

JUDGMENT OF THE COURT

(Third Chamber)

of 20 October 2005

in Case C-511/03: reference for a preliminary ruling from the Hoge Raad der Nederlanden Staat der Nederlanden (Ministerie van Landbouw, Natuurbeheer en Visserij) v Ten Kate Holding Musselkanaal BV and Others ⁽¹⁾

(Human and animal health — Protection against bovine spongiform encephalopathy (mad cow disease) — Feeding of ruminants with proteins derived from species other than ruminants — Liability of a Member State for damage caused to individuals by breaches of Community law for which it may be held responsible — Applicable law — Obligation to bring an action against the Commission for failure to act)

(2005/C 315/08)

(Language of the case: Dutch)

In Case C-511/03: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 5 December 2003, received at the Court on 8 December 2003, in the proceedings between **Staat der Nederlanden (Ministerie van Landbouw, Natuurbeheer en Visserij)** and **Ten Kate Holding Musselkanaal BV, Ten Kate Europrodukten BV, Ten Kate Produktie Maatschappij BV** — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, J.-P. Puissochet, S. von Bahr, U. Löhms and A. Ó Caoimh, Judges; C. Stix-Hackl, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 20 October 2005, the operative part of which is as follows:

1. Community law does not impose any obligation on a Member State to bring an action for annulment, pursuant to Article 230 EC, or for failure to act, pursuant to Article 232 EC, for the benefit of one of its citizens. Community law does not, however, in principle preclude national law from containing such an obligation or providing for liability to be imposed on the Member State for not having acted in such a way.
2. Article 1(2) of Commission Decision 94/381/EC of 27 June 1994 concerning certain protection measures with regard to bovine spongiform encephalopathy and the feeding of mammalian derived protein, read in conjunction with Article 17 of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market and with Article 17 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market, must be construed as meaning that, if the material available to the Commission does not enable it to establish that the controls carried out within the framework of a system which makes it possible to distinguish between animal protein of

ruminant origin and that of non-ruminant origin, submitted for its appraisal by a Member State with a view to obtaining authorisation, offer adequate guarantees in regard to the protection of public health, and if the matter has been referred to the Standing Veterinary Committee at the request of a Member State but that Committee has not taken a position, particularly by reason of new information altering the perception of the risk to public health, the Commission is not obliged to submit to the Council a proposal relating to the measures to be taken.

⁽¹⁾ OJ C 59 of 06.03.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 20 October 2005

in Case C-6/04: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora)

(2005/C 315/09)

(Language of the case: English)

In Case C-6/04, Commission of the European Communities (Agents: M. van Beek and L. Flynn) v United Kingdom of Great Britain and Northern Ireland (Agent: C. Jackson, assisted by K. Smith, Barrister) — Action under Article 226 EC for failure to fulfil obligations, brought on 9 January 2004 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, R. Silva de Lapuerta, G. Arestis and J. Klůčka (Rapporteur), Judges; J. Kokott, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 20 October 2005, in which it:

1. Declares that, by failing to adopt, within the prescribed period, all the measures necessary in order to implement completely and correctly the requirements of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and in particular of:

— Article 6(2), as regards Gibraltar,

— Article 6(3) and (4), as regards water abstraction plans and projects and land use plans,

- Article 11,
- Article 12(1)(d), as regards Gibraltar,
- Article 12(2),
- Article 12(4),
- Article 13(1),
- Article 14(2),
- Article 15,
- Article 16,
- the whole of Directive 92/43 beyond its territorial waters,

the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;

2. Dismisses the action as to the remainder;

3. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

⁽¹⁾ OJ C 59, 06.03.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 13 October 2005

in Case C-73/04 (Reference for a preliminary ruling from the Oberlandesgericht Hamm): *Brigitte and Marcus Klein v Rhodos Management Ltd* ⁽¹⁾

(Brussels Convention — Jurisdiction in proceedings regarding tenancies of immovable property — Time-share in immovable property)

(2005/C 315/10)

(Language of the case: German)

In Case C-73/04, reference for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, from the Oberlandesgericht Hamm (Germany), by Decision of 27 January 2004, received at the Court on 17 February 2004, in the proceedings pending before that court between Brigitte and Marcus Klein and Rhodos Management Ltd, the Court: (First Chamber) composed of P. Jann, President of the Chamber, K. Schiemann, N. Colneric, J.N. Cunha Rodri-

gues and E. Levits, Judges; L.A. Geelhoed, Advocate General, R. Grass, Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

On a proper construction of Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, that Article does not apply to a club membership contract which, in return for a membership fee which represents the major part of the total price, allows members to acquire a right to use on a time-share basis immovable property of a specified type in a specified location and provides for the affiliation of members to a service which enables them to exchange their right of use.

⁽¹⁾ OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 15 September 2005

in Case C-258/04: Reference for a preliminary ruling from the Cour de travail de Liège in *Office national de l'emploi v Ioannis Ioannidis* ⁽¹⁾

(Job-seekers — European citizenship — Principle of non-discrimination — Article 39 EC — Tideover allowances for young people seeking their first employment — Grant conditional on completion of secondary education in the Member State concerned)

(2005/C 315/11)

(Language of the case: French)

In Case C-258/04: reference for a preliminary ruling under Article 234 EC from the Cour de travail de Liège (Belgium), made by decision of 7 June 2004, received at the Court on 17 June 2004, in the proceedings between Office national de l'emploi and Ioannis Ioannidis — the Court (First Chamber), composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 15 September 2005, in which it ruled: