

of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.

3. Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence on the basis of Article 18(1) EC, subject to the condition that that person has lawfully resided for a continuous period of five years in that Member State of execution.

(<sup>1</sup>) OJ C 116, 9.5.2008.

**Judgment of the Court (Grand Chamber) of 6 October 2009 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Intercontainer Interfrigo SC (ICF) v Balkenende Oosthuizen BV, MIC Operations BV**

(Case C-133/08) (<sup>1</sup>)

*(Rome Convention on the law applicable to contractual obligations — Applicable law in the absence of choice — Charter-party — Connecting criteria — Separability)*

(2009/C 282/15)

Language of the case: Dutch

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

Applicant: Intercontainer Interfrigo SC (ICF)

Defendant: Balkenende Oosthuizen BV, MIC Operations BV

**Re:**

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 4 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 — Concept of a contract for the carriage of goods — Constituent elements — Voyage charter party — Applicable law in the absence of choice — Connecting criteria

**Operative part of the judgment**

1. The last sentence of Article 4(4) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that the

connecting criterion provided for in the second sentence of Article 4(4) applies to a charter-party, other than a single voyage charter-party, only when the main purpose of the contract is not merely to make available a means of transport, but the actual carriage of goods.

2. The second sentence of Article 4(1) of the Convention must be interpreted as meaning that a part of a contract may be governed by a law other than that applied to the rest of the contract only where the object of that part is independent.

Where the connecting criterion applied to a charter-party is that set out in Article 4(4) of the Convention, that criterion must be applied to the whole of the contract, unless the part of the contract relating to carriage is independent of the rest of the contract.

3. Article 4(5) of the Convention must be construed as meaning that, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of one of the criteria set out in Article 4(2) to (4) of the Convention, it is for the court to disregard those criteria and apply the law of the country with which the contract is most closely connected.

(<sup>1</sup>) OJ C 158, 21.06.2008.

**Judgment of the Court (First Chamber) of 1 October 2009 — Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v Council of the European Union, Commission of the European Communities, Vale Mill (Rochdale) Ltd, Pirola SpA, Colombo New Scal SpA, Italian Republic**

(Case C-141/08 P) (<sup>1</sup>)

*(Appeals — Commercial policy — Dumping — Imports of ironing boards originating in China — Regulation (EC) No 384/96 — Articles 2(7)(c) and 20(4) and (5) — Market economy treatment — Rights of the defence — Anti-dumping investigation — Periods granted to undertakings to submit their representations)*

(2009/C 282/16)

Language of the case: French

**Parties**

Appellant: Foshan Shunde Yongjian Housewares & Hardware Co. Ltd (represented by: J.-F. Bellis, avocat, and G. Vallera, Barrister)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix, Agent, E. McGovern, Barrister, and B. O'Connor, Solicitor), Commission of the European Communities (represented by: H. van Vliet, T. Scharf and K. Talabér-Ritz, Agents), Vale Mill (Rochdale) Ltd, Pirola SpA, Colombo New Scal SpA (represented by: G. Berrisch and G. Wolf, Rechtsanwälte), the Italian Republic (represented by: R. Adam, Agent, and W. Ferrante, avvocato dello Stato)

**Re:**

Appeal against the judgment of the Court of First Instance (Sixth Chamber) of 29 January 2008 in Case T-206/07 *Foshan Shunde Yongjian Housewares & Hardware v Council* by which the Court of First Instance dismissed the action brought by the appellant for annulment of Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12), inasmuch as it imposes an anti-dumping duty on imports of ironing boards manufactured by the appellant — Error of law as a result of the material inaccuracy of the findings made by the Court of First Instance and the absence of any penalty for the breach of the rights of the defence established by the Court of First Instance — Interpretation of Articles 2(7)(c) and 20(4) and (5) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) — Notion of an undertaking 'operating in market economy conditions' and scope of the minimum period of 10 days granted to an undertaking subject to an anti-dumping investigation to submit any representations

**Operative part of the judgment**

The Court:

1. Sets aside the judgment of the Court of First Instance of 29 January 2008 in Case T-206/07 *Foshan Shunde Yongjian Housewares & Hardware v Council* in so far as the Court of First Instance found that *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd's* rights of defence were not adversely affected by the infringement of Article 20(5) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community;
2. Annuls Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine, in so far as it imposes an anti-dumping duty on imports of ironing boards manufactured by *Foshan Shunde Yongjian Housewares and Hardware Co. Ltd.*;
3. Orders the Council of the European Union to pay the cost of the proceedings at first instance and the appeal proceedings;
4. Orders the Commission of the European Communities, *Vale Mill (Rochdale) Ltd*, *Pirola SpA*, *Colombo New Scal SpA* and the Italian Republic to bear their own costs.

(<sup>1</sup>) OJ C 158, 21.6.2008.

**Judgment of the Court (First Chamber) of 6 October 2009 — Commission of the European Communities v Kingdom of Spain**

(Case C-153/08) (<sup>1</sup>)

**(Failure of a Member State to fulfil obligations — Freedom to provide services — Article 49 EC and Article 36 of the EEA Agreement — Direct taxation — Income tax — Tax exemption restricted to winnings from lotteries and games of chance organised by certain national bodies and entities)**

(2009/C 282/17)

Language of the case: Spanish

**Parties**

*Applicant:* Commission of the European Communities (represented by: R. Lyal and L. Lozano Palacios, Agents)

*Defendant:* Kingdom of Spain (represented by: F. Díez Moreno, Agent)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC and Article 36 EEA — National legislation under which amounts won in lotteries and games of chance organised abroad, but not in certain lotteries or games of chance organised in Spain, are subject to income tax.

**Operative part of the judgment**

The Court:

1. Declares that, by maintaining in force fiscal legislation which exempts winnings from lotteries, games of chance and betting organised in the Kingdom of Spain by certain public bodies and entities established in that Member State and pursuing social or charitable non-profit-making activities, without that same exemption being granted to winnings from lotteries, games of chance and betting organised by bodies and entities established in another Member State of the European Union or European Economic Area and pursuing the same type of activities, the Kingdom of Spain has failed to fulfil its obligations under Article 49 EC and Article 36 of the Agreement on the European Economic Area of 2 May 1992;
2. Dismisses the action as to the remainder;
3. Orders the Commission of the European Communities and the Kingdom of Spain to bear their own costs.

(<sup>1</sup>) OJ C 142, 7.6.2008.