeftikon Proionton (formerly Glaxowellcome AEVE) (Joined cases C-468–478/06) [ECJ]. . . . . 1
Mickelsson, Åklagaren v (Case C-142/05) [ECJ] . . . . . 842	
Minister for Agriculture and Food, Impact v (Case C-268/06) [ECJ]. . . . . 306	
Minister for Justice, Equality and Law Reform, Metock v (Case C-127/08) [ECJ]. . . . . 40	
Minister van Landbouw, Natuur en Voedselkwaliteit, van der Weerd v (Joined cases C-222–225/05) [ECJ] . . . . . 90	
Motosyklistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio (Case C-49/07) [ECJ] . . . . . 150	
Municipality of Alexandroupolis, Emm G Lianakis AE v (Case C-532/06) [ECJ] . . . . . 991	

	<i>Page</i>		<i>Page</i>
Staatssecretaris van Financiën, Passenheim-van Schoot v (Joined cases C-155/08 and C-157/08) [ECJ]. . . . .	888	van der Weerd v Minister van Landbouw, Natuur en Voedselkwaliteit (Joined cases C-222–225/05) [ECJ] . . . . .	90
Staatssecretaris van Financiën, X v (Joined cases C-155/08 and C-157/08) [ECJ]. . . . .	888	Varec SA v Belgium (Diehl Remscheid GmbH & Co, intervening) (Case C-450/06) [ECJ] . .	772
Staatssecretaris van Justitie, Elgafaji v (Case C-465/07) [ECJ] . . . . .	651	Vatsouras v Arbeitsgemeinschaft (ARGE) Nürnberg 900 (Joined cases C-22/08 and C-23/08) [ECJ]. . . . .	747
Stringer v HM Revenue and Customs (Joined cases C-520/06 and C-350/06) [ECJ]. . . . .	906	West Tankers Inc v Riunione Adriatica di Sicurtà SpA, The Front Comor (Case C-185/07) [ECJ] . . . . .	491
Technische Universität Graz, Hütter v (Case C-88/08) [ECJ] . . . . .	1129	X v Staatssecretaris van Financiën (Joined cases C-155/08 and C-157/08) [ECJ]. . . . .	888
Total France SA, Commune de Mesquer v (Case C-188/07) [ECJ] . . .	525		

# Digest of cases reported in European Cases volume

## AGRICULTURAL PRODUCTS AND FOODSTUFFS

- Protection of geographical indications and designations of origin – Use of the name ‘Parmesan’ – Germany not proceeding against the abuse of a protected designation of origin – Whether ‘Parmesan’ becoming generic name for hard cheese – Whether Germany failing to fulfil its obligations

### **European Commission (supported by the Czech Republic, intervening) v Germany (supported by Denmark, intervening)**

**(Case C-132/05) ..... ECJ 58**

## CITIZENSHIP

- Freedom to reside and move freely within territory of member states – Nationals of non-member states entering host state – Refusal of asylum – Subsequent marriage to Union citizen – Application for residence card being refused by reason of deportation order or conditions of prior lawful residence in another member state – Whether Community law prohibiting national legislation of prior lawful residence – Whether non-member state spouse accompanying or joining a Union citizen able to benefit from Community law

### **Metock v Minister for Justice, Equality and Law Reform**

**(Case C-127/08) ..... ECJ 40**

- Person holding nationality of a member state – Discrimination on grounds of nationality – Applicant being national of one member state travelling to another member state to study – Applicant awarded maintenance grant – Decision to award grant annulled on grounds of applicant’s unemployment and lack of integration in host member state – Whether applicant entitled to maintenance grant – Whether prior residence requirement compatible with principle of non-discrimination – Whether retroactive application of residence requirement precluded by principle of legal certainty

### **Förster v Hoofddirectie van de Informatie Beheer Groep**

**(Case C-158/07) ..... ECJ 399**

- Person holding nationality of a member state – Discrimination on grounds of nationality – Citizen from one member state residing in another member state – Storage and processing of personal data in a central database of foreign nationals – No similar database in respect of nationals of member state – Objective of protecting public security by fighting crime – Whether storage and processing compatible with Community law

**Huber v Germany (Case C-524/06) ..... ECJ 239**

- Person holding nationality of a member state – Freedom to reside and move freely within territory of member states – Greek nationals entering Germany and applying for benefits in favour of jobseekers – Job centre granting then subsequently withdrawing entitlement to benefits – National rules excluding nationals of other member states from receipt of jobseekers’ benefits – Whether national rules precluded by European Community legislation

### **Vatsouras v Arbeitsgemeinschaft (ARGE) Nürnberg 900 (Joined**

**cases C-22/08 and C-23/08) ..... ECJ 747**

## CONFLICT OF LAWS

- Foreign proceedings – Circumstances in which court will restrain foreign proceedings – Charterparty – London arbitration clause – Ship colliding with jetty in Italy – Insurers bringing subrogated claim against owner in Italy – Owner contending claim falling within arbitration clause – Owner obtaining interim anti-suit injunction – Insurers applying to discharge injunction – Whether anti-suit injunction consistent with European law

**West Tankers Inc v Riunione Adriatica di Sicurtà SpA, The Front Comor (Case C-185/07) ..... ECJ 491**

## CONSUMER PROTECTION

- Air transport – Compensation for passengers for flight cancellation – Claimant booking outward and return flights on non-Community carrier travelling from member state to third country – Return flight from third country cancelled – Claimant seeking compensation for flight cancellation – Whether ‘flight’ to be interpreted as comprising both outward and return journeys – Whether fact that outward and return flights booked simultaneously affecting interpretation of ‘flight’

**Emirates Airlines—Direktion für Deutschland v Schenkel (Case C-173/07) ..... ECJ 436**

- Distance contracts – Right of consumer to withdraw from distance contract during specified period – Prohibition on seller requesting payment before expiry of withdrawal period – Whether prohibition constituting quantitative restriction on exports or measure having equivalent effect

**Criminal proceedings against Gysbrechts (Case C-205/07) ..... ECJ 711**

## DATA PROTECTION

- Processing and free movement of personal data – Storage and processing of personal data relating to citizens of European Union who are nationals of another member state – Whether processing data necessary for the performance of a task carried out in the public interest

**Huber v Germany (Case C-524/06) ..... ECJ 239**

## DIRECTIVES

- Legal basis of directive – Directive concerning retention of data generated or processed in connection with provision of electronic communications services – Whether choice of legal basis for adoption of directive appropriate – Whether provisions of directive concerning functioning of internal market

**Ireland (supported by Slovakia, intervening) v European Parliament (supported by Spain, intervening) (Case C-301/06) ..... ECJ 1181**

## EMPLOYMENT

- Contract – Framework agreement on fixed-term work – Successive fixed-term contracts in public sector – Irish government belatedly transposing framework agreement on fixed-term work into national law – Irish government renewing employment contracts for fixed term of up to eight years – Whether national court required to apply directly effective Community law in absence of express jurisdiction – Whether provisions for non-discrimination and prevention of abuse in framework agreement directly effective – Whether ‘employment conditions’ including remuneration and pensions

**Impact v Minister for Agriculture and Food (Case C-268/06) ..... ECJ 306**

## EMPLOYMENT (CONT'D)

- Equal treatment in employment and occupation – Dismissal – Discrimination on grounds of age – United Kingdom transposing Community legislation on equal treatment in employment and occupation into national legislation – National legislation providing for exception to principle of non-discrimination where reason for dismissal of employee aged 65 or over was retirement – Whether national legislation properly transposing Community legislation – Whether member states required to specify differences of treatment not covered by principle of non-discrimination

**R (on the application of the Incorporated Trustees of the National Council on Ageing (Age Concern England)) v Secretary of State for Business, Enterprise and Regulatory Reform (Case C-388/07) ..... ECJ 619**

- Equal treatment in employment and occupation – Occupational pension scheme – Exclusion of right to survivor's pension if spouse more than 15 years younger than deceased employee – Alleged discriminatory treatment containing no link to Community law – Whether application of Community law appropriate – Whether exclusion constituting discrimination based on age

**Bartsch v Bosch und Siemens Hausgeräte (BSH)**

**Altersfürsorge GmbH (Case C-427/06) ..... ECJ 113**

- Equal treatment in employment and occupation – Pay and grading of contractual public servants – Employee recruited at lower grade than older colleague – National legislation excluding accreditation of employee's professional experience acquired before age of 18 in determination of grading – Employee seeking compensation for age discrimination – Whether difference in treatment justified – Whether European Community legislation precluding national legislation

**Hütter v Technische Universität Graz (Case C-88/08) ..... ECJ 1129**

## ENVIRONMENT

- Genetically modified organisms – Applicant directing deliberate release of genetically modified organisms – Defendant requesting disclosure of information concerning release of each genetically modified organism in applicant's administrative area including specific 'location of release' – Applicant refusing to accede to request arguing that information confidential – Meaning of 'location of release' – Whether possible to oppose disclosure of information by way of 'confidentiality' or any other exception

**Commune de Sausheim v Azelvandre (Case C-552/07) ..... ECJ 1028**

- Ship-source pollution – Management of waste – 'Polluter pays' principle – Accidental spillage of heavy fuel oil at sea following shipwreck – Whether heavy fuel oil sold as combustible fuel to be classified as waste – Whether heavy fuel oil accidentally spilled at sea to be classified as waste – Whether producer and/or seller of heavy fuel oil accidentally spilled at sea to be required to dispose of waste generated

**Commune de Mesquer v Total France SA (Case C-188/07) ..... ECJ 525**

- Water – Recreational craft – National legislation prohibiting use of personal watercraft on waters other than general navigable waterways – Persons operating personal watercraft in infringement of national legislation – Public prosecutor's office bringing proceedings for infringement – Whether European Community legislation precluding national legislation – Whether national legislation justified by objective of environmental protection

**Åklagaren v Mickelsson (Case C-142/05) ..... ECJ 842**

**EQUALITY OF TREATMENT OF MEN AND WOMEN**

- Equal pay for equal work – Transfer of pension scheme to Community pension scheme – Calculation of years of pensionable service being transferred to new scheme – Method of calculation differing between male and female – Whether formulae used in calculation discriminating against sex

**Lindorfer v EU Council (Case C-227/04 P) ..... ECJ 569**

**FREEDOM OF ESTABLISHMENT**

- Companies and firms – Company seat noted in commercial register – National legislation not allowing a company incorporated in one member state to transfer its seat abroad while continuing to be subject to that state's domestic law – Application to register transfer of company seat from one member state to another member state being rejected – Whether rejection contrary to Community law

**Civil proceedings concerning Cartesio Oktató és Szolgáltató bt (Case C-210/06) ..... ECJ 269**

- Principle of non-discrimination – Deduction of losses – National law allowing company to take into account losses incurred by its permanent establishment situated in another member state and then providing for reintegration of such losses when permanent establishment made profits – Member state in which permanent establishment situated not conferring right to carry forward losses incurred by permanent establishment belonging to company established in another state – Income of permanent establishment exonerated from taxation in member state in which principal company situated pursuant to double taxation convention – Whether restriction on freedom of establishment

**Finanzamt für Körperschaften III in Berlin v Krankenhaus Ruhesitz am Wannsee-Seniorenheimstatt GmbH (Case C-157/07) ..... ECJ 513**

- Principle of non-discrimination – Right to operate pharmacies restricted to qualified pharmacists only – Objective of ensuring proper provision of medicinal products to the public – Whether protection on public health grounds justifying restriction imposed – Whether national legislation infringing Community law

**European Commission v Italy (supported by Greece, intervening) (Case C-531/06) ..... ECJ 1141**

- Restriction on freedom to provide services – Public health – Pharmacies – Recognition of professional qualifications – National legislation restricting right to own and operate pharmacy to pharmacists alone – Restriction justified in general interest – Whether restriction proportionate to risk posed by non-pharmacists operating pharmacies

**Apothekerkammer des Saarlandes v Saarland (DocMorris NV, joined party) (Joined cases C-171/07 and C-172/07) ..... ECJ 1001**

**FREEDOM OF MOVEMENT**

- Capital – Principle of non-discrimination – Income tax – Deduction of gifts to bodies recognised as charitable – Deduction restricted to gifts to national bodies – Donation to charitable body in another member state – Whether donations in kind within scope of free movement of capital – Whether refusal to allow deduction restriction on free movement of capital – Whether restriction justified by need to safeguard effectiveness of fiscal supervision

**Persche v Finanzamt Lüdenscheid (Case C-318/07) ..... ECJ 673**

## **FREEDOM OF MOVEMENT (CONT'D)**

- Capital – Principle of non-discrimination – Savings deposited in member state other than member state of residence – No declaration of assets or income derived from assets – Recovery period for tax payable on such assets – Extension of recovery period in case of assets held outside member state of residence – Whether differing recovery periods established by national legislation contrary to Community law – Whether calculation of fine imposed for concealment of assets appropriate

### **X v Staatssecretaris van Financiën, Passenheim-van Schoot v Staatssecretaris van Financiën (Joined cases C-155/08 and C-157/08) .....**

**ECJ 888**

- Goods – Restriction on freedom – National legislation prohibiting the sale by mail order of image storage media which had not been examined and classified by competent national authority and which did not bear age limit label – Image storage media imported from another member state which had been examined and classified by the competent authority of that state and which bore age limit label – Whether principle of free movement of goods precluding national legislation

### **Dynamic Medien Vertriebs GmbH v Avides Media AG (Case C-244/06) .....**

**ECJ 1098**

- Goods – Restriction on freedom – Restrictions justified on grounds of protection of public health – National provisions prohibiting importation of alcoholic beverages by private individuals – Justification – Objective of limiting the consumption of alcohol and protecting young persons against the harmful effects of such consumption – Whether objectives suitable for achieving the protection of health and life of humans

### **Rosengren v Rikssåklagaren (Case C-170/04) .....**

**ECJ 455**

- Services – Posting of workers in another member state – Obligations under national legislation – Undertakings to comply with terms and conditions of employment going beyond the requirements of Community law – Undertakings to produce documents relating to a posting – Undertakings to designate a permanent agent to retain documents for monitoring purposes – Whether national legislation contrary to the freedom to provide services

### **European Commission v Luxembourg (Case C-319/06) .....**

**ECJ 1049**

## **HEALTH AND SAFETY AT WORK**

- Organisation of working time – Paid annual leave – Annual leave coinciding with sick leave – Compensation for paid annual leave not taken before end of contract because of sickness – Whether worker entitled to take paid annual leave during period of sick leave – Whether right to paid annual leave extinguished at end of leave year and/or carry-over period where worker on sick leave for whole or part of leave year – Whether worker absent on sick leave for whole or part of leave year entitled to allowance in lieu of paid annual leave not taken by time employment terminated

### **Stringer v Her Majesty's Revenue and Customs, Schultz-Hoff v Deutsche Rentenversicherung Bund (Joined cases C-520/06 and C-350/06) .....**

**ECJ 906**

## **IMPORTS**

- Prohibition on imports – Quantitative restrictions and measures having equivalent effect – National provisions prohibiting importation of alcoholic beverages by private individuals – Rule relating to existence and operation of monopoly on sales of alcoholic beverages – Exclusive right of retail of alcoholic beverages – Whether measure contrary to Community law

### **Rosengren v Rikssåklagaren (Case C-170/04) .....**

**ECJ 455**

## NATIONAL RULES

- Procedure – Proceedings in national court – Original pleas in law being rejected – National court indicating other pleas in law alleging infringement of Community law – National court raising Community law of its own motion – Whether principles of equivalence and effectiveness requiring national court to raise an examination of its own motion – Whether national court required to conduct an examination of the validity of a national administrative measure where parties to proceedings not invoked pleas in law

**van der Weerd v Minister van Landbouw, Natuur en  
Voedselkwaliteit (Joined cases C-222-225/05) ..... ECJ 90**

## PROCEDURE

- Action for annulment – Council decision – Restrictive measures against certain persons and entities with a view to combating terrorism – Council decision freezing assets of applicant – Further decision being adopted after judgment annulling similar decisions – Whether Council giving adequate statement of reasons – Whether right to fair hearing observed

**People's Mojahedin Organisation of Iran v EU Council (supported  
by the UK, intervening) (Case T-256/07) ..... CFI 1221**

- Action for annulment – Council decision – Transfer of pension rights to new pension scheme – Calculation of years of pensionable service on transfer – Challenge to the number of calculated years – Court of First Instance dismissing action – Whether Council erring in calculation of the number of years of pensionable service

**Lindorfer v EU Council (Case C-227/04 P) ..... ECJ 569**

## PUBLIC PROCUREMENT

- Public works contracts – Awards procedure and criteria – Principle of equal treatment of economic operators and obligation of transparency – Contracting authority inviting tenders for contract to carry out project – Whether Community law precluding contracting authority from stipulating weighting factors and sub-criteria to be applied to award criteria referred to in contract notice at later date

**Emm G Lianakis AE v Municipality of Alexandroupolis  
(Case C-532/06) ..... ECJ 991**

- Review procedures applicable to public contracts – Tenderers submitting bids in procurement process – Eliminated tenderer bringing action for annulment of award decision – Winning tender initially excluded from court file lodged by contracting authority – Request for winning tender to be included in file – Winning tender containing confidential data and information – Balance between adversarial principle and right to observance of business secrets – Whether review body required to protect confidentiality of business secrets provided by economic operators

**Varec SA v Belgium (Diehl Remscheid GmbH & Co, intervening)  
(Case C-450/06) ..... ECJ 772**

## REFERENCE TO EUROPEAN COURT

- Request for preliminary ruling concerning interpretation of Community law – Interpretation of directive – Subsidiary protection status – Serious and individual threat to life by reason of indiscriminate violence in situations of armed conflict – Real risk of suffering harm if returned to country of origin – Applicants applying for temporary residence permits as persons eligible for subsidiary protection – Determination of qualification for subsidiary protection status – Whether necessary for applicant to adduce evidence of specific targeting by reason of individual circumstances

**Elgafaji v Staatssecretaris van Justitie (Case C-465/07) ..... ECJ 651**

## REFERENCE TO EUROPEAN COURT (CONT'D)

- Request for preliminary ruling concerning interpretation of treaty – Court proceedings relating to request to register transfer on commercial register – Court entrusted with keeping register rejecting application – Proceedings not inter partes under national law – Request to refer questions for a preliminary ruling – Whether referring court can be classified as court or tribunal able to refer for a preliminary ruling – Whether referring court constituting court or tribunal against whose decisions there was no judicial remedy under national law

**Civil proceedings concerning Cartesio Oktató és Szolgáltató bt**  
(Case C-210/06) ..... ECJ 269

## REGULATIONS

- Legal basis of regulation – Community foreign and security policy – Restrictive measures taken against persons and entities associated with Usama bin Laden, Al Qa'ida network and Taliban – Freezing of funds – Application for annulment – Security Council naming applicants in published list of entities subject to freezing of funds – Whether right to respect for property, right to be heard and right to effective judicial review being breached

**Othman v EU Council (supported by the UK, intervening)**  
(Case T-318/01) ..... CFI 873

## RULES ON COMPETITION

- Abuse of dominant position – Concept of undertaking and of economic activity – Non-profit-making association – Dual role of public body and undertaking – Association having powers to give consent to applications for authorisation to organise certain events – Association also exercising economic activities such as conclusion of sponsorship, advertising and insurance contracts for those events – Whether association a public body or an undertaking – Whether public body can infringe competition law

**Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio (Case C-49/07)** ..... ECJ 150

- Abuse of dominant position – Undertaking importing, warehousing and distributing medicinal products – Wholesalers distributing products in national and other member state – Undertaking deciding to distribute products itself – Orders for medicinal products by wholesalers being refused – Aim of refusal to restrict parallel trade – Belief that parallel trade harming undertaking's trade – Whether refusal to meet orders constituting abuse of dominant position

**Sot Lelos kai Sia EE v GlaxoSmithKline AVEE Farmakeftikon Proionton (formerly Glaxowellcome AVEE) (Joined cases C-468–478/06)** ..... ECJ 1

- Agreements preventing, restricting or distorting competition – Agreement to reduce overcapacity in the Irish beef processing industry – Whether agreement having 'as [its] object or effect the prevention, restriction or distortion of competition' – Whether sufficient to show that agreement having anti-competitive object

**Competition Authority v Beef Industry Development Society Ltd**  
(Case C-209/07) ..... ECJ 367

## **TREATY PROVISIONS**

- Obligations under treaty – Failure to fulfil obligations – Free movement of goods – Transport – Member state prohibiting mopeds, motorcycles, motor tricycles and quadricycles towing a trailer – Whether prohibition constituting obstacle to import of goods – Whether ensuring road safety appropriate justification for prohibition

**European Commission v Italy (Case C-110/05) ..... ECJ 796**

- Obligations under treaty – Failure to fulfil obligations – Freedom to provide services – Failure to fully transpose Community legislation into domestic legislation – Domestic legislation creating restrictions on freedom to provide services – Whether domestic legislation compatible with Community law

**European Commission v Luxembourg (Case C-319/06) ..... ECJ 1049**

## **WORKERS**

- Freedom of movement – Care insurance scheme established by federated entity of member state – Exclusion of persons residing in part of the national territory other than that falling within the competence of that entity – Action for annulment of scheme – Whether care insurance scheme within jurisdiction of Community law – Whether residency criterion contrary to Community law

**Government of the French Community v Flemish Government  
(Case C-212/06) ..... ECJ 187**

- Freedom of movement – EEC-Turkey Association Agreement – Turkish nationals being granted leave to enter United Kingdom as au pair and as students – Turkish nationals seeking further leave to remain under association agreement – Secretary of State refusing further leave to remain on basis that working as au pair and studying not constituting employment – Turkish nationals seeking to quash decision – Whether Secretary of State entitled to reject application on grounds that Turkish nationals not in employment

**R (on the application of Payir) v Secretary of State for the Home  
Dept (Case C-294/06) ..... ECJ 964**

*a* **Sot Lelos kai Sia EE and others v  
GlaxoSmithKline AEEV  
Farmakeftikon Proionton (formerly  
*b* Glaxowellcome AEEV)**  
(Joined cases C-468–478/06)

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES (GRAND CHAMBER)

*c* JUDGES SKOURIS (PRESIDENT), JANN, TIMMERMANS, ROSAS, LENAERTS (RAPPORTEUR) AND TIZZANO (PRESIDENTS OF CHAMBERS), SILVA DE LAPUERTA, SCHIEMANN, MAKARCZYK, LINDH, BONICHOT, VON DANWITZ AND ARABADJIEV  
ADVOCATE GENERAL RUIZ-JARABO COLOMER

29 JANUARY, 1 APRIL, 16 SEPTEMBER 2008

*d* *European Community – Rules on competition – Abuse of dominant position – Undertaking importing, warehousing and distributing medicinal products – Wholesalers distributing products in national and other member state – Undertaking deciding to distribute products itself – Orders for medicinal products by wholesalers being refused – Aim of refusal to restrict parallel trade – Belief that parallel trade harming undertaking's trade – Whether refusal to meet orders constituting abuse of dominant position – Article 82 EC (formerly EC Treaty, art 86).*

*e*

*f* The respondent was the Greek subsidiary of a pharmaceuticals research and manufacturing company established in the United Kingdom. It imported, warehoused and distributed the United Kingdom company's pharmaceutical products in Greece. As such it held the marketing authorisation in Greece, inter alia, for a number of prescription-only medicinal products which formed the basis of the instant dispute. Each of the applicant companies had for a number of years bought those medicinal products from the respondent in order to distribute them on the Greek market and in other member states.

*g* Subsequently, the respondent altered its system of distribution on the Greek market, citing a shortage of those medicines and stopped meeting the orders of the applicants for the medicinal products in dispute and began itself to distribute those products to Greek hospitals and pharmacies. The respondent applied to the Epitropi Antagonismou (Competition Commission) for a declaration that its policy of selling medicines directly to hospitals and

*h* pharmacies did not infringe domestic competition rules. A few months later, having taken the view that the supply of medicines on the Greek market had to some extent normalised, the respondent began once more to supply limited quantities of the medicinal products in dispute to the applicants. The applicants, along with some Greek associations of pharmacists and wholesalers, applied to the Epitropi Antagonismou for a declaration that the

*i* sales policy of the respondent in respect of those medicinal products constituted an abuse of the dominant position which those companies held on the markets for the medicinal products in question (see *Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) v GlaxoSmithKline plc* Case C-53/03 [2005] ECR I-4609). By another decision, the Epitropi Antagonismou ordered the respondent to meet the orders of the applicants for the medicinal products

in dispute pending the decision in the *Syfait* case. The respondent lodged applications with the Diikitiko Efetio Athinon (Athens Administrative Appeal Court) for a stay of execution and an annulment of that decision, which were rejected. Subsequently, the applicants brought an action before the Polimeles Protodikio Athinon (Athens Court of First Instance) claiming that the conduct of the respondent in interrupting supplies of medicinal products which had been ordered constituted unfair and anti-competitive acts and an abuse of the dominant position occupied by the respondent on the markets for the medicinal products in dispute. Although the Polimeles Protodikio Athinon ruled that the actions were admissible it dismissed them as unfounded, on the ground that the refusal on the part of the respondent to supply was not unjustified and could not constitute abuse of that company's dominant position. The applicants appealed against those judgments before the Efetio Athinon (Court of Appeal, Athens) with the respondent cross-appealing. That court, however, suspended its examination of some of the cases before it pending the Court of Justice of the European Communities' decision in the *Syfait* case in which it was held that it had no jurisdiction to reply to the questions referred by the Epitropi Antagonismou since that body was not a court or tribunal. Considering that, in order to deliver its judgments, it was necessary to have answers to the same questions which the Epitropi Antagonismou had referred, the Efetio Athinon decided to stay the appeal proceedings and referred for a preliminary ruling under art 234 EC (formerly art 177 of the EC Treaty), inter alia, the following question to the Court of Justice whether there was an abuse of a dominant position contrary to art 82 EC<sup>a</sup> (formerly art 86 of the EC Treaty) if a pharmaceuticals company occupying such a position on the national market for certain medicinal products refused to meet orders sent to it by wholesalers on account of the fact that those wholesalers were involved in parallel exports of those products to other member states.

**Held** – Article 82 EC had to be interpreted as meaning that an undertaking occupying a dominant position on the relevant market for medicinal products which, in order to put a stop to parallel exports carried out by certain wholesalers from one member state to other member states, refused to meet ordinary orders from those wholesalers, was abusing its dominant position. It was for the national court to ascertain whether the orders were ordinary in the light of both the size of those orders in relation to the requirements of the market in the first member state and the previous business relations between that undertaking and the wholesalers concerned. The refusal by an undertaking occupying a dominant position on the market of a given product to meet the orders of an existing customer constituted abuse of that dominant position under art 82 EC where, without any objective justification, that conduct was liable to eliminate a trading party as a competitor. With regard to a refusal by an undertaking to deliver its products in one member state to wholesalers which export those products to other member states, such an effect on competition might exist not only if the refusal impeded the activities of those wholesalers in that first member state, but equally if it led to the elimination of effective competition from them in the distribution of

<sup>a</sup> Article 82 EC, so far as material, provides: 'Any abuse by one or more undertakings of a dominant position ... shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.'