Action brought on 7 October 2004 by the Commission of the European Communities against Edith Cresson

(Case C-432/04)

(2004/C 300/64)

An action against Edith Cresson was brought before the Court of Justice of the European Communities on 7 October 2004 by the Commission of the European Communities, represented by Hans Peter Hartvig and Julian Currall, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that Edith Cresson has failed to comply with her obligations under Article 213 EC;

2. consequently, order the forfeiture in part or in whole of Mrs Cresson's pension rights and/or any other benefits linked to those rights or standing in their stead, the Commission leaving it to the discretion of the Court to determine the duration and extent of that forfeiture;

3. order Mrs Cresson to pay the costs.

Pleas in law and main arguments

During her term of office as a Member of the Commission, Mrs Cresson engaged in acts of favouritism for the benefit of two personal friends, contrary to the public interest and to her obligations under Article 213 EC. One of them was recruited on the initiative of Mrs Cresson although his profile did not correspond to the various posts to which he was recruited. Protection by Mrs Cresson then became apparent on several occasions even though the work he performed was manifestly inadequate in quality, quantity and relevance. Similarly, again on the initiative of Mrs Cresson, contracts were offered to another of her friends, without corresponding to a request or requirement of the Commission. Mrs Cresson's conduct was not dictated by the interests of the institution but was motivated essentially by the wish to do a favour for those two persons. At the very least, Mrs Cresson did not at any time make inquiries as to the correctness of the decisions made or procedures applied, although such a check was necessary in the case of persons with whom she had relations of friendship. That behaviour thus appears to constitute an act of favouritism or at the least obvious negligence.

Action brought on 8 October 2004 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-433/04)

(2004/C 300/65)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 8 October 2004 by the Commission of the European Communities, represented by D. Triantafyllou, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that, by obliging principals and contractors who have recourse to entering into contracts with foreign parties not registered in Belgium to withhold 15 % of the sum payable in respect of the works carried out, and by imposing on those principals and contractors joint and several liability for the tax debts of the parties with whom they enter into contracts who are not registered in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 and 50 of the Treaty establishing the European Community;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The national legislation in the construction sector which, on pain of a fine, requires principals and contractors, whenever they make payment to parties with whom they have entered into a contract who are not registered in Belgium, to withhold 15 % of the amount billed and to pay it to the Belgian authorities, in order to ensure that any tax debts of those parties are paid or recovered, constitutes an obstacle to the freedom to provide services as provided for in Articles 49 and 50 EC. The joint and several liability of the principals and contractors for the tax debts of the other parties to their contracts who are not registered, which comes to as much as 35 % of the total cost of the works, excluding VAT, likewise constitutes a breach of Articles 49 and 50 EC.

That legislation is such as to deter principals and contractors from entering into contracts with parties not registered in Belgium. The automatic application of joint and several liability of the principals and contractors for the tax debts of the other party to the contract does not comply with the principle of proportionality and involves an unjustified breach of the right to property and the rights of the defence of those principals and contractors. The joint and several liability of principals and contractors is automatic, without the authorities having to prove fault or complicity on the part of the principal or contractor. Also the liability may extend to tax debts relating to works which the other party to the contract has carried out for other persons. Breach of the obligation to withhold is penalised by a fine of double the amount to be withheld.

The legislation also constitutes a genuine obstacle for unregistered parties who wish to offer their services in Belgium. They must accept receiving the amount billed less 15 %, even if they have no tax debt to which the amount withheld could be applied, and they can recover that sum only after a certain time, by applying for its restitution.

Those measures cannot be regarded as objectively justified. First of all, in the majority of cases a person providing services who is established in another Member State is not liable for the taxes to which the legislation relates. Also, in specific situations where tax debts would be payable or recoverable in Belgium, the mechanism set up by the provisions must, because of its general nature, be considered disproportionate.

Finally, the possibility of registration does not justify the obligation to withhold and the joint and several liability. The action involved in the registration procedure, which goes far beyond merely communicating information to the Belgian authorities, means that registration is not a valid alternative for undertakings not established in Belgium which wish to exercise their freedom to offer their services in Belgium occasionally. The requirement to register renders the Treaty provisions intended to guarantee the freedom to provide services entirely redundant.

Reference for a preliminary ruling by the Korkein oikeus by order of that court of 6 October 2004 in the case of Jan-Erik Anders Ahokainen and Mati Leppik against Virallinen syttäjä

(Case C-434/04)

(2004/C 300/66)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein oikeus (Supreme Court) (Finland)) of 6 October 2004, which was received at the Court Registry on 11 October 2004, for a preliminary ruling in the case of Jan-Erik Anders Ahokainen and Mati Leppik against Virallinen syttäjä (Public Prosecutor).

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

1. Is Article 28 EC to be interpreted as precluding legislation of a Member State under which non-denatured ethyl alcohol of over 80 % (spirits) may be imported only by a person who has obtained a licence to do so?

2. If the above question is answered in the affirmative, is the licence system to be regarded as permitted under Article 30 EC?

Reference for a preliminary ruling by the Cour de cassation de Belgique by decision of that court of 6 October 2004 in the case of Sébastien Victor Leroy against Ministère public

(Case C-435/04)

(2004/C 300/67)

Reference has been made to the Court of Justice of the European Communities by order of the Cour de cassation de Belgique (Belgium Court of Cassation) of 6 October 2004 received at the Court Registry on 14 October 2004, for a preliminary ruling in the case of Sébastien Victor Leroy against Ministère public on the following question:

Do Articles 49 to 55 of the Treaty of 25 March 1957 establishing the European Community preclude a national law of a Member State which prohibits a person who resides and works in that State from using in that State a vehicle which belongs to a leasing company established in another Member State when that vehicle has not been registered in the former State, even if it has been in the latter?

Reference for a preliminary ruling by the Hof van Cassatie van Belgie by decision of that court of 5 October 2004 in the case of Léopold Henri Van Esbroeck against Openbaar Ministerie

(Case C-436/01)

(2004/C 300/68)

Reference has been made to the Court of Justice of the European Communities by order of the Hof van Cassatie van Belgie (Court of Cassation (Belgium)) of 5 October 2004, received at the Court Registry on 13 October 2004, for a preliminary ruling in the case of Léopold Henri Van Esbroeck against Openbaar Ministerie on the following questions: