

3. In circumstances such as those of the main proceedings, Article 3 of Regulation No 1408/71, in the version updated by Regulation No 2001/83, as amended by Regulation No 2195/91, does not preclude a competent institution, when examining entitlement to unemployment benefit, from not taking into account, in calculating periods of insurance completed, a period of compulsory military service performed in another Member State.

(¹) OJ C 7 of 11.1.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 30 November 2004

in Case C-16/03 (reference for a preliminary ruling from the Hovrätten över Skåne och Blekinge): Peak Holding AB v Axolin-Elinor AB (¹)

(Trade marks — Directive 89/104/EEC — Article 7(1) — Exhaustion of the rights conferred by a trade mark — Putting on the market of the goods in the EEA by the proprietor of the trade mark — Concept — Goods offered for sale to consumers and then withdrawn — Sale to an operator established in the EEA with the obligation to put the goods on the market outside the EEA — Resale of the goods to another operator established in the EEA — Marketing in the EEA)

(2005/C 19/04)

(Language of the case: Swedish)

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

In Case C-16/03: reference for a preliminary ruling under Article 234 EC from the Hovrätten över Skåne och Blekinge (Sweden), made by decision of 19 December 2002, received at the Court on 15 January 2003, in the proceedings between Peak Holding AB and Axolin-Elinor AB, formerly Handelskompaniet Factory Outlet i Löddeköpinge AB – the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and R. Silva de Lapuerta, Presidents of Chambers, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 30 November 2004, in which it has ruled:

1. Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that goods bearing a trade mark cannot be regarded as having been put on the market in the European Economic Area where the proprietor of the trade mark has imported them into the European Economic Area with a view to selling them there or where he has offered them for sale to consumers in the European Economic Area, in his own shops or those of an associated company, without actually selling them.

2. In circumstances such as those of the main proceedings, the stipulation, in a contract of sale concluded between the proprietor of the trade mark and an operator established in the European Economic Area, of a prohibition on reselling in the European Economic Area does not mean that there is no putting on the market in the European Economic Area within the meaning of Article 7(1) of Directive 89/104, as amended by the Agreement on the European Economic Area, and thus does not preclude the exhaustion of the proprietor's exclusive rights in the event of resale in the European Economic Area in breach of the prohibition.

(¹) OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 2 December 2004

in Case C-42/03: Commission of the European Communities v Kingdom of Spain (¹)

(Failure of a Member State to fulfil obligations — Conservation and management of resources — Control measures for fishing activities)

(2005/C 19/05)

(Language of the case: Spanish)

In Case C-42/03: Commission of the European Communities (Agents: T. van Rijn and S. Pardo Quintillán) v Kingdom of Spain (Agent: N. Díaz Abad) – ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 February 2003 – the Court (Third Chamber), composed of: A. Rosas, President of Chamber, J.-P. Puissochet (Rapporteur), S. von Bahr, J. Malenovský and U. Lohmus, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 2 December 2004, in which it: