

Pleas and main arguments

Breach of Community law (Article 175 of the Treaty establishing the European Community) by misinterpretation thereof inasmuch as it does not take account of the social context in which it to be applied and infringement of the fundamental human rights enshrined in Article F(2) of the Treaty on European Union and in general principles of law:

- right to judicial protection against an excessively formalistic interpretation of the procedural requirements which must be fulfilled prior to the bringing of an action for failure to take action: the totally formalistic interpretation by the Court of First Instance is incorrect, in view of the conclusions at which it arrives. The Commission knew that there was a vessel and crew which had been seized under false accusations, since it had sufficient evidence of it in its possession and, moreover, according to findings by its own experts, knew such detention to be illegal. Nevertheless, it took no action. It is impossible to adhere to a view so formal that it does not consider the appellant's assumption that the Commission is dealing with compliance with treaty requirements and taking steps to free the persons illegally arrested to be, in itself, a request for action.
- misapplication of the right to equal treatment inasmuch as different situations were treated alike
- breach of the principle of legal certainty which governs the Community legal system and regulates the conduct of the Community institutions
- right to freedom and safety, honour and moral integrity of the crew of the *Albor Uno*, which is the property of the applicant undertaking *Pescados Congelados Jogamar SL*.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office), by order of that court of 14 April 1999, in the case of *The Queen against Secretary of State for the Home Department, ex parte: Cheung Chiu Hung*

(Case C-256/99)

(1999/C 246/42)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office), of 14 April 1999, which was received at the Court Registry on 9 July 1999, for a preliminary ruling in the case of *The Queen against Secretary of State for the Home Department, ex parte: Cheung Chiu Hung*, on the following questions:

1. When determining whether the Applicant, as a British National (Overseas) not entitled (under United Kingdom law) to enter or remain in the United Kingdom, is a 'person holding the nationality of a Member State' and therefore is 'a citizen of the Union' for the purpose of Article 8 of the EC Treaty:
 - (1) What is the effect (if any) as a master of Community law of
 - (a) the United Kingdom's 1972 Declaration 'on the definition of the term "nationals"' which was made at the time of Accession to the European Communities and annexed to the Final Act of the Accession Conference, and
 - (b) the United Kingdom's 1982 Declaration 'on the meaning of a UK national', and
 - (c) Declaration No. 2 to the Treaty on European Union signed on 7 February 1992 that nationality is to be decided solely by reference to the national law of the Member State concerned and Member States may declare, for information, who are to be considered to be their nationals for Community purposes?
 - (2) If and to the extent that the United Kingdom is not entitled, as a master of Community law, to rely on the Declarations referred to in (1) above, what are the relevant criteria for identifying whether a person has nationality of a Member State for the purposes of Article 8 where domestic law identifies various categories of nationality only some of which confer a right to enter and remain in that Member State?
 - (3) In this context, what is the effect of the principle of respect for fundamental human rights under Community law claimed by the Applicant, in particular where the Applicant relies on Article 3(2) of the Fourth Protocol to the European Convention on Human Rights that no one shall be deprived of the right to enter the territory of the State of which he is a national, which has not been ratified by the United Kingdom?
2. In the circumstances of the present case does Article 8a(1) of the EC Treaty:
 - (a) Confer rights on a citizen of the Union to enter and remain in the Member State of which he is a national even where those rights are otherwise denied by national law.
 - (b) Confer rights additional to those which existed under the EC Treaty prior to its amendment by the Treaty on European Union.
 - (c) Give rise to directly effective rights which citizens of the Union may invoke before national courts and tribunals.
 - (d) Apply to situations which are wholly internal to a single Member State?