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# COURT OF JUSTICE

**COURT OF JUSTICE**

**JUDGMENT OF THE COURT**

**(First Chamber)**

**of 28 November 2000**

**in Case C-88/99 (reference for a preliminary ruling from the Tribunal de Grande Instance de Béthune): Roquette Frères SA v Direction des Services Fiscaux du Pas-de-Calais** [1]

***(Recovery of sums paid but not due — National procedural rules — Capital duty levied in respect of a merger)***

(2001/C 61/01)

*(Language of the case: French)*

*(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-88/99: reference to the Court under Article1 177 of the EC Treaty (now Article 234 EC) from the Tribunal de Grande Instance de Béthune, (France) for a preliminary ruling in the proceedings pending before that court between Roquette Frères SA and Direction des Services Fiscaux du Pas-de-Calais — to ascertain whether Community law prohibits national tax legislation which provides that an action for recovery of a sum paid but not due, based on a judicial decision declaring a rule of law incompatible with a higher-ranking rule, may relate only to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility — the Court (First Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 28 November 2000, in which it has ruled:

*Community law does not preclude legislation of a Member State laying down that, in tax matters, an action for recovery of a sum paid but not due based on a finding by a national or Community court that a national rule is not compatible with a superior rule of national law or with a Community rule of law may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.*

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[1] OJ C 136 of 15.5.1999.

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**Reference for a preliminary ruling by the Landesarbeitsgericht München by order of that court of 11 February 2000 in the case of Giulia Pugliese against Finmeccanica s.p.a., Alenia Aerospazio division**

**(Case C-437/00)**

(2001/C 61/02)

Reference has been made to the Court of Justice of the European Communities by order of the Landesarbeitsgericht München (Higher Labour Court, Munich) of 11 February 2000, received at the Court Registry on 27 November 2000, for a preliminary ruling in the case of Giulia Pugliese v Finmeccanica s.p.a., Alenia Aerospazio division 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 Brussels Convention'; OJ 1990 C 189, p. 2):

1. In a dispute between an Italian national and a company established under Italian law having its registered office in Italy arising from a contract of employment concluded between them which designates Turin as the place of work, is Munich the place where the employee habitually carries out his work under the second half-sentence of Article 5(1) of the Brussels Convention where, from the outset, the contract of employment is temporarily placed on non-active status at the request of the employee and, during that period, the employee carries out work, with the consent of the Italian employer, but on the basis of a separate contract of employment, for a company established under German law at its registered office in Munich, for the duration of which the Italian employer assumes the obligation to provide accommodation in Munich or to bear the costs of such accommodation and to bear the costs of two journeys home each year from Munich to the employee's native country?

2. If the first question is answered in the negative, may the employee, in a legal dispute with her Italian employer arising from the contract of employment, rely, with reference to the payment of rental costs and travel costs for the two journeys home each year, on the argument that the court having jurisdiction is that for the place of performance of the obligation in question, pursuant to the first half-sentence of Article 5(1) of the Brussels Convention?

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**Reference for a preliminary ruling from the Oberlandesgericht Hamm by order of that court of 15 November 2000 in the case of Deutscher Handballbund e.V. v Maros Kolpak**

**(Case C-438/00)**

(2001/C 61/03)

Reference has been made to the Court of Justice of the European Communities by an order of the Oberlandesgericht (Higher Regional Court) Hamm, Germany, of 15 November 2000, which was received at the Court Registry on 28 November 2000, for a preliminary ruling in the case of Deutscher Handballbund e.V. v Maros Kolpak on the following question:

Is it contrary to Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part — Final Act — if a sports association applies to a professional sportsman of Slovak nationality a rule it has adopted under which clubs may play in championship and cup matches only a limited number of players who come from third countries not belonging to the European Communities?

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**Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per il Lazio, Chamber 2b, by judgment of that court of 28 June and 6 July 2000, in the case of Azienda Agricola Giuseppe Cantarello against Azienda di Stato per gli interventi nel mercato agricolo A.I.M.A. and the Ministry for Agricultural Policy**

**(Case C-451/00)**

(2001/C 61/04)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunale Amministrativo Regionale per il Lazio, Chamber 2b, of 28 June and 6 July 2000, received at the Court Registry on 8 December 2000, for a the preliminary ruling in the case of Azienda Agricola Giuseppe Cantarello against Azienda di Stato per gli interventi nel mereato agricolo A.I.M.A. and the Ministry for Agricultural Policy on the following questions:

(1) May the provisions contained in Articles 1 and 4 of Council Regulation (EEC) No 3950/92 [1] of 28 December 1992 and Articles 3 and 4 of Commission Regulation (EEC) No 534/93 [2] of 9 March 1993 be interpreted as meaning that it is possible, in the case of Community law proceedings and the subsequent compliance of the Member State to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?

If not,

(2) Are those provisions of Community law valid, in the light of Article 33 (ex 39) of the Treaty, in so far as they do not provide for derogation from the periods prescribed for allocation and adjustments in the abovementioned case of Community law proceedings?

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[1] OJ L 405 of 31.12.1992, p. 1.
[2] Commission Regulation (EEC) No 536/93 of 9 March 1993 is meant (OJ L 57 of 10.3.1993, p. 12).

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**Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by decision of that court of 1 November 2000 in the case of Kühne & Heitz N.V. against Produktschap voor Pluimvee en Meren**

**(Case C-453/00)**

(2001/C 61/05)

Reference has been made to the Court of Justice of the European Communities by a decision of the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) of 1 November 2000, which was received at the Court Registry on 11 December 2000, for a preliminary ruling in the case of Kühne Heitz N.V. v Produktschap voor Pluimvee en Eieren on the following question: