legislation in force, current health policy and veterinary supervision' also applied to caviar, their findings in fact related exclusively to the production of horse meat and pike fillets. The Commission made a proposal to the Veterinary Committee without having itself carried out any examination or appraisal and without submitting the inspectors' report.

— The Court of First Instance further disregarded the fact that, in addition, the Commission clearly violated the principle of the protection of legitimate expectations, to the detriment of the appellant: according to Commission Decision 1999/136 of 28 January 1999, published in the Official Journal of 18 February 1999, the importation of caviar from Kazakhstan continued to be permitted (List II). Thereafter, at the beginning of March 1999, the appellant concluded contracts for the supply of caviar from Kazakhstan for the 1999 season. However, in January 1999, at all events before 18 February 1999, the Commission was already aware of the results of the inspection, as set out in the report, which prompted it to submit to the Veterinary Committee, for consideration at its meeting on 23 February 1999, a draft providing for deletion from List II. In view of the small number of importers affected, it would have been easy for the Commission to inform those undertakings of the results of the inspection visit, which were available to it in January, and of the consequences which those results might have for the importation of caviar.

(1) Decision 1999/244/EC amending Decision 97/296/EC drawing up the list of third countries from which the import of fishery products is authorised for human consumption (OJ 1999 L 91, p. 37).

Action brought on 21 December 2001 by the Commission of the European Communities against the French Republic

(Case C-496/01)

(2002/C 44/16)

An action against the French Republic was brought before the Court of Justice of the European Communities on 21 December 2001 by the Commission of the European Communities, represented by Maria Patakia, acting as Agent.

The applicant claims that the Court should:

1. Declare that by:

— requiring bio-medical analysis laboratories established in other Member States to have their place of business on French territory as a condition for obtaining the requisite operating authorisation; and

— precluding any reimbursement of the cost of bio-medical analyses carried out by bio-medical analysis laboratories established in another Member State,

the French Republic has failed to fulfil its obligations under Articles 43 and 49 of the EC Treaty; and

2. order the French Republic to pay the costs.

Pleas in law and main arguments

— Restriction of Article 43 EC by virtue of the fact that the requisite administrative authorisation for operating a bio-medical analysis laboratory (Article L 757 of the Public Health Code) can only be delivered by the Préfet for the *département* in which the laboratory operates (Article 15 of Decree No 76-1004). That provision precludes the setting up of an establishment having the status of an office or agency. The Commission does not dispute that a Member State may provide for rules governing the authorisation for operating laboratories. Such rules must however take account of the requirements and safeguards already complied with in another Member State of establishment without disregarding that a higher level of protection may exist in the first Member State. Otherwise, failure to take into account safeguards already complied with in another Member State would lead to a duplicate procedure for applying for authorisation over and above the authorisation which the foreign laboratory has already obtained in its Member State of establishment. Such a situation runs counter to the principle of proportionality which requires that the objectives pursued must be achieved by the least restrictive means.

— Restriction of Article 43 EC by virtue of the fact that the French legislation (Article R 332-3 of the Social Security Code) restricts financial assistance from sickness insurance schemes only to exceptional cases, that is to say where the insured person is able to show that he cannot obtain the appropriate treatment on French territory, which is moreover not the case so far as concerns bio-medical analysis laboratories. That constitutes a barrier both to the freedom to provide services (where a laboratory does not have an establishment in France) and to the right to set up secondary establishments (where a laboratory has a secondary establishment where analyses are not however carried out).

The Commission takes the view that such restrictions are not justified on public-health grounds in particular. The safeguards afforded by the Council directives in the field (93/16/EEC, 85/432/EEC, 85/433/EEC, 78/1026/EEC and 78/1027/EEC)

ensure to a great extent the quality of medical services, so that specific measures restricting the basic freedoms enshrined in the Treaty should be exceptional and fully justified by special circumstances. As for monitoring in particular, there is nothing to prevent laboratories established in other Member States agreeing, voluntarily, to comply with French standards when applying for authorisation nor is there anything to prevent French inspectors from travelling abroad so long as their inspection is freely consented to by the laboratories concerned.

Reference for a preliminary ruling by the Tribunal d'Arrondissement de Luxembourg by order of 19 December 2001 in the case of Zita Modes SARL v Administration de l'enregistrement et des domaines

(Case C-497/01)

(2002/C 44/17)

Reference has been made to the Court of Justice of the European Communities by order of 19 December 2001 by the Tribunal d'Arrondissement de Luxembourg which was received at the Court Registry on 24 December 2001, for a preliminary ruling in the case of Zita Modes SARL v Administration de l'enregistrement et des domaines on the following questions:

1. Is Article 5(8) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1] to be interpreted as meaning that the transfer of a totality of assets to a taxable person constitutes a sufficient condition for the transaction not to be made subject to value added tax, whatever the taxable person's activity may be or whatever use he makes of the property transferred?

2. If the answer to the first question is in the negative, is Article 5(8) of the Sixth Directive to be interpreted as meaning that the transfer of a totality of assets to a taxable person is to be understood as meaning a transfer of all or part of an undertaking to a taxable person who continues the whole activity of the transferor undertaking or continues the activity of the branch corresponding to the part of the totality of assets transferred, or merely as meaning a transfer of a totality of assets or part thereof to a taxable person who continues the transferor's line of activity in whole or in part, without there being any transfer of an undertaking or branch of an undertaking?

3. If the answer to any part of the second question is in the affirmative, does Article 5(8) of the Sixth Directive require or allow a State to require that the recipient's activity be pursued in accordance with the licence issued by the competent authority for the activity or branch of activity stipulated, assuming that the activity pursued falls within lawful economic channels in the sense contemplated in the case-law of the Court of Justice?

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[1] OJ L 145, 13.6.1977, p. 1.