

**ORDER OF THE COURT****(Fifth Chamber)****of 1 October 2004****in Case C-379/03 P: Rafael Pérez Escolar v Commission of the European Communities** <sup>(1)</sup>**(Appeal — State aid — Action for declaration of failure to act — Locus standi — Admissibility of the action)**

(2005/C 19/19)

*(Language of the case: Spanish)*

In Case C-379/03 P: appeal under Article 56 of the Statute of the Court of Justice, brought on 10 September 2003, Rafael Pérez Escolar (Agent: F. Moreno Pardo), the other party to the proceedings being: Commission of the European Communities (Agent: J. L. Buendía Sierra) – the Court (Fifth Chamber), composed of: C. Gulmann (Rapporteur), President of the Chamber, R. Schintgen and J. Klucka, Judges; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 1 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*
2. *Mr Pérez Escolar shall pay the costs.*

<sup>(1)</sup> OJ C 251 of 18.10.2003.

**ORDER OF THE COURT****(Fourth Chamber)****of 29 October 2004****in Case C-18/04 P: Grégoire Krikorian and Others v European Parliament, Council of the European Union, Commission of the European Communities** <sup>(1)</sup>**(Appeal — Non-contractual liability of the Community — Action for damages — Appeal in part manifestly inadmissible and in part unfounded)**

(2005/C 19/20)

*(Language of the case: French)*

In Case C-18/04 P: Grégoire Krikorian, residing in Bouc-Bel-Air (France), Suzanne Krikorian, née Tatoyan, residing in Bouc-Bel-

Air (France), Euro-Arménie ASBL, established in Marseille (France), (avocat: P. Krikorian), the other parties to the proceedings being European Parliament (Agents: A. Baas and R. Passos), Council of the European Union, (Agents: S. Kyriakopoulou and G. Marhic), Commission of the European Communities (Agents: C. Ladenburger and F. Dintilhac) – Appeal pursuant to Article 56 of the Statute of the Court of Justice, brought on 16 January 2004 – the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an order on 29 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*
2. *The appellants shall bear the costs of the appeal.*

<sup>(1)</sup> OJ C 94, 17.4.2004.

**Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per la Sicilia by decision of that court of 20 July 2004 in the case of Agip Petroli SpA against Capitaneria di Porto di Siracusa, Capitaneria di Porto di Siracusa, Sezione Staccata di Santa Panagia, Ministero delle Infrastrutture e dei Trasporti, interested party (for the applicant): Arbix Diamone Shipping**

**(Case C-456/04)**

(2005/C 19/21)

*(Language of the case: Italian)*

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrativo Regionale per la Sicilia (Sicily Regional Administrative Court) (Italy) of 20 July 2004 received at the Court Registry on 29 October 2004, for a preliminary ruling in the case of Agip Petroli SpA against Capitaneria di Porto di Siracusa, Capitaneria di Porto di Siracusa, Sezione Staccata di Santa Panagia, Ministero delle Infrastrutture e dei Trasporti, interested party (for the applicant): Arbix Diamone Shipping on the following question:

For the purposes of Article 3(3) of Regulation No 3577/92 <sup>(1)</sup>, does the term 'voyage which follows or precedes the cabotage voyage' apply only to a voyage which is 'functionally and commercially autonomous, that is with cargo on board, the final/starting point of which is a foreign port', as referred to in the contested measure in the present case, or does it also apply to a voyage without cargo on board (that is, a 'voyage in ballast')?

<sup>(1)</sup> OJ L 364 of 12.12.1992, p. 7.

**Reference for a preliminary ruling by the First Chamber of the Tribunal administratif de Caen, by judgment of that court dated 5 October 2004, in the case of Chambre de commerce et d'industrie de Flers-Argentan against Directeur des services fiscaux, Dircofi Ouest**

**(Case C-458/04)**

(2005/C 19/22)

*(Language of the case: French)*

Reference has been made to the Court of Justice of the European Communities by judgment of First Chamber of the Tribunal administratif de Caen (Caen Administrative Court) dated 5 October 2004, which was received at the Court Registry on 29 October 2004, for a preliminary ruling in the case of Chambre de commerce et d'industrie de Flers-Argentan (Flers-Argentan Chamber of Commerce and Industry) against Directeur des services fiscaux (Head of the Fiscal Authorities), Dircofi Ouest.

The First Chamber of the Tribunal administratif de Caen asks the Court of Justice to give a preliminary ruling on the question whether internal financial transfers constitute subsidies within the meaning of Article 19 of Sixth Council Directive 77/388/EEC of 17 May 1977 <sup>(1)</sup> for the purposes of the calculation of the deductible proportion.

<sup>(1)</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

**Reference for a preliminary ruling by the Tribunale Amministrative Regionale per la Lombardia, Milano, by order of that court of 29 September 2004, in the case of Federconsumatori and Others against Comune di Milano (Municipality of Milan) and Aem Spa**

**(Case C-463/04)**

(2005/C 19/23)

*(Language of the case: Italian)*

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrative Regionale per la Lombardia, Milano, Sezione I (Regional Administrative Court for Lombardy, Milan, Division I) (Italy) of 29 September 2004, received at the Court Registry on 2 November 2004, for a preliminary ruling in the case of Federconsumatori and Others against Comune di Milano (Municipality of Milan) and Aem Spa, on the following questions:

- Can Article 2449 of the Civil Code, as applied in the circumstances at issue in this case, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, thereby obtaining a disproportionate power of control?
- Can Article 2449 of the Civil Code, applied in conjunction with Article 4 of Decree-Law No 332 of 31 May 1994 converted into Law No 474 of 30 July 1994, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments of the Court of Justice in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, and thereby obtaining a disproportionate power of control?