

Exam JUR5440 EC Substantive law

Spring 2007

Please answer questions 1, 2 AND 3 (ALL questions!)

1(A) Greece introduces a universal ban on the importation of Northeast Atlantic fish, predominantly cod and haddock. As a result, no cod and haddock coming from any Member State of the European Union or any third state may be imported to Greece.

The Commission accuses Greece that the rationale behind the ban is to protect the environment and initiates proceedings before the European Court of Justice (ECJ) against Greece for breach of a EC Treaty obligation on the grounds that

- a) the ban on cod and haddock from other Member States is a measure contrary to Article 28 EC Treaty and
- b) the ban on cod from third countries is illegal since the Common Commercial Policy is an exclusive Community competence and Member States do no longer have the right to adopt unilateral measures.

The Greek authorities contend that the reasons underpinning the ban are

- a) the conservation of the depleting fishing stocks in the Northeast Atlantic and
- b) in light of the overwhelming scientific consensus that oceanic fish is of lower nutritional value than Mediterranean fish, the measure is necessary to protect the health and welfare of Greek citizens.

Discuss the position under EC law of both the Commission and Greece.

AND

1(B) "Although theoretically simple, the notion of measures having equivalent effect to customs duties under Article 25 EC Treaty has given rise to difficult questions in its practical application." Discuss referring to the case-law of the European Court of Justice where appropriate.

2. What issues of EC law are raised by each of the following scenarios?

(A) Peter, a German national, has just moved to Italy with his German wife and elderly parents to seek work. He wishes to know whether how far he and his family can benefit from EC rights relating to free movement.

(B) Anne-Sophie, a French national has just been made redundant from her teaching post in a Belgian school. She goes to the job centre to seek work but is told that she cannot be given assistance in seeking employment unless she shows her residence permit. Moreover, the job centre has contacted the immigration authorities and Anne-Sophie has been given one month to leave the country.

Would your answer to the above scenario differ if Anne-Sophie had given up her teaching post voluntarily?

(C) Hans, a Danish national is employed by the North Sea Oil Company which operates in Scotland. He has a criminal record of public order offences in Denmark and has been actively engaged in trade union affairs since joining the UK company six months ago. He has just been told by the UK Immigration Authorities that, for reasons of public policy, he must leave the country within 10 days.

(D) Cecilia, an architect and an Italian national, decides to exercise her EC Treaty right of freedom of establishment and extends her business to Austria. She decides to set up an office in Vienna. Cecilia approaches you with the following problems:

(i) under Austrian law, architects doing work in Austria must be registered with the Austrian Architects Association (AAA) and pay the corresponding annual membership fee. Cecilia does not wish to belong to the AAA. She already is a member of the Italian Order of architects.

(ii) the AAA has also informed Cecilia that she must use an accountant from an Austrian accountancy firm, not her current Italian accountant

(iii) Cecilia intends to work in Austria with six partners. She has been told that under Austrian law if you have more than three partners in a business you have to incorporate as a company.

3.(A) "... Eventually the Court will have to decide what the Treaty provisions on free movement are intended to achieve. Are they merely about eliminating discrimination, in which case barriers to movement will continue to exist so long as they are not discriminatory, or, more radically, are they about removing any obstacle to free movement which (substantially) hinders both access to the market and the exercise of the freedom. While the latter approach does more damage to national regulatory autonomy, some of this can be preserved through judicious and flexible use of the public interest requirements."

Discuss

(a) the above statement generally in the context of the freedom of cross-border services;

AND

(b) in particular, discuss critically how the ECJ has interpreted the EC Treaty provisions, and/or relevant secondary legislation, in the context of children of workers or self-employed EU citizens exercising their EC Treaty rights of free movement.

Recommended time for each question

1. 2.5hours
2. 2.5 hours
3. 1.0 hours