

JUDGMENT OF THE COURT

(Second Chamber)

of 24 June 2004

in Case C-49/02 (reference for a preliminary ruling from the Bundespatentgericht): Heidelberger Bauchemie GmbH ⁽¹⁾

(Trade marks — Harmonisation of laws — Directive 89/104/EEC — Signs capable of constituting a trade mark — Combinations of colours — Colours blue and yellow for certain products used in the building trade)

(2004/C 201/03)

(Language of the case: German)

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

In Case C-49/02: reference to the Court under Article 234 EC from the Bundespatentgericht (Germany) for a preliminary ruling in the proceedings brought before that court by Heidelberger Bauchemie GmbH — on the interpretation of Article 2 of the First Council Directive (89/104/EEC) of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 24 June 2004, in which it has ruled:

Colours or combinations of colours which are the subject of an application for registration as a trade mark, claimed in the abstract, without contours, and in shades which are named in words by reference to a colour sample and specified according to an internationally recognised colour classification system may constitute a trade mark for the purposes of Article 2 of the First Council Directive (89/104/EEC) of 21 December 1988 to approximate the laws of the Member States relating to trade marks where:

- *it has been established that, in the context in which they are used, those colours or combinations of colours in fact represent a sign, and*
- *the application for registration includes a systematic arrangement associating the colours concerned in a predetermined and uniform way.*

Even if a combination of colours satisfies the requirements for constituting a trade mark for the purposes of Article 2 of the Directive, it is

still necessary for the competent authority for registering trade marks to decide whether the combination claimed fulfils the other requirements laid down, particularly in Article 3 of the Directive, for registration as a trade mark in relation to the goods or services of the undertaking which has applied for its registration. Such an examination must take account of all the relevant circumstances of the case, including any use which has been made of the sign in respect of which trade mark registration is sought. That examination must also take account of the public interest in not unduly restricting the availability of colours for other traders who market goods or services of the same type as those in respect of which registration is sought.

⁽¹⁾ OJ C 131, 1.6.2002.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 24 June 2004

in Case C-119/02: Commission of the European Communities v Hellenic Republic ⁽¹⁾

(Failure of a Member State to fulfil obligations — Second subparagraph of Article 3(1) and Article 5(2) of Directive 91/271/EEC — Discharge of urban waste water into a sensitive area — Lack of a collecting system — Lack of treatment more stringent than the secondary treatment provided for in Article 4 of the Directive)

(2004/C 201/04)

(Language of the case: Greek)

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

In Case C-119/02: Commission of the European Communities (Agents: G. Valero Jordana and M. Konstantinidis) v Hellenic Republic (Agent: E. Skandalou) — application for a declaration that, by not taking the measures necessary for the installation of a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to treatment more stringent than secondary treatment before its discharge into the sensitive area of the Gulf of Elefsina, the Hellenic Republic has failed to fulfil its obligations

under Articles 3(1) and 5(2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40), as amended by Commission Directive 98/15/EC of 27 February 1998 (OJ 1998 L 67, p. 29) — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 24 June 2004, in which it:

1. Declares that, by not taking the measures necessary for the installation of a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to treatment more stringent than secondary treatment before its discharge into the sensitive area of the Gulf of Elefsina, the Hellenic Republic has failed to fulfil its obligations under the second subparagraph of Article 3(1) and Article 5(2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, as amended by Commission Directive 98/15/EC of 27 February 1998;
2. Orders the Hellenic Republic to pay the costs.

(¹) OJ C 131, 1.6.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 24 June 2004

**in Case C-212/02: Commission of European Communities
v Austria Republic (¹)**

(Failure of a Member State to fulfil obligations — Directives 89/665/EEC and 92/13/EEC — Inadequate transposition — Obligation that legislation relating to the award of public contracts provide for a procedure whereby all unsuccessful tenderers may have the award decision set aside)

(2004/C 201/05)

(Language of the case: German)

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

In Case C-212/02, Commission of the European Communities (Agent: M. Nolin, assisted by R. Roniger) v Republic of Austria

(Agents: C. Pesendorfer and M. Fruhmarmann) — application for a declaration that, inasmuch as the Landesvergabegesetze (regional public procurement laws) of the Länder of Salzburg, Styria, Lower Austria and Carinthia do not in all cases provide for a review procedure whereby an unsuccessful tenderer may have an award decision set aside, the Republic of Austria has failed to fulfil its obligations under Article 2(1)(a) and (b) of 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 (OJ 1989 L 395, p. 33) and of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1991 L 76, p. 14) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet (Rapporteur), R. Schintgen, F. Macken and N. Colneric, Judges; M. Poirares Maduro, Advocate General; R. Grass, Registrar, has given a judgment on 24 June 2004, in which it:

1. Declares that inasmuch as the Landesvergabegesetze (regional public procurement laws) of the Länder of Salzburg, Styria, Lower Austria and Carinthia do not in all cases provide for a review procedure whereby an unsuccessful tenderer may have an award decision set aside, the Republic of Austria has failed to fulfil its obligations under Article 2(1)(a) and (b) of 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 and of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;

2. Orders the Republic of Austria to pay the costs.

(¹) OJ C 180, 27.7.2002.