

**Reference for a preliminary ruling by the Raad van State by judgment of that court of 4 November 1999 in the case of Nedlloyd Lijnen B.V. against Customs Inspector, Rotterdam District**

**(Case C-431/99)**

(2000/C 20/32)

Reference has been made to the Court of Justice of the European Communities by judgment of the Raad van State (Council of State) of 4 November 1999, received at the Court Registry on 8 November 1999, for a preliminary ruling in the case of Nedlloyd Lijnen B.V. against Customs Inspector, Rotterdam District on the following questions:

1. (a) Does legislation such as the VBS, in so far as it provides for mandatory participation in traffic accompaniment, constitute a restriction on freedom to provide services, as provided for in Regulation (EEC) No 4055/86 in conjunction with Article 59 (now Article 49) of the EC Treaty?
- (b) If not, is it otherwise if participants in the scheme are charged for services provided?
- (c) Must Question 1(b) be answered differently if that charge is levied on participants in the scheme whose participation is mandatory, though not on other users such as inland navigation or sea vessels with a length of less than 41 metres?
2. (a) If legislation such as the VBS and its associated charge constitutes an obstacle to freedom to provide services, does such restriction then come under the exception provided for in Article 56 (now Article 46) of the EC Treaty for provisions justified on grounds of public security?
- (b) Is it material to the reply to be given to Question 2(a) whether the charge is greater than the actual cost of the service provided to the individual vessel?
3. If legislation such as the VBS and its associated charge constitutes an obstacle to freedom to provide services, and such restriction is not justified under the exception provided for in Article 56 (now Article 46) of the EC Treaty, can the restriction be justified either because it merely concerns a 'sales arrangement', as laid down in Keck and Mithouard, and there is thus no question of discrimination, or because it meets the yardsticks for such legislation laid down in other judgments, in particular in Gebhard?

4. (a) Must a Member State's legislation such as the VBS be deemed to constitute aid within the meaning of Article 92(1) (now Article 87(1)) of the EC Treaty, inasmuch as it exempts certain categories of participants, particularly inland navigation, from the requirement to pay the charge?
- (b) If so, does such aid come within the prohibition of that provision?
- (c) If Question 4(b) is also answered affirmatively, does the description of aid prohibited under Community law also have consequences under Community law for the remuneration which the participants, apart from those exempted, are required to pay?

**Action brought on 9 November 1999 by the Commission of the European Communities against the Italian Republic**

**(Case C-432/99)**

(2000/C 20/33)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 9 November 1999 by the Commission of the European Communities, represented by Hendrik van Lier, of its Legal Service, and Giacinto Bisogni, appeal court judge on secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- declare that, by failing to adopt and bring into force or, in any event, by failing to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 96/57/EC of the European Parliament and of the Council of 3 September 1996 on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof,<sup>(1)</sup> the Italian Republic has failed to fulfil its obligations under that directive;
- order the Italian Republic to pay the costs.

*Pleas in law and main arguments*

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired on 3 September 1997 without the Italian Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

(<sup>1</sup>) OJ 1996 L 236, p. 36.

**Action brought on 16 November 1999 by the Commission of the European Communities against Ireland**

**(Case C-437/99)**

(2000/C 20/34)

An action against Ireland was brought before the Court of Justice of the European Communities on 16 November 1999 by the Commission of the European Communities, represented by Mr Peter Oliver, Legal Adviser, and by Mr Keir Fitch, official seconded to the Commission's Legal Service under the arrangement for the exchange of national officials, acting as agents, with an address for service at the office of Mr Carlos Gómez de la Cruz, a member of its Legal Service, at the Wagner Centre, Luxembourg.

The Applicant claims that the Court should:

- declare that by failing to adopt the laws regulations or administrative provisions necessary to comply with
  - Directive 95/53/EC of the Council of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition (<sup>1</sup>);
  - Directive 96/93/EC of the Council of 17 December 1996 (<sup>2</sup>) laying down the rules to be observed in issuing the certificates required by veterinary legislation;
  - Directive 97/61/EC of the Council of 20 October 1997 amending the Annex to Directive 91/492/EEC laying down the health conditions for the production and placing on the market of live bi-valve molluscs (<sup>3</sup>)

and/or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under those Directives, and

- order Ireland to pay the costs.

*Pleas in law and main arguments*

Article 249 CE (ex Article 189 of the EC Treaty), under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired without Ireland having enacted the provisions necessary to comply with the directives referred to in the conclusions of the Commission.

(<sup>1</sup>) OJ L 265, 8.11.1995, p. 17-22.

(<sup>2</sup>) on the certification of animals and animal products OJ L 13 of 16.01.1997, p. 18-30.

(<sup>3</sup>) OJ L 295, 29.10.1997, p. 35-36.

**Reference for a preliminary ruling by the Juzgado de lo Social Único de Algeciras, by order of that court of 10 November 1999 in the case of María Luisa Jiménez Melgar against the Municipality of Los Barrios**

**(Case C-438/99)**

(2000/C 20/35)

Reference has been made to the Court of Justice of the European Communities by an order of the Juzgado de lo Social Único (Social Court), Algeciras, of 10 November 1999, which was received at the Court Registry on 17 November 1999, for a preliminary ruling in the case of María Luisa Jiménez Melgar against Municipality of Los Barrios, on the following questions:

1. Is Article 10 of Directive 92/85/EEC (<sup>1</sup>) sufficiently clear, precise and unconditional to be directly effective?
2. In providing that 'Member States shall take the necessary measures to prohibit the dismissal of workers ... [who are pregnant, have given birth or are breastfeeding] during the period from the beginning of their pregnancy to the end of the maternity leave ... save in exceptional cases not connected with their condition', does Article 10 of the Directive require the Member States to lay down, on a specific and exceptional basis, the available grounds for dismissing a worker who is pregnant, has given birth or is breast-feeding, so that they must introduce into national legislation, together with the general rules on the extinguishment of employment contracts, a further special, exceptional and more limited set of rules expressly for those cases in which the worker is pregnant, has given birth or is breast-feeding?
3. What repercussions does Article 10 of the Directive have regarding non-renewal by an employer of a fixed-term contract of a woman who is pregnant under the same circumstances as prevailed in relation to earlier contracts? Does Article 10 affect the protection enjoyed by a pregnant woman in the context of temporary employment relationships, and if so, in what way, according to what parameters and to what extent?