

## I

(Information)

## COURT OF JUSTICE

## COURT OF JUSTICE

**Reference for a preliminary ruling by the Landesgericht Innsbruck by order of that court of 26 May 2004 in the case of Rosmarie Kapferer against Schlank & Schick GmbH**

(Case C-234/04)

(2004/C 251/01)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht Innsbruck (Regional Court Innsbruck) (Austria) of 26 May 2004 received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Rosmarie Kapferer against Schlank & Schick GmbH on the following questions:

A) The jurisdiction decision of the court of first instance:

1) Is the principle of cooperation enshrined in Article 10 EC to be interpreted as meaning that, in the circumstances stated in the judgment of the Court of Justice in Case C-453/00 Kühne & Heitz, a national court is also obliged to review and reopen a final judicial decision if it should infringe Community law? Are there any other conditions applicable to the review and reopening of judicial decisions in contrast to administrative decisions?

2) If the answer to the first question should be in the affirmative:

Is the period given under Paragraph 534 of the Zivilprozessordnung (Austrian Code of Civil Procedure) for the reopening of judicial decisions that are contrary to Community law compatible with the principle of full effectiveness of Community law?

3) Furthermore, if the answer to the first question should be in the affirmative:

Does a lack of international (or local) jurisdiction that is not remedied by Article 24 of Council Regulation (EC) No 44/2001<sup>(1)</sup> of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters constitute a breach of

Community law that, under the principles concerned, can set aside the legal force of a judicial decision?

If the answer to the third question should be in the affirmative:

4) Is a court of appeal obliged to review the issue of international (or local) jurisdiction under Regulation No 44/2001 if the jurisdiction decision of the court of first instance has become final but the decision on the merits of the case has not? If so, is that review to be conducted by the court of its own motion or only at the instigation of one of the parties to the proceedings?

B) Jurisdiction over consumer contracts under Article 15(1)(c) of Regulation No 44/2001:

1) Does a misleading promise of financial benefit that helps to cause a contract to be concluded — that is to say, prepares the ground for a contract — demonstrate a sufficiently close connection with the intended conclusion of a consumer contract for jurisdiction over consumer contracts under Article 15(1)(c) of Regulation No 44/2001 to be afforded to consequent claims?

If the answer to the first question should be in the negative:

2) Is jurisdiction over consumer contracts afforded to claims arising out of a pre-contractual obligation and does a misleading promise of financial benefit that helps to prepare the ground for a contract demonstrate a sufficiently close connection with the pre-contractual obligation thereby established for jurisdiction over consumer contracts also to be afforded thereto?

3) Is jurisdiction over consumer contracts afforded only if the conditions stipulated by the undertaking for participation in the prize game are satisfied, even if those conditions are not to be given any consideration in the substantive claim under Paragraph 5j of the Konsumentenschutzgesetz (Austrian Consumer Protection Law)?

If the answers to the first and second questions should be in the negative:

- 4) Is jurisdiction over consumer contracts afforded sui generis to a specific statutory form of contractual performance claim or sui generis to a constructive quasi-contractual performance claim which arises as a result of a promise of financial benefit made by an undertaking and the claiming of the financial benefit by the consumer?

(<sup>1</sup>) OJ L 12, 2001, p. 1.

**Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that court of 26 May 2004 in the case of EMAG Handel Eder OHG against Finanzlandesdirektion für Kärnten (Berufungssenat II)**

(Case C-245/04)

(2004/C 251/02)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Higher Administrative Court) (Austria), of 26 May 2004, received at the Court Registry on 10 June 2004, for a preliminary ruling in the case of EMAG Handel Eder OHG against Finanzlandesdirektion für Kärnten (Berufungssenat II) (Second Appeal Chamber of the Carinthia Regional Tax Authority) for a preliminary ruling on the following questions:

1. Is the first sentence of Article 8(1)(a) of the Sixth Council Directive 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 (77/388/EEC) (<sup>1</sup>) to be interpreted as meaning that the place where dispatch or transport begins is relevant even when several undertakings enter into arrangements for the supply of the same goods and those arrangements are implemented by way of a single movement of goods?
2. Are successive supplies to be treated as exempted intra-Community supplies when several undertakings enter into arrangements for the supply of the same goods and those arrangements are implemented by way of a single movement of goods?
3. If the answer to the first question is in the affirmative, is the place at which the second supply begins the actual place of departure of the goods or the place where the first supply finishes?
4. Is the identity of the party having the right of disposal of the goods during their movement a relevant factor in answering the first, second and third questions?

(<sup>1</sup>) OJ 1977 L 145, p. 1.

**Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that court of 26 May 2004 in the case Turn- und Sportunion Waldburg against Finanzlandesdirektion für Tirol**

(Case C-246/04)

(2004/C 251/03)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Higher Administrative Court) (Austria), of 26 May 2004, which was received at the Court Registry on 10 June 2004, for a preliminary ruling in the case of Turn- und Sportunion Waldburg against Finanzlandesdirektion für Tirol.

The Verwaltungsgerichtshof asks the Court of Justice to give a preliminary ruling on the following questions:

1. May a Member State exercise its discretion under Article 13 C of the Sixth Council Directive 77/388/EEC (<sup>1</sup>) 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 ('the directive') to give taxable persons the right, despite the tax exemption for the letting of property provided for in Article 13 B(b) of the directive, to opt for taxation only in a uniform manner or may the Member State distinguish by reference to the type of turnover or the group of taxable persons?
2. Does Article 13 B(b) in conjunction with C(a) of the directive permit Member States' legislation, like Paragraph 6(1)(14) of the Umsatzsteuergesetz 1994 (Law on turnover tax; hereinafter 'UStG 1994') in conjunction with Paragraph 6(1)(16) of the UStG 1994, under which the possibility of opting for taxation of turnover from leasing and letting is limited in such a way that non-profit-making sport clubs do not have that option?
3. Does Article 13 B(b) in conjunction with C(a) of the directive permit Member States' legislation, like Paragraph 2(5)(2) of the UStG 1994 in conjunction with Paragraph 1(2)(1) of the version of the Hobbies Order in BGBl Nr 33/1993 (Bundesgesetzblatt; Austrian Official Journal), under which the possibility of opting for taxation of turnover from letting does not exist where the letting does not lead within a foreseeable period of time to an overall profit or surplus in income and concerns a building suitable for use as a private dwelling?

(<sup>1</sup>) OJ L 145, p. 1.