

**Parties to the main proceedings**

*Applicant:* UD

*Defendant:* Subdelegación del Gobierno en Barcelona

**Questions referred**

1. Did the Spanish State correctly transpose Directive 2008/115 <sup>(1)</sup> into national law (Ley Orgánica 4/2000 (Organic Law 4/2000) as amended by Ley Orgánica 2/2009 (Organic Law 2/2009)), in so far as it kept fines as the main penalty for illegal staying, with the penalty of expulsion being applied only where there are aggravating circumstances?
2. Can the Spanish State, pursuant to the principle that national law must be interpreted in conformity with EU law, require Directive 2008/115 to be applied directly, even where contrary to the provisions of its national legislation and where doing so aggravates the situation of the foreign national?
3. Can Articles 55(1) and 57(1) of Organic Law 4/2000 be interpreted in conformity with Directive 2008/115 whilst a rule remains in force under national Spanish law to the effect that the main penalty for illegal staying is a fine, or would such an interpretation be *contra legem* under national law?
4. Must national courts continue to apply the penalty of a fine as the main penalty and the penalty of expulsion in cases where there are aggravating circumstances or, conversely, are they strictly obliged to impose the penalty of expulsion in all cases, with the exception of the situations expressly excluded by Directive 2008/115?

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<sup>(1)</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

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**Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 15 October 2019 — Ramada Storax SA v Autoridade Tributária e Aduaneira**

**(Case C-756/19)**

(2020/C 19/17)

*Language of the case:* Portuguese

**Referring court**

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

**Parties to the main proceedings**

*Applicant:* Ramada Storax S.A.

*Defendant:* Autoridade Tributária e Aduaneira

### Question referred

Can Articles 90 and 273 of Council Directive 2006/112/EC <sup>(1)</sup> of 28 November 2006 ..., the principles of VAT neutrality and of proportionality and the fundamental economic freedoms be interpreted as permitting the Portuguese legislature, pursuant to Article 78(7)(b) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code), approved by Decree-Law No 394-B of 26 December 1984, to restrict adjustments of value added tax (VAT) for debts deemed irrecoverable in insolvency proceedings to the circumstances referred to in that article (that is, where the insolvency has been declared a simplified insolvency, once the ruling on the admission and ranking of claims referred to in the Código da Insolvência e da Recuperação de Empresas (Corporate Insolvency and Recovery Code), approved by Decree-Law No 53 of 18 March 2004, has become final, or following approval of the plan, where such plan exists, agreed under Article 156 of that code), with the result that rulings by courts of other Member States declaring debts claimed in insolvency proceedings irrecoverable are not recognised for that purpose?

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<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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### Request for a preliminary ruling from the Polymeles Protodikeio Athinon (Greece) lodged on 16 October 2019 — OH v ID

(Case C-758/19)

(2020/C 19/18)

*Language of the case: Greek*

### Referring court

Polymeles Protodikeio Athinon

### Parties to the main proceedings

*Applicant:* OH

*Defendant:* ID

### Questions referred

- (1) Are the terms ‘immunity from legal proceedings’ and ‘immunity’, as formulated and for the purpose which they serve in Article 11 of the Protocol, <sup>(1)</sup> identical?
- (2) Does the immunity from legal proceedings/immunity envisaged in Article 11 include and cover, in addition to criminal prosecutions, civil claims made in actions against members of the Commission by injured third parties?
- (3) Is waiver of the Commissioner’s immunity from legal proceedings/immunity also possible in the context of a civil action brought against him, such as the action under consideration? If it is, who must initiate the waiver procedure in question?
- (4) Do the Courts of the European Union have jurisdiction to rule on a non-contractual claim in tort, such as that at issue here, against a Commissioner?

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<sup>(1)</sup> Article 11 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Union, now annexed to the Treaty as Protocol No 7.