

**Action brought on 14 January 2009 — Commission of the European Communities v Kingdom of Spain**

(Case C-18/09)

(2009/C 69/49)

*Language of the case: Spanish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Simonsson and L. Lozano Palacios, acting as Agents)

*Defendant:* Kingdom of Spain

**Form of order sought**

- declare that, by maintaining in force Ley 48/2003, de 26 noviembre, de regimen económico y de prestación de servicios de los puertos de interés general (Law 48/2003 of 26 November 2003 on the economic rules and supply of services for ports of general interest) and, in particular Article 24(5) and Article 27(1), (2) and (4) thereof, which establish a system of rebates and exemptions for harbour dues, the Kingdom of Spain has failed to fulfil its obligations under Community Law <sup>(1)</sup> and, in particular, Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;
- order Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

Spanish law provides for a series of exemptions and rebates relating to harbour dues. Those exemptions and rebates depend on the ports of departure or destination of the vessels and have the consequence that more favourable tariffs are applied, first, to traffic between the Spanish archipelagos and Ceuta and Melilla and, second, to traffic between those ports and ports of the European Union and, third, between ports of the European Union. The Commission takes the view that that legislation is discriminatory.

The Kingdom of Spain, which invoked the particular geographic situation of the ports concerned, has not justified either the need for or the proportionality of that measure. Despite having promised to amend the legislation at issue, as far as the Commission is aware, no legislation has been adopted to put an end to the infringement.

<sup>(1)</sup> OJ L 378, p. 1.

**Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 19 January 2009 — Djurgården-Lilla Värtans Miljöskyddsförening v AB Fortum Värme samägt med Stockholms stad**

(Case C-24/09)

(2009/C 69/50)

*Language of the case: Swedish*

**Referring court**

Högsta domstolen

**Parties to the main proceedings**

*Applicant:* Djurgården-Lilla Värtans Miljöskyddsförening

*Defendant:* AB Fortum Värme samägt med Stockholms stad

**Questions referred**

1. Does the provision in Article 10a of Directive 85/337 <sup>(1)</sup> — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is also a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?
2. If the answer to Question 1 is affirmative: Are Articles 1(2), 6(4) and 10a of Directive 85/337 to be interpreted as meaning that different national requirements can be laid down with regard to the public concerned referred to in Articles 6(4), on the one hand, and 10a, on the other, with the result that a locally established environmental protection association which has a right to participate in the decision-making procedures referred to in Article 6(4) in respect of projects which may have significant effects on the environment in the area where the association is active does not — since it has fewer members than the minimum number laid down in national law — have a right of appeal such as is referred to in Article 10a of Directive 85/337?
3. Does the provision in Article 15a of Directive 96/61 <sup>(2)</sup> — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?