

Reference for a preliminary ruling by the Tribunale di Bologna — Sezione 1^a penale — by order of that Court of 22 September 2003 in the criminal proceedings against Mario Filimeno Miraglia

(Case C-469/03)

(2004/C 21/25)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Bologna — Sezione 1^a penale — (Bologna District Court, First Criminal Collegiate Chamber) of 22 September 2003, received at the Court Registry on 10 November 2003, for a preliminary ruling in the criminal proceedings against Mario Filimeno Miraglia on the following question:

Does Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 apply when the decision of the court in the first State appears to discontinue prosecution without adjudicating on the merits of the case and on the sole premise that proceedings are taking place in another State?

Appeal brought on 12 November 2003 (by fax of 10 November 2003) by the Diputación Foral de Bizkaia against the judgment delivered on 5 August 2003 by the First Chamber (Extended Composition) of the Court of First Instance of the European Communities in Joined Cases T-116/01 and T-118/01 between P. & O. European Ferries (Vizcaya) S.A. (T-116/01) and the Diputación Foral de Vizcaya (T-118/01) and the Commission of the European Communities

(Case C-471/03 P)

(2004/C 21/26)

An appeal against the judgment delivered on 5 August 2003 by the First Chamber (Extended Composition) of the Court of First Instance of the European Communities in Joined Cases T-116/01 and T-118/01 between P. & O. European Ferries (Vizcaya) S.A. (T-116/01) and the Diputación Foral de Vizcaya (T-118/01) and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 November 2003 by the Diputación Foral de Bizkaia, represented by Marta Morales Isasi and Ignacio Sáenz-Cortabarría.

The appellant claims that the Court should:

- set aside the contested judgment;

- principally, if the state of the proceedings so permits, uphold the claims made at first instance by the appellant and, in consequence, annul the Commission's decision of 29 November 2000 on the aid scheme implemented by Spain in favour of the shipping company Ferries Golfo de Vizcaya or, secondarily, annul Article 2 of the Decision in so far as it orders repayment of ESP 985 500 000, together with interest;
- if the preceding claim is not allowed, refer the matter back to the Court of First Instance;
- in either case, order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

- Error of law, in that the Court of First Instance interpreted the 'advantage' element of the concept of State aid in the light of the principle of a private investor operating in normal market economy conditions, so introducing as a criterion of analysis the criterion of assessing the need for public intervention;
- misinterpretation of Article 87 EC, inasmuch as the Court of First Instance inferred the existence of State aid because it considered that there was no need for the purchase of vouchers;
- error of law, in that the Court of First Instance did not penalise the lack of economic analysis in the Commission's decision, where it declared that all the sums paid constituted State aid;
- clear distortion by the Court of First Instance of the statement of reasons given for the decision, on the basis solely of lack of transparency in the selection of the shipping company, so as to exclude application of Article 87(2)(a) EC, which gave rise to infringement of the right to a fair hearing because no real answer was given to the arguments put forward in the application;
- obvious inaccuracy as regards matters taken by the Court of First Instance to be proven facts and incorrect classification of facts, in that the Court of First Instance considered that the aid contained in the 1995 agreement was 'instituted and implemented in 1992' and drew the legal inference therefrom that the aid was unlawful, which amounts to clear distortion of the facts, of the Decision itself and of the evidence, and breach of procedural rules, in that the Court of First Instance substituted the Commission's reasoning for its own in classifying the aid at issue as illegal;