

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (First Chamber) of 24 January 2013  
— European Commission v Kingdom of Spain**(Case C-529/09) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — State aid incompatible with the common market — Obligation of recovery — Failure to comply with a Commission Decision — Objection of inadmissibility — Res judicata by means of a previous judgment of the Court)*

(2013/C 71/02)

Language of the case: Spanish

**Parties**

*Applicant:* European Commission (represented by: L. Flynn and C. Urraca Caviedes, acting as Agents)

*Defendant:* Kingdom of Spain (represented by: N. Díaz Abad, acting as Agent)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 288 TFEU and of Articles 2 and 3 of Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (OJ 1999 L 198, p. 15) — Aid granted to Industrias Domésticas, S.A. (Indosa)

**Operative part of the judgment**

*The Court:*

1. Declares that, by failing to adopt, within the prescribed period, the measures necessary to comply with Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors, as regards the undertaking Industrias Domésticas SA, the Kingdom of Spain has failed to fulfil its obligations under the fourth paragraph of Article 288 TFEU and under Articles 2 and 3 of that decision.
2. Orders the Kingdom of Spain to pay the costs.

<sup>(1)</sup> OJ C 51, 27.2.2010.

**Judgment of the Court (Second Chamber) of 24 January 2013 — Frucona Košice a.s. v European Commission, St. Nicolaus — trade a.s.**(Case C-73/11 P) <sup>(1)</sup>

*(Appeal — State aid — Cancellation of 65 % of a tax debt in a collective bankruptcy procedure — Decision declaring the aid to be incompatible with the internal market and ordering its recovery — Private creditor test — Limits of judicial review — Substitution by the General Court of its own grounds for those set out in the contested decision — Manifest error of assessment — Distortion of evidence)*

(2013/C 71/03)

Language of the case: English

**Parties**

*Appellant:* Frucona Košice a.s. (represented by: P. Lasok QC, J. Holmes and B. Hartnett, Barristers, and by O. Geiss, Rechtsanwalt)

*Other parties to the proceedings:* European Commission (represented by: K. Walkerová, L. Armati and B. Martenczuk, Agents), St. Nicolaus — trade a.s. (represented by: N. Smaho, lawyer)

**Re:**

Appeal brought against the judgment of the General Court (Second Chamber) of 7 December 2010 in Case T-11/07 *Frucona Kosice a.s v European Commission* in which the General Court dismissed an action for annulment of the Commission Decision C(2006) 2087 final, of 7 June 2006, concerning aid granted by Slovakia for Frucona Košice in the form of a cancellation of a tax debt by the competent tax office in a collective bankruptcy procedure (State Aid No C 25/2005, ex NN/2005), in so far as that decision declares that measure incompatible with the common market and orders Slovakia to recover the aid in its entirety

**Operative part of the judgment**

*The Court:*

1. Sets aside the judgment of the General Court of the European Union of 7 December 2010 in Case T-11/07 *Frucona Košice v Commission*;

2. Refers the case back to the General Court of the European Union for it to give judgment on the pleas raised before it on which it did not rule;
3. Reserves the costs.

(<sup>1</sup>) OJ C 130, 30.4.2011.

**Judgment of the Court (Fourth Chamber) of 24 January 2013 (requests for a preliminary ruling from the Symvoulío tis Epikrateias — Greece) — Stanleybet International LTD (C-186/11), William Hill Organization Ltd (C-186/11), William Hill Plc (C-186/11), Sportingbet plc (C-209/11) v Ypourgos Oikonomias kai Oikonomikon, Ypourgos Politismou**

(Joined Cases C-186/11 and C-209/11) (<sup>1</sup>)

**(Articles 43 and 49 EC — National legislation granting an exclusive right for the running, management, organisation and operation of games of chance to a single undertaking, in the form of a public limited company listed on the stock exchange — Advertising of the games and expansion in other Member States of the European Union — State controls)**

(2013/C 71/04)

Language of the case: Greek

#### Referring court

Symvoulío tis Epikrateias

#### Parties to the main proceedings

*Applicants:* Stanleybet International Ltd (C-186/11), William Hill Organization Ltd (C-186/11), William Hill Plc (C-186/11), Sportingbet plc (C-209/11)

*Defendants:* Ypourgos Oikonomias kai Oikonomikon, Ypourgos Politismou

*Intervener:* Organismos prognostikon agonon podosfairou AE (OPAP)

#### Re:

Request for a preliminary ruling — Symvoulío tis Epikrateias — Interpretation of Articles 49 and 56 TFEU (Articles 43 and 49 EC) — National legislation under which, for the purpose of restricting games of chance, an exclusive right to run, manage, organise and operate games of chance is granted to a single undertaking, in the form of a public limited company listed on the stock exchange — Advertising of the games by that company and expansion in other countries of the European Union

#### Operative part of the judgment

1. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which grants the exclusive right to run, manage, organise and operate games of chance to a single entity, where, firstly, that legislation does not genuinely meet the concern to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner and, secondly, where strict control by the public authorities of the expansion of the sector of games of chance, solely in so far as is necessary to combat criminality linked to those games, is not ensured. It is for the national court to ascertain whether this is the case.
2. In the event that the national legislation governing the organisation of games of chance is incompatible with the Treaty provisions on the freedom to provide services and the freedom of establishment, the national authorities may not refrain from considering applications, such as those at issue in the main proceedings, for permission to operate in the sector of games of chance, during a transitional period.
3. In circumstances such as those of the main proceedings, the competent national authorities may examine applications for permission to organise games of chance submitted to them according to the level of consumer protection and the preservation of order in society that they intend to uphold solely on the basis of objective, non-discriminatory criteria.

(<sup>1</sup>) OJ C 186, 25.6.2011.  
OJ C 194, 2.7.2011.

**Judgment of the Court (Grand Chamber) of 22 January 2013 (reference for a preliminary ruling from the Bundeskommunikationssenat — Austria) — Sky Österreich GmbH v Österreichischer Rundfunk**

(Case C-283/11) (<sup>1</sup>)

**(Directive 2010/13/EU — Provision of audiovisual media services — Article 15(6) — Validity — Events of high interest to the public that are subject to exclusive broadcasting rights — Right of access of broadcasters to such events for the purpose of making short news reports — Limitation of possible compensation for the holder of the exclusive right to additional costs incurred in providing such access — Charter of Fundamental Rights of the European Union — Articles 16 and 17 — Proportionality)**

(2013/C 71/05)

Language of the case: German

#### Referring court

Bundeskommunikationssenat