

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 13 March 2012 — Melli Bank plc v Council of the European Union, French Republic, United Kingdom of Great Britain and Northern Ireland, European Commission

(Case C-380/09 P) ⁽¹⁾

(Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran to prevent nuclear proliferation — Freezing the funds of a bank's subsidiary — Principle of proportionality — Ownership or control of the entity)

(2012/C 133/02)

Language of the case: English

Parties

Appellant: Melli Bank plc (represented by: D. Anderson and D. Wyatt QC, R. Blakeley, Barrister, instructed by S. Gadhia and T. Din, Solicitors)

Other parties to the proceedings: Council of the European Union, (represented by: M. Bishop and R. Szostak, Agents), French Republic, (represented by: E. Belliard, G. de Bergues, L. Butel and E. Ranaivoson, Agents), United Kingdom of Great Britain and Northern Ireland, (represented by: S. Hathaway, Agent, and S. Lee, Barrister), European Commission (represented by: S. Boelaert and M. Konstantinidis, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 9 July 2009 in Joined Cases T-246/08 and T-332/08 *Melli Bank plc v Council of the European Union* by which that court dismissed an application for the annulment in part of Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Council Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2008 L 163, p. 29), in so far as the appellant's name appears in the list of persons, bodies and entities to which those provisions apply.

Operative part of the judgment*The Court:*

1. Dismisses the appeal.
2. Orders Melli Bank plc to pay the costs.

⁽¹⁾ OJ C 282, 21.11.2009.

Judgment of the Court (First Chamber) of 22 March 2012 — Portuguese Republic v Transn utica — Transportes e Navega o SA, European Commission

(Case C-506/09 P) ⁽¹⁾

(Appeal — Customs union — Regulation (EEC) No 2913/92 and Regulation (EEC) No 2454/93 — Remission of import duties — Consignments of tobacco and ethyl alcohol for third countries — Fraud committed by an employee of the company liable)

(2012/C 133/03)

Language of the case: English

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, Agent)

Other parties to the proceedings: Transn utica — Transportes e Navega o SA (represented by: M. L pez Garrido, advogada), European Commission (represented by: R. Lyal and L. Bouyon, Agents)

Intervener in support of the appellant: Kingdom of Spain (represented by: M. Mu oz P rez, Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Seventh Chamber) of 23 September 2009 in Case T-385/05 *Transn utica v Commission*, by which that court annulled Commission Decision REM 05/2004 of 6 July 2005 informing the Portuguese authorities that the remission of import duties for the applicant was not justified in relation to a certain amount and that import duties could not be reimbursed to it in relation to another amount since the fact that the applicant was unaware that one of its employees was acting fraudulently did not constitute a special situation which may justify the remission and reimbursement of import duties to it.

Operative part of the judgment*The Court:*

1. Dismisses the appeal;

2. Orders the Portuguese Republic to pay the costs;
3. Orders the Kingdom of Spain to bear its own costs.

(¹) OJ C 63, 13.3.2010.

**Judgment of the Court (Third Chamber) of 15 March 2012
(reference for a preliminary ruling from the Corte
d'appello di Torino — Italy) — Società Consortile
Fonografici (SCF) v Marco Del Corso**

(Case C-135/10) (¹)

(Copyright and related rights in the information society — Direct applicability of the Rome Convention, the TRIPS Agreement and the WPPT in the European Union legal order — Directive 92/100/EC — Article 8(2) — Directive 2001/29/EC — Concept of ‘communication to the public’ — Communication to the public of phonograms broadcast by radio in a dental practice)

(2012/C 133/04)

Language of the case: Italian

Referring court

Corte d'appello di Torino

Parties to the main proceedings

Applicant: Società Consortile Fonografici (SCF)

Defendant: Marco Del Corso

Intervening party: Procuratore generale della Repubblica

Re:

Reference for a preliminary ruling — Corte di Appello di Torino — Direct applicability within the Community legal order of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the World Intellectual Property Organisation (WIPO) Treaty on Performances and Phonograms (WPPT) — Interpretation of Article 3(2) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Concept of ‘communication to the public’ — Broadcasting and communication to the public of radio phonograms in a dental practice

Operative part of the judgment

1. The provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO) signed at Marrakesh on 15 April 1994 and approved by

Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) and of the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty of 20 December 1996 are applicable in the legal order of the European Union.

As the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome on 26 October 1961, does not form part of the legal order of the European Union it is not applicable there; however, it has indirect effects within the European Union.

Individuals may not rely directly either on that convention or on the agreement or the treaty mentioned above.

The concept of ‘communication to the public’ which appears in Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted in the light of the equivalent concepts contained in the convention, the agreement and the treaty mentioned above and in such a way that it is compatible with those agreements, taking account of the context in which those concepts are found and the purpose of the relevant provisions of the agreements as regards intellectual property.

2. The concept of ‘communication to the public’ for the purposes of Article 8(2) of Directive 92/100 must be interpreted as meaning that it does not cover the broadcasting, free of charge, of phonograms within private dental practices engaged in professional economic activity, such as the one at issue in the main proceedings, for the benefit of patients of those practices and enjoyed by them without any active choice on their part. Therefore such an act of transmission does not entitle the phonogram producers to the payment of remuneration.

(¹) OJ C 134, 22.5.2010.

**Judgment of the Court (Third Chamber) of 15 March 2012
(reference for a preliminary ruling from the High Court of
Ireland — Ireland) — Phonographic Performance (Ireland)
Ltd v Ireland, Attorney General**

(Case C-162/10) (¹)

(Copyright and related rights — Directive 2006/115/EC — Articles 8 and 10 — Concepts of ‘user’ and ‘communication to the public’ — Installation in hotel bedrooms of televisions and/or radios to which the hotelier distributes a broadcast signal)

(2012/C 133/05)

Language of the case: English

Referring court

High Court of Ireland