

interveners) was brought before the Court of Justice of the European Communities on 2 March 2000 by Acciaierie di Bolzano SpA, represented by Bruno Nascimbene, with an address for service at 36, Rue de Wiltz, Luxembourg.

The appellant claims that the Court should:

1. Set aside the judgment of the Court of First Instance of the European Communities in Case T-158/96 between Acciaierie di Bolzano SpA and Commission of the European Communities (Italian Republic and Falck SpA, interveners);
2. By so doing, annul Commission Decision 96/617/ECSC of 17 July 1996 concerning aid granted by the Autonomous Province of Bolzano (Italy) to Acciaierie di Bolzano⁽¹⁾.

In the alternative

3. In the event that the Court of Justice should decide that it cannot make a decision as to the status of the measure, set aside the judgment of the Court of First Instance and refer the case to another sitting of the Court of First Instance, indicating the points of law upheld in the present appeal.
4. Make any other decisions it may deem necessary.
5. Order the Commission to pay the costs, including those incurred at first instance.

Pleas and main arguments

The contested judgment should be set aside on the following grounds:

- Failure to declare that the rights of the defence had been infringed by the administrative decision and the inconsistency of the decision at issue;
- Breach of the prohibition on making decisions containing sanctions and of the principle of proportionality; absence/inadequacy/inconsistency of the reasons stated in that respect;
- Invalid calculation of the interest and inadequate reasons stated in that respect;
- Breach of rules on limitation periods. Absence and inadequacy of reasons in that respect;
- Breach of the prohibition on applying Community rules retroactively. Failure to state reasons in that respect;
- Breach of the legal expectations held by Acciaierie di Bolzano that it would not have to repay the aid and of the principles of good faith and cooperation;

— Breach of the rule of law which makes the incompatibility of ECSC aid dependent on changes in competitive conditions. Absence of reasons regarding validity and compatibility of the aid;

— Breach of the procedural rules governing inter partes proceedings, to the detriment of the appellant's interests.

⁽¹⁾ OJ 1996 L 274, p. 30.

Action brought on 2 March 2000 by the Commission of the European Communities against the Italian Republic

(Case C-78/00)

(2000/C 149/36)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 2 March 2000 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- a) Declare that, by providing that, in the case of a category of taxpayer whose tax situation for 1992 shows a credit balance, such persons be belatedly issued with Government bonds (titoli di Stato) rather than VAT refunds, the Italian Republic has failed to fulfil its obligations under Articles 17 and 18 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes⁽¹⁾;
- b) Order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

According to the Commission, the Italian State has failed to fulfil its obligation to issue VAT refunds to taxpayers whose tax balance for the 1992 tax year shows a credit situation in excess of 100 million as a result of intra-Community transactions accounting for more than 10 % of their total taxable transactions for that year. The Italian State has thereby deprived that category of person of the normal exercise of the right to a refund, a right which constitutes an 'essential element' of the entire common system of value added tax and restriction of which constitutes a serious infringement of Article 17 of the Sixth Directive.

By issuing to those taxpayers five-year or ten-year Government bonds, the Italian State has gone far beyond the facultative power conferred on Member States by Article 18(4) of the Sixth Directive, which allows the difference between tax deducted and tax due to be carried forward, but only to the following tax period. To carry the excess further forward entails infringement of the rule clearly laid down by Article 18(4), frustrating that provision and ultimately constituting a serious contravention of the basic principle underlying the common system of value added tax, namely, the right to immediate exercise of the right to a refund.

(¹) OJ L 145 of 13.6.1977, p. 1.

Reference for a preliminary ruling by the Bundesgerichtshof by order of that court of 10 February 2000 in the case of Italian Leather SpA against WECO Polstermöbel GmbH & Co.

(Case C-80/00)

(2000/C 149/37)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichtshof (Federal Court of Justice, Germany) of 10 February 2000, received at the Court Registry on 7 March 2000, for a preliminary ruling in the case of Italian Leather SpA v WECO Polstermöbel GmbH & Co. on the following questions concerning the interpretation of the EC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters of 27 September 1968 ('the Convention') (OJ 1972 L 299, p. 32):

1. Can judgments be irreconcilable within the meaning of Article 27(3) of the Convention when the only difference between them lies in the specific requirements for the adoption of a particular type of autonomous provisional measure (within the meaning of Article 24 of the Convention)?
2. May and must the court of the enforcing State which has declared a foreign judgment requiring the debtor to desist from certain activities to be enforceable in accordance with Articles 34(1) and 31(1) of the Convention at the same time order the measures necessary under the law of the enforcing State for enforcement of a restraining order?
3. If the answer to Question 2 is in the affirmative, must the measures necessary under the law of the enforcing State for enforcement of the restraining order be ordered even if the judgment to be recognised does not itself include comparable measures in accordance with the law of the State of judgment, and that law makes no provision at all for the immediate enforceability of such restraining orders?

Reference for a preliminary ruling by the Amtsgericht Heidelberg by order of that court of 3 March 2000 in the business register case of HSB-Wohnbau GmbH

(Case C-86/00)

(2000/C 149/38)

Reference has been made to the Court of Justice of the European Communities by order of the Amtsgericht, Heidelberg (Local Court, Heidelberg), received at the Court Registry on 7 March 2000, for a preliminary ruling in the business register case of HSB-Wohnbau GmbH on the following questions:

- A. Does the transfer to Spain of the registered office of a company properly constituted under German law, registered in the German register, and whose sole shareholder is a Spanish company, whereby it retains its legal personality, fall within the rights set out in Articles 43 and 48 of the EC Treaty (formerly Articles 52 and 58 EC)?
- B. Do Articles 43 and 48 of the EC Treaty (previously Articles 52 and 58 EC) preclude a national rule prohibiting the transfer to Spain of the registered office of a limited liability company properly constituted under German law, registered on the German register, and whose sole shareholder is a Spanish company, whereby it retains its legal personality?

Reference for a preliminary ruling by the Giudice di Pace di Genova by order of that court of 28 February 2000 in the case of Roberto Nicoli v Eridiana SpA

(Case C-87/00)

(2000/C 149/39)

Reference has been made to the Court of Justice of the European Communities by an order of the Giudice di Pace di Genova (Magistrate's Court, Genoa) of 28 February 2000, which was received at the Court Registry on 7 March 2000, for a preliminary ruling in the case of Roberto Nicoli v Eridiana SpA, on the following questions:

1. Are Regulation (EC) No 1360/98⁽¹⁾ of 26 June 1998 and Regulation (EC) No 1361/98⁽²⁾ of 26 June 1998 valid, in view of the fact in that, as a result of belatedly fixing for the 1998-99 marketing year certain prices applicable to the sugar sector, they belatedly determine the intervention prices to be observed on the Italian market, in breach of Article 3(4) and (5) of the basic regulation, Regulation No 1785/81⁽³⁾?