The appellant claims that the Court should:

— declare the present appeal to be admissible and well founded;

— set aside the judgment delivered by the Court of First Instance on 13 September 2005;

— grant the application made at first instance for the annulment of Commission Decision REM 09/00 of 16 November 2001 stating that remission of import duties in favour of the present appellant was not justified;

— alternatively, remit the case to the Court of First Instance for further consideration;

— order the Commission to pay the costs of the present proceedings and of those at first instance.

Pleas in law and main arguments

In support of its appeal against the aforementioned judgment, the appellant makes the following submissions:

1. The appellant takes the view that the Court of First Instance proceeded on the basis of an incorrect, or at any rate unduly restricted, interpretation of, in particular, Articles 905 to 909 of the regulation implementing the Community Customs Code [1] with regard to the procedure for the repayment and/or remission of customs duties. The principle of legal certainty requires that the legal situation of Ricosmos should have been foreseeable in this particular case. Ricosmos takes the view that, because of suspensions of the proceedings of which it was not informed, that was not the case here. The Court of First Instance also proceeded incorrectly on the basis of an overly restricted view of the rights of the defence, reflected in its excessively circumscribed interpretation of the right to timeous and full access to the case files (both that of the national customs authorities and that of the Commission):

2. The appellant considers that the decision of the Court of First Instance is also at variance with Community law. It takes the view that the principle of legal certainty also implies that the criteria for determining that there was no obvious negligence must be clear and readily identifiable. It is precisely because of the considerable flexibility of the term 'obvious negligence' that those criteria ought in principle to be construed restrictively and individually. The negligence must be evident and essential and must also be in a clear causal relationship with the special situation which has been established. In this case, the Court of First Instance wrongly attached in this regard no, or not enough, weight to the complexity of the legislation and to the significant professional experience of the appellant, and also misconstrued a number of obligations on the appellant, or at any rate appraised them in an overly formalistic manner;

3. The appellant is also of the view that the Commission infringed the principle of proportionality and that the Court of First Instance also attached no, or at any rate insufficient, weight to new facts which suggested that the customs duties charged ought to have been cancelled;

4. In conclusion, the appellant expresses the view that the establishment by the Court of First Instance of the facts underlying the dispute was in part erroneous or in any event incomplete.

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[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Action brought on 28 November 2005 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-422/05)

(2006/C 48/26)

(Language of the case: French)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 28 November 2005 by the Commission of the European Communities, represented by Frank Benyon and Mikko Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. Declare that, by adopting the Royal Decree of 14 April 2002 regulating night flights of certain types of civil subsonic jet aircraft, the Kingdom of Belgium has failed to fulfil its obligations under Directive 2002/30/EC [1] and under the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC;

2. Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Decree specifies certain types of aircraft which cannot operate in Belgian airports between 11 pm and 6 am. As it is based on the by-pass ratio, the Royal Decree takes a different approach to that of Directive 2002/30/EC, which is based on a certification procedure. This approach corresponds to that taken in Regulation (EC) No 925/1999, which was repealed by Directive 2002/30/EC.

According to Article 16 of Directive 2002/30/EC, which entered into force on 28 March 2002, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 28 September 2003 at the latest. The Royal Decree was adopted before the deadline for transposition of the Directive. The Commission cites the case-law of the Court of Justice according to which it follows from Articles 10 EC and 249 EC in conjunction with a directive itself that, during the period allowed for transposition, Member States must refrain from taking any measures liable seriously to compromise the result prescribed by the directive in question in question. By taking an approach involving operating restrictions aimed at the withdrawal of recertified civil subsonic jet aircrafts, which is completely different from that taken by the Directive, the Royal Decree seriously compromises the result prescribed by the Directive.

([1]) OJ L 85, 28.3.2002, p. 40.

Action brought on 29 November 2005 by the Commission of the European Communities against the French Republic

(Case C-423/05)

(2006/C 48/27)

(Language of the case: French)

An action against the French Republic was brought before the Court of Justice of the European Communities on 29 November 2005 by the Commission of the European Communities, represented by A. Caerios and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by failing to take all necessary measures:

   — to ensure that waste is recovered or disposed of without endangering human health or the environment and to prohibit the abandonment, dumping or uncontrolled disposal of waste;

   — to ensure that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out disposal or recovery operations, or recovers or disposes of it himself, in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste; ([1])

   — to ensure that establishments and undertakings which carry out disposal operate with a permit issued by the competent authorities;

   — to ensure in relation to landfill sites which had been granted a permit or were already in operation when Council Directive 99/31/EC of 26 April 1999 on the landfill of waste ([2]) was to be transposed into national law, namely on 16 July 2001, that landfill operators prepared and presented to the competent authorities, for their approval, prior to 16 July 2002 a conditioning plan for the site, including particulars relating to the conditions of the permit and any corrective measures the operator considered would be needed, and that, following the presentation of conditioning plans, the competent authorities take a definite decision on whether operations may continue, taking all necessary measures to close down as soon as possible sites which have not been granted a permit to continue to operate or authorising the necessary work and laying down a transitional period for the completion of the plan,

   the French Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442/EEC, as amended by Directive 91/156/EEC, ([3]) and Article 14(a), (b) and (c) of Directive 99/31/EC.

2. order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that, by permitting a very large number of unlawful and unsupervised landfill sites to operate in France, and by failing to take all necessary measures to ensure that waste is disposed of without endangering human health and harming the environment, the French Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Council Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC. The French authorities do not dispute that they have breached these obligations; they do dispute, however, the number of unlawful landfill sites indicated by the Commission and claim that their impact on the environment is slight since the unauthorised landfill sites take only green waste, rubble and bulky waste.

The French authorities did not provide adequate information for it to be possible to assess whether its permit system complies with the requirements of Article 9 of Directive 75/442/EEC: no permit is required for tips covering an area of less than 100 m^2 with a height of less than 2m or for the recovery of waste on such tips. The French authorities' interpretation that only landfill sites operated by municipal authorities without a permit are unlawful sites is incorrect since an individual may also operate a landfill site without a permit.