— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

   By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

   The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

   The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure in 1996.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

([2]) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 25 November 2009 — Charles Defossez v Christian Wiart, liquidator of Sotimon SARL, Office national de l'emploi, CGEA de Lille

(Case C-477/09)

(2010/C 37/19)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Applicant: Charles Defossez

Defendant: Christian Wiart, liquidator of Sotimon SARL; Office national de l'emploi (fonds de fermeture d'entreprises); CGEA de Lille

Question referred

Is the reference to the Court of Justice of the European Communities for a ruling on whether Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, [1] as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, [2] which provides, in paragraph 1 thereof, that when an undertaking with activities in the territories of at least two Member States is in a state of insolvency, the institution responsible for meeting employees' outstanding claims is to be that in the Member State in whose territory they work or habitually work and, in paragraph 2 thereof, that the extent of employees' rights is to be determined by the law governing the competent guarantee institution, is to be interpreted as designating the competent institution to the exclusion of any other, or whether, having regard to the purpose of the Directive, which is to strengthen the rights of workers exercising their right to freedom of movement, and to the first paragraph of Article 9 of the Directive, under which the Directive is not to affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees, it is to be interpreted as not depriving the employee of the right to take advantage, in the place of that institution's guarantee, of a more favourable guarantee from the institution with which his employer is insured and to which it makes contributions under national law?

[1] OJ L 283, p. 23.
[2] OJ L 270, p. 10.

Reference for a preliminary ruling from the Audiencia Provincial de Tarragona (Spain) lodged on 30 November 2009 — Criminal proceedings against Magatte Gueye

(Case C-483/09)

(2010/C 37/20)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties to the main proceedings

Defendant: Magatte Gueye

Other parties: Ministerio Fiscal and Eva Caldes

Questions referred

1. Should the right of the victim to be understood, referred to in recital (8) of the preamble to the Framework Decision, [1] be interpreted as meaning that the State authorities responsible for the prosecution and punishment of conduct which has an identifiable victim have a positive obligation to allow the victim to express her assessment, thoughts and opinion on the direct effects on her life which may be caused by the imposition of penalties on the offender with whom she has a family relationship or a strong emotional relationship?

2. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the duty of States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?

3. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?

4. Should Article 8 of the Framework Decision 2001/220/JHA providing that States are to guarantee a suitable level of protection for victims be interpreted as permitting the general and mandatory imposition of injunctions to stay away from the victim or orders prohibiting communication as ancillary penalties in all cases in which a person is a victim of crimes committed within the family, in the light of the specific characteristics of those offences, or, on the other hand, does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case-by-case basis, of the suitable level of protection having regard to the competing interests?

5. Should Article 10 of the Framework Decision 2001/220/JHA be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to crimes committed within the family, in the light of the specific characteristics of those crimes or, on the other hand, should mediation also be permitted in proceedings of that kind, assessing the competing interests on a case-by-case basis?

[1] Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001, L 82, p. 1)