

Reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 13 November 2009 — Karl Heinz Bablok, Stefan Egeter, Josef Stegmeier, Karlhans Müller, Barbara Klimesch v Freistaat Bayern — Intervening parties: Monsanto Technology Llc., Monsanto Agrar Deutschland GmbH, Monsanto Europa S.A./N.V.

(Case C-442/09)

(2010/C 24/51)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Karl Heinz Bablok, Stefan Egeter, Josef Stegmeier, Karlhans Müller, Barbara Klimesch

Defendant: Freistaat Bayern

Intervening parties: Monsanto Technology Llc., Monsanto Agrar Deutschland GmbH, Monsanto Europe SA/NV

Questions referred

1. Must the term 'genetically modified organism' or 'GMO' defined in point 5 of Article 2 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed⁽¹⁾ be interpreted as meaning that it includes also material from genetically modified plants (in this case, pollen from the genetically modified MON 810 strain of maize) which although containing genetically modified DNA and genetically modified proteins (in this case, Bt toxin) at the time of entering a food (in this case, honey) or designation for use as a food/food supplement does not possess (or no longer possesses) a specific and individual capacity to reproduce?
2. If Question 1 is answered in the negative:
 - (a) Does it suffice, at any rate for foods which within the meaning of point 10 of Article 2 of Regulation (EC) No 1829/2003 are deemed to be 'produced from GMOs', that the food contains material from genetically modified plants which previously possessed a specific and individual capacity to reproduce?
 - (b) If that is answered in the affirmative:

Must the term 'produced from GMOs' within the meaning of point 10 of Article 2 and Article 3(1)(c) of Regulation (EC) No 1829/2003 be interpreted as meaning that in relation to GMOs no deliberate and targeted production process is required and the unintentional and adventitious contamination of food (in this case, honey or pollen as a food supplement) by (former) GMOs is also covered?

3. If either Question 1 or Question 2 is answered in the affirmative:

Must Article 3(1) and Article 4(2) of Regulation (EC) No 1829/2003 be interpreted as meaning that any contamination of food of animal origin, such as honey, through genetically modified material lawfully present in the environment triggers the obligation for such to be authorised and supervised or can thresholds applicable elsewhere (for example, under Article 12(2) of the Regulation) apply *mutatis mutandis*?

⁽¹⁾ OJ 2003 L 268, p. 1

Reference for a preliminary ruling from the Juzgado Contencioso Administrativo nº 3 de La Coruna (Spain) lodged on 16 November 2009 — Rosa María Gaviero Gaviero v Consellería de Educación e Ordenación Universitaria

(Case C-444/09)

(2010/C 24/52)

Language of the case: Spanish

Referring court

Juzgado Contencioso Administrativo No 3 of La Coruna

Parties to the main proceedings

Applicant: Rosa María Gaviero Gaviero

Defendant: Consellería de Educación e Ordenación Universitaria (Galicia)

Question referred

What is the meaning of the phrase 'different length-of service qualifications' in Clause 4(4) of the Framework agreement in the Annex to Directive 1999/70/EC⁽¹⁾, and is the mere fact of the temporary nature of the employment relationship of those serving as public employees an 'objective ground' which may justify a difference in treatment as regards receipt of the length of service increment?

⁽¹⁾ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999)