COURT OF JUSTICE OF THE EUROPEAN UNION

RESEARCH AND DOCUMENTATION DIRECTORATE

FOLLOW-UP OF PRELIMINARY RULINGS

FLASH NEWS

3/17

OVERVIEW FROM 17th to 30th NOVEMBER 2017

France – Court of Cassation

[Judgment of Bougnaoui and ADDH, C-188/15]

Social policy- Equal treatment- Discrimination based on religion or beliefs

Following the C-157/15 and C-188/15 judgments, the Court of Cassation held that the employer could provide for, in the internal rules of the company or in a memo, a clause of neutrality prohibiting the visible wearing of any political, philosophical or religious sign at the workplace, as this general and undifferentiated clause was only applied to the employees in contact with the customers. The Court of Cassation also indicated that in the event of an employee's refusal to comply with such a clause, it was the responsibility of the employer to see whether it was possible for it to offer the employee a post not requiring eye contact with these customers instead of dismissing the employee. In this case, the Court of cassation held that the dismissal for misconduct, because of the non-compliance by the employee with an oral order concerning the prohibition of wearing the Islamic headscarf, must be analysed as constituting a direct discrimination that could not be justified.

Court of Cassation, ruling of 18.11.2017, no. 2484 (FR)

Explanatory Note

Sweden – Supreme Court

[Judgment of Länsförsäkringar, C-654/15]

European Union trademark- Absence of genuine use

Following judgment C-654/15, the Supreme Court stated that there had been no infringement of the applicant's right pursuant to article 9, paragraph 1 under a) or b) of regulation no. 207/2009 on the European Union trademark. Based on the said judgment, the Supreme Court found that, the owner of a trademark could certainly prohibit the use of a sign identical or similar to its trademark during the five-year period following its registration, without having to demonstrate a genuine use of the said trademark. However, this fact does not relieve the holder of the obligation of proving the existence of a likelihood of confusion. In this case, an overall assessment had not established such a risk.

Högsta domstolen, ruling of 22.11.2017 (SV)

Italy-Court of Cassation

[Judgment of Bayerische Motoren Werke, C-433/16]

Jurisdiction in civil and commercial matters- Community designs- Action for establishing non-infringement

This decision follows on from the ruling of the Court in the C- 433/16 case, concerning an action seeking to obtain a judgment declaring non-infringement of the Community designs registered by BMW for alloy wheel rims of automotive vehicles. The Court of Cassation ruled that the rule of jurisdiction set out in article 5, point 3, of regulation no. 44/2001 does not apply to the actions for establishing non-infringement stated in article 81, under b), of regulation no. 6/2002 and the applications for establishing abuse of a dominant position and unfair competition that could possibly be related to such actions. Therefore, when the defendant is domiciled in a Member State, actions for establishing non-infringement stated in article 81 must be brought before the courts of community design of that State.

Corte di Cassazione, ruling of 20.11.2017, no. 27441 (IT)

Belgium – Council of State

[Judgment of TNS Dimarso, C-6/15]

Public service contracts- Directive 2004/18- Obligation of the contracting authority- Award criteria

Supporting the reasoning of the Court of justice, in judgement C-6/15, the Council of State ruled that, in the case of a service contract that is to be awarded according to the criterion of the most economically advantageous offer, the establishment, by the contracting authority, of the evaluation method after the publication of the contract notice or specifications shall not have the effect of altering the award criteria or their relative weighting.

Therefore, the Council of State annulled the award decision of the Flemish region on the grounds that the evaluation method established subsequently by this region had altered the relative weighting of the award criteria.

Raad van State, ruling of 23.11.2017 (NL)

Portugal – Court of Appeal of Évora

[Judgment of Delgado Mendes, C-503/16]

Third party motor insurance - Extension of coverage to third-parties

Supporting the reasoning of the Court of justice in the C-329/15 case, the Court of Appeal of Évora held that the provisions of directives 72/166, 84/5 and 90/232, conflicted with the Portuguese regulation that excludes the physical injury and material damage suffered by a pedestrian who is a victim in a traffic accident from the compensation by Compulsory Insurance against Civil Liability, resulting from the movement of motor vehicles, solely on the grounds that the pedestrian was the policy holder while it was the owner of the vehicle that caused the damage.

Tribunal da Relação de Évora, ruling of 23.11.2017, not published, available upon request

Poland – Supreme Court

[Judgment of ENEA, C-329/15]

State aids- Concept of "aids granted by States or through State resources"

Supporting the reasoning followed by Court of justice in judgment C-329/15, the Supreme Court ruled that the obligation to buy electricity from cogeneration incumbent upon a public company could not be qualified as State intervention or through State resources, only because the latter held the majority capital of this company.

Therefore, it dismissed the appeal in cassation filed by a public company, in the context of which the latter argued that such an obligation constituted a violation of article 7 of the TFUE

Sąd Najwyższy, ruling of 28.11.2017, III SK 30/14 (PL)

Spain – Labour Court of Barcelona

[Judgment of Espadas Recio, C-98/15]

Social Security- Unemployment benefits- Equal treatment for men and women - Vertical part-time workers

Following the judgment of the Court in the C-98/15 case, the Labour Court of Barcelona granted the application filed by Mrs E. R. against the public employment service, concerning the determination of the basis for the calculation of the duration of unemployment benefits for the vertical part-time workers, that is to say, those gathering their working hours over a few working days of the week. It thus ruled out the national rules which only took into account the days actually worked and excluded the days not worked for which the contributions had been paid, thus reducing the period of payment of the unemployment benefit, when it was found that the majority of negatively affected vertical part-time workers were women. This national measure does not allow ensuring the correlation between the contributions paid by the worker and the rights he can claim as regards unemployment benefits.

Juzgado de lo Social, Barcelona, ruling of 23.11.2017, no. 398/2017 (ES)

Germany – Higher Regional Court of Düsseldorf

[Judgment of W. F. Gözze Frottierweberei, C-689/15]

European Union trademark - Proof of genuine use

Following the judgment of the Court of justice in the C-689/15 case, the Higher Regional Court of Düsseldorf accepted the counterclaim for a declaration of invalidity filed by a textile company subject to trademark infringement proceedings with respect to another company on the grounds that it affixed the trademark of this other company on its products as a quality label. In fact, the Higher Regional Court held that the trademark in question was devoid of distinctive character and that it therefore was not capable of indicating a particular company as the origin of products.

Oberlandesgericht Düsseldorf, judgment of 30.11.2017, not published, available upon request

The intranet site of the Research and Documentation Directorate lists all the analyses of the follow-up decisions received and processed by the Directorate since 1st January 2000, arranged by year according to the date of filing of the case in the court. All the analyses established in the context of the follow-up of the preliminary rulings are also available via the internal portal, under each preliminary ruling, under the 'litigation at national level' section.