

The Commission of the European Communities claims that the Court should:

1. declare that, by making the grant of a permanent residence permit to nationals of the other Member States referred to in Article 1(a), (c), (f), (h), (i) and (j) of Decree No 94-221 of 11 March 1994 laying down the conditions of entry to, and residence in France applicable to nationals of Member States of the European Communities entitled to freedom of movement for persons subject to a condition of reciprocity, the French Republic has failed to fulfil its obligations under Article 12 EC;
2. order the French Republic to pay the costs.

*Pleas in law and main arguments*

The French legislation determining the conditions for issuing permanent residence permits to nationals of Member States and members of their family, makes the grant of those permits subject to a condition of reciprocity, namely the condition that the applicant be a national of a Member State which issues residence permits of permanent validity to French nationals who have exercised their right to freedom of movement. Such a condition is manifestly contrary to Article 12 EC, read with Articles 17, 18(1), 39 and 43 EC.

**Reference for a preliminary ruling by the Audiencia Nacional, Sala de lo Contencioso Administrativo by order of that Court of 9 May 2003 in the case of Igor Simutenkov against Abogado del Estado, Real Federación Española de Fútbol and Ministerio Fiscal**

(Case C-265/03)

(2003/C 213/20)

Reference has been made to the Court of Justice of the European Communities by order of the Audiencia Nacional (National High Court) Sala de lo Contencioso Administrativo (Chamber for Contentious Administrative Proceedings) of 9 May 2003, received at the Court Registry on 17 June 2003, for a preliminary ruling in the case of Igor Simutenkov against Abogado del Estado, Real Federación Española de Fútbol and Ministerio Fiscal on the following question:

Is it contrary to Article 23 of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, concluded in Corfu on

24 June 1994, for a sports federation to apply to a professional sportsman of Russian nationality who is lawfully employed by a Spanish football club, as in the main proceedings, a rule which provides that clubs may use in competitions at national level only a limited number of players from countries outside the European Economic Area?

**Reference for a preliminary ruling by the Högsta Domstolen by order of that Court of 10 April 2003 in the case of Lars Erik Staffan Lindberg against Riksåklagaren**

(Case C-267/03)

(2003/C 213/21)

Reference has been made to the Court of Justice of the European Communities by order of the Högsta Domstolen (Supreme Court) of 10 April 2003, received at the Court Registry on 18 June 2003, for a preliminary ruling in the case of Lars Erik Staffan Lindberg against Riksåklagaren (public prosecutor) on the following questions of interpretation of Council Directive 83/189/EEC<sup>(1)</sup> (as amended by Directive 88/182/EC<sup>(2)</sup>) and by European Parliament and Council Directive 94/10/EC<sup>(3)</sup> in the light of the amendments to the Lottery Law which entered into force on 1 January 1997:

1. Can the introduction in national law of a prohibition on the use of a product constitute a technical regulation which must be notified under the regulation?
2. Can the introduction in national law of a prohibition on a service which affects the use of a product constitute a technical regulation which must be notified under the regulation?
3. Can the redefinition in national law of a service connected with the design of a product constitute a technical regulation which must be notified under the directive, if the new definition affects the use of the product?
4. What is the significance for the obligation to notify of factors such as the replacement of a licence requirement by a prohibition in national law, the greater or lesser

value of the product/service, the size of the market for the product/service or the effect of a new national provision on use, which could be either a total prohibition on use or prohibition or restriction within one of many possible areas of use?

- (<sup>1</sup>) of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 109 of 26.04.1983, p. 8).
- (<sup>2</sup>) of 22 March 1988 amending Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 81 of 26.03.1988, p. 75).
- (<sup>3</sup>) of 23 March 1994 materially amending for the second time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 100 of 19.04.1994, p. 30).

**Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 13 May 2003 in the proceedings between Hauptzollamt Neubrandenburg and Jens Christian Siig, trading as 'Internationale Transport' Export-Import**

(Case C-272/03)

(2003/C 213/22)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 13 May 2003, received at the Court Registry on 24 June 2003, for a preliminary ruling in the proceedings between Hauptzollamt Neubrandenburg and Jens Christian Siig, trading as 'Internationale Transport' Export-Import on the following question:

Is Article 718(3)(d) in conjunction with Article 670(p) of Regulation (EEC) No 2454/93 (<sup>1</sup>) to be interpreted as meaning that that regulation prohibits the use of a road tractor registered outside the customs territory of the Community to transport a semi-trailer from a place within the customs territory of the Community, where the semi-trailer is loaded with goods, to another place within the customs territory of the Community, where the semi-trailer is merely parked with

a view to being transported subsequently by another road tractor to the consignee of the goods, who is established outside the customs territory of the Community?

(<sup>1</sup>) OJ L 253 of 11.10.1993, p. 1.

**Action brought on 25 June 2003 by the Commission of the European Communities against the Portuguese Republic**

(Case C-275/03)

(2003/C 213/23)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 25 June 2003 by the Commission of the European Communities, represented by António Caeiros and Klaus Wiedner, acting as Agents.

The applicant claims that the Court should:

- Declare that, by failing to transpose correctly and completely Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (<sup>1</sup>), the Portuguese Republic has failed to fulfil its obligations under Community law;
- Order the Portuguese Republic to pay the costs.

*Pleas in law and main arguments*

Portuguese law as it stands makes the award of damages for infringements of Community law in the field of public procurement or national rules implementing that law subject to proof, by the person harmed by the infringement, that the misconduct of the State or of the public body was culpably or maliciously intended by the relevant body or office holders or administrative officials. Such evidence can be extremely difficult or impossible to produce. The difficulty or impossibility of producing such evidence may result in persons harmed by an infringement not obtaining the compensation to which they are entitled. It is therefore clear that that obligation, not provided for by Directive 89/665, on persons who have suffered damage is likely to undermine the effectiveness of Article 2(1)(c) of that directive.