

**Operative part of the judgment**

The Court:

- 1) Declares that, by exempting almost all, if not all, categories of establishments undertaking the public lending of works protected by copyright from the obligation to pay remuneration to authors for the lending carried out, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- 2) Orders the Kingdom of Spain to pay the costs.

(<sup>1</sup>) OJ C 69 of 19.03.2005.

**Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Hellenic Republic**

(Case C-65/05) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Free movement of goods — Article 43 EC — Freedom of establishment — Article 49 EC — Freedom to provide services — Prohibition on the installation and operation of electrical, electromechanical and electronic games subject to criminal or administrative sanctions — Directive 98/34/EC — Technical standards and regulations — National legislation applicable to electrical, electromechanical and electronic games)*

(2006/C 326/16)

Language of the case: Greek

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Patakia, Agent)

*Defendant:* Hellenic Republic (represented by: A. Samoni-Rantou and N. Dafniou, Agents)

**Re:**

Failure of a Member State to fulfil obligations — Arts 28, 43 and 49 EC and Art. 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37) — National legislation applicable to electronic computer games

**Operative part of the judgment**

The Court:

1. Declares that, by inserting into Articles 2(1) and 3 of Law No 3037/2002 the prohibition, subject to the criminal and administrative penalties set out in Articles 4 and 5 of the same law, on the installation and operation of all electrical, electromechanical and electronic games, including all computer games, on all public or private premises apart from casinos, the Hellenic Republic has failed to fulfil its obligations under Articles 28 EC, 43 EC and 49 EC and Article 8 of Directive 98/34/CE of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998;
2. Orders the Hellenic Republic to pay the costs.

(<sup>1</sup>) OJ C 82, 02.04.2005.

**Judgment of the Court (First Chamber) of 26 October 2006 — Koninklijke Coöperatie Cosun UA v Commission of the European Communities**

(Case C-68/05 P) (<sup>1</sup>)

*(Appeal — Agriculture — Common organisation of the markets — Sugar — Article 26 of Regulation (EEC) No 1785/81 and Article 3 of Regulation (EEC) No 2670/81 — Charge owing for C Sugar disposed of on the internal market — Application for remission — Equity clause laid down in Article 13 of Regulation (EEC) No 1430/79 — ‘Import or export duties’ — Principles of equality and legal certainty — Equity)*

(2006/C 326/17)

Language of the case: Dutch

**Parties**

*Applicant:* Koninklijke Coöperatie Cosun UA (represented by: M. Slotboom and N.J. Helder, advocaten)

*Other party to the proceedings:* Commission of the European Communities (represented by: X. Lewis, Agent, F. Tuytschaever, advocaat)

**Re**

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 7 December 2004 in Case T-240/02 Koninklijke Coöperatie Cosun v Commission, by which the Court of First Instance dismissed an application for annulment of Commission Decision REM/19/10 of 2 May 2002 declaring inadmissible the request for remission of import duties lodged by the Netherlands in favour of the applicant

**Operative part of the Judgment**

1. *The appeal is dismissed;*
2. *Koninklijke Coöperatie Cosun UA is ordered to pay the costs.*

(<sup>1</sup>) OJ C 82, 02.04.2005.

**Judgment of the Court (Third Chamber) of 9 November 2006 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Heinrich Schulze GmbH & Co. KG i.L. v Hauptzollamt Hamburg-Jonas**

(Case C-120/05) (<sup>1</sup>)

*(Export refunds — Conditions for granting — Export declaration — Lack of documentary evidence — Use of other types of evidence)*

(2006/C 326/18)

*Language of the case: German*

**Referring court**

Finanzgericht Hamburg

**Parties to the main proceedings**

*Applicant:* Heinrich Schulze GmbH & Co. KG i.L.

*Defendant:* Hauptzollamt Hamburg-Jonas

**Re:**

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the third subparagraph of Article 7(2) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (OJ 1994 L 136, p. 5) — Exporter unable to fulfil the obligation to provide the competent authorities, in support of its declaration, with all documents and information regarded by those authorities as appropriate — Documents destroyed by force majeure — Possibility of using other types of evidence.

**Operative part of the judgment**

*The third subparagraph of Article 7(1) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered*

*by Annex II to the Treaty, and the criteria for fixing the amount of such refunds, as amended by Commission Regulation (EC) No 229/96 of 7 February 1996, is to be interpreted as not precluding an exporter from providing evidence by other means where it is unable to provide in support of its export declaration documentary evidence relating to the quantities of products actually used in the manufacture of exported goods, even in a case of force majeure. The national authorities are to assess that other means of evidence, in accordance with the detailed rules laid down in the national law, provided, however, that those rules do not affect either the scope or effectiveness of Community law. For that purpose, national authorities must also take into consideration documents previously exchanged with the exporter when the application is made under the simplified procedure provided for in the third subparagraph of Article 3(2) of that regulation.*

(<sup>1</sup>) OJ C 143, 11.06.2005.

**Judgment of the Court (First Chamber) of 26 October 2006 (reference for a preliminary ruling from the Audiencia Provincial de Madrid — Spain) — Elisa María Mostaza Claro v Centro Móvil Milenium SL**

(Case C-168/05) (<sup>1</sup>)

*(Directive 93/13/EEC — Unfair terms in consumer contracts — Failure to raise the unfair nature of a term during arbitration proceedings — Possibility of raising that objection in the context of an action brought against the arbitration award)*

(2006/C 326/19)

*Language of the case: Spanish*

**Referring court**

Audiencia Provincial de Madrid

**Parties to the main proceedings**

*Applicant:* Elisa María Mostaza Claro

*Defendant:* Centro Móvil Milenium SL

**Re:**

Reference for a preliminary ruling — Audiencia Provincial de Madrid — Interpretation of Articles 6(1) and 7(1) of, and point 1(q) of the annex to, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Adequate and effective means to prevent the use of unfair terms — Invalidity of an arbitration agreement not pleaded by the consumer during the arbitration proceedings