

The direct effect which that provision must therefore be recognised as having means that Polish nationals relying on it have the right to invoke it before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 58(1) of that Agreement.

2. The right of establishment, as defined by Article 44(3) of the above Association Agreement, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Polish nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen, or activities of the professions in a Member State. However, it follows from Article 58(1) of that Agreement that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Polish nationals.
3. Articles 44(3) and 58(1) of the above Association Agreement, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources and has reasonable chances of success. Substantive requirements such as those set out in paragraphs 217 and 219 of the United Kingdom Immigration Rules (House of Commons Paper 395) have as their very purpose to enable the competent authorities to carry out such checks and are appropriate for achieving such a purpose.
4. Article 58(1) of the above Association Agreement must be construed as meaning that the competent authorities of the host Member State may reject an application made pursuant to Article 44(3) of that Agreement on the sole ground that, when that application was submitted, the Polish national was residing illegally within the territory of that State because of false representations made to those authorities for the purpose of obtaining initial leave to enter that Member State on a different basis or of non-compliance with an express condition attached to that entry and relating to the authorised duration of his stay in that Member State. Consequently, those authorities may require that national to submit, in due and proper form, a new application for establishment on the basis of that Agreement by applying for an entry visa to the competent authorities in his State of origin or, as the case may be, in another country, provided that such measures do not have the effect of preventing such a national from having his situation reviewed at a later date when he submits that new application.

JUDGMENT OF THE COURT

(Second Chamber)

of 11 October 2001

in Case C-77/99: Commission of the European Communities v Oder-Plan Architektur GmbH, NCC Deutsche Ban GmbH, Esbensen Consulting Engineers⁽¹⁾

(Arbitration clause — Financial support for the energy sector — Thermie Programme — Non-performance of a contract — Termination — Right to repayment of an advance)

(2002/C 17/05)

(Language of the case: German)

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

In Case C-77/99: Commission of the European Communities (Agents: R.B. Wainwright and K. Schreyer, assisted by M. Núñez-Müller) v Oder-Plan Architektur GmbH, in liquidation, established in Berlin (Germany), represented by its liquidator, C. Schlote, NCC Deutsche Ban GmbH, formerly NCC Siab Bau GmbH, established in Fürstenwalde (Germany), represented by D. Stoecker, Rechtsanwalt, and Esbensen Consulting Engineers, established in Virum (Denmark), represented by D. Stoecker — application by the Commission of the European Communities under Article 181 of the EC Treaty (now Article 238 EC) for repayment of an advance paid by the Commission under the Thermie Programme referred to in Article 1 of Council Regulation (EEC) No 2008/90 of 29 June 1990 concerning the promotion of energy technology in Europe (Thermie programme) (OJ 1990 L 185, p. 1) — the Court (Second Chamber), composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 11 October 2001, in which it:

1. By way of judgment by default, orders Oder-Plan Architektur GmbH, jointly and severally with NCC Deutsche Bau GmbH and Esbensen Consulting Engineers, to pay to the Commission of the European Communities the sum of EUR 54 510, plus interest of EUR 12 077.09 for the period from 1 January 1995 to 15 January 1999;
2. Orders NCC Deutsche Ban GmbH and Esbensen Consulting Engineers, jointly and severally as between each other and with Oder-Plan Architektur GmbH, to pay to the Commission of the European Communities the sum of EUR 54 510, plus interest of EUR 12 077.09 for the period from 1 January 1995 to 15 January 1999;
3. Dismisses the remainder of the application;

⁽¹⁾ OJ C 121 of 1.5.1999.

4. *Orders Oder-Plan Architektur GmbH, NCC Deutsche Bau GmbH and Esbensen Consulting Engineers, jointly and severally, to pay the costs.*

(¹) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 22 November 2001

in Case C-147/99: Italian Republic v Commission of the European Communities⁽¹⁾

(EAGGF — Clearance of accounts — Ineligible durum wheat — Quantities missing from the stockpile — Withdrawal of approval of undertakings packaging olive oil — Inadequate management and checks of premiums for sheep and goats)

(2002/C 17/06)

(Language of the case: Italian)

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

In Case C-147/99: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) v Commission of the European Communities (Agent: F.P. Ruggeri Laderchi, assisted by A. Dal Ferro) — application for annulment of the part concerning the Italian Republic of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37) — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 22 November 2001, in which it:

1. Dismisses the action;
2. Orders the Italian Republic to pay the costs.

(¹) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 22 November 2001

in Joined Cases C-541/99 and C-542/99 (references for preliminary rulings from the Giudice di Pace di Viadana): Cape Snc and Idealservice Srl (C-541/99) and between Idealservice MN RE Sas and OMAI Srl (C-542/99)⁽¹⁾

(Article 2(b) of Directive 93/13/EEC — Meaning of ‘consumer’ — Undertaking concluding a standard contract with another undertaking to acquire merchandise or services solely for the benefit of its employees)

(2002/C 17/07)

(Language of the case: Italian)

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

In Joined Cases C-541/99 and C-542/99: references to the Court under Article 234 EC from the Giudice di Pace (Magistrate), Viadana, (Italy) for preliminary rulings in the proceedings pending before that court between Cape Snc and Idealservice Srl (C-541/99) and between Idealservice MN RE Sas and OMAI Srl (C-542/99) — on the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — the Court, composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges; J. Mischo, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 22 November 2001, in which it has ruled:

The term ‘consumer’, as defined in Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, must be interpreted as referring solely to natural persons.

(¹) OJ C 47 of 19.2.2000.