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(Information)

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 1997

in Case C-356/95 (application for a preliminary ruling by the Schleswig-Holsteinisches Oberverwaltungsgericht): Matthias Witt v. Amt für Land- und Wasserwirtschaft [1]

(Common agricultural policy — Regulation (EEC) No 1765/92 — Support system for producers of certain arable crops — Establishment of production regions — Obligation to indicate the criteria used — Relevance of soil fertility)

(98/C 41/01)

(Language of the case: German)

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

In Case C-356/95: reference to the Court under Article 177 of the EC Treaty by the Schleswig-Holsteinisches Oberverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Matthias Witt and Amt für Land- und Wasserwirtschaft, on the interpretation of the first subparagraph of Article 3 (1) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ L 181, 1.7.1992, p. 12) — the Court (Sixth Chamber) composed of: H. Ragnemalm, President of the Chamber, R. Schintgen, G. F. Mancini (Rapporteur), J. L. Murray and G. Hirsch, Judges; P. Léger, Advocate-General; D. Louterman-Hubeau, Principal Administrator, gave a judgment on 27 November 1997, the operative part of which is as follows:

1. *The first subparagraph of Article 3 (1) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops does not require the Member States, in establishing production regions, to indicate the criteria used in the provisions implementing that Regulation.*

2. *The first subparagraph of Article 3 (1) of Regulation (EEC) No 1765/92 must be interpreted as meaning that a Member State which, under the third sentence of the second subparagraph of Article 2 (2) of that Regulation, has not designated its whole territory as a regional base area but merely different parts of it, is entitled to establish the whole territory of a specific regional base area as a production region, and that the specific characteristics that influence yields do not require regional base areas to be further subdivided into different production regions.*

[1] OJ C 16, 20.1.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 1997

in Case C-369/95 (reference for a preliminary ruling from the Tribunale di Salerno): Somalfruit SpA, Camar SpA v. Ministero delle Finanze, Ministero del Commercio con l'Estero [1]

(Bananas — Common organization of the markets — Import arrangements — ACP States — Somalia — Validity of Council Regulation (EEC) No 404/93 and Commission Regulations (EEC) No 1442/93 and (EEC) No 1443/93)

(98/C 41/02)

(Language of the case: Italian)

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

In Case C-369/95: reference to the Court under Article 177 of the EC Treaty from the Tribunale (District Court), Salerno (Italy), for a preliminary ruling in the proceedings pending before that court between Somalfruit SpA, Camar SpA and Ministero delle Finanze, Ministero del

Commercio con l'Estero — on the validity of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ L 47, 25.2.1993, p. 1), Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ L 142, 12.6.1993, p. 6) and Commission Regulation (EEC) No 1443/93 of 10 June 1993 on transitional measures for the application of the arrangements for importing bananas into the Community in 1993 (OJ L 142, 12.6.1993, p. 16) — the Court (Sixth Chamber), composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur), G. F. Mancini, P. J. G. Kapteyn and J. L. Murray, Judges; M. B. Elmer, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 27 November 1997, in which it has ruled:

1. *Consideration of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas in the light of the Fourth ACP-EEC Convention, signed in Lomé on 15 December 1989 and approved by Decision 91/400/ECSC, EEC of the Council and the Commission of 25 February 1991, has revealed no factor of such a kind as to affect its validity.*

2. *Consideration of Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community in the light of the Fourth ACP-EEC Convention and Regulation (EEC) No 404/93 has revealed no factor of such a kind as to affect its validity.*

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(1) OJ C 31, 3.2.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 November 1997

in Case C-57/96 (reference for a preliminary ruling from the Nederlandse Raad van State): H. Meints v. Minister van Landbouw, Natuurbeheer en Visserij (1)

(Regulation (EEC) No 1408/71 — Unemployment benefit — Regulation (EEC) No 1612/68 — Social advantage — Discrimination based on nationality — Residence condition)

(98/C 41/03)

(Language of the case: Dutch)

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

In Case C-57/96: reference to the Court under Article 177 of the EC Treaty from the Nederlandse Raad van State (Netherlands Council of State) for a preliminary ruling in the proceedings pending before that court between H. Meints and Minister van Landbouw, Natuurbeheer en Visserij — on the interpretation of Article 4 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ L 230, 2.2.1983, p. 6), and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, D. A. O. Edward (Rapporteur) and L. Sevón, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 November 1997, in which it has ruled:

1. *Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, does not apply to a compensation scheme under which agricultural workers, whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer, receive a benefit in the form of a single payment, the amount of which is determined solely by the age of the recipient and which must be repaid if the recipient is reemployed by his former employer within 12 months following the termination of his contract of employment.*

2. *A benefit which takes the form of a single payment to agricultural workers whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer is to be classified as a social advantage within the meaning of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.*

3. *A Member State may not make payment of a social advantage within the meaning of Article 7 (2) of Regulation (EEC) No 1612/68 dependent on the condition that recipients be resident within its territory.*

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(1) OJ C 133, 4.5.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 November 1997

in Case C-62/96: Commission of the European Communities v. Hellenic Republic [1]

(Failure of a Member State to fulfil its obligations — Registration of vessels — Nationality requirement for the owner)

(98/C 41/04)

(Language of the case: Greek)

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

In Case C-62/96: Commission of the European Communities (Agents: Frank Benyon and Maria Condou Durande) v. Hellenic Republic (Agents: Aikaterini Samoni-Randou, assisted by Evi Skandalou and Stamatina Vodina) — application for a declaration that, by maintaining in force legislative provisions which restrict the right to registration in the Greek shipping registers to vessels more than half the shares in which are owned by Greek nationals or owned by Greek legal persons more than half of whose capital is held by Greek nationals, the Hellenic Republic has failed to fulfil its obligations under Articles 6, 48, 52, 58 and 221 of the EC Treaty, Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402) and Article 7 of Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity (OJ L 14, 20.1.1975, p. 10) — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, J. C. Moitinho de Almeida, D. A. O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 November 1997, in which it:

1. *declares that, by maintaining in force legislative provisions which restrict the right to registration in the Greek shipping registers to vessels more than half the shares in which are owned by Greek nationals or owned by Greek legal persons more than half of whose capital is held by Greek nationals, the Hellenic Republic has failed to fulfil its obligations under Articles 6, 48, 52, 58 and 221 of the EC Treaty, Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State and Article 7 of Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity;*

2. *orders the Hellenic Republic to pay the costs.*

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[1] OJ C 158, 1.6.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 November 1997

in Case C-137/96: Commission of the European Communities v. Federal Republic of Germany [1]

(Failure of a Member State to fulfil its obligations — Non-transposition of Directive 91/414/EEC)

(98/C 41/05)

(Language of the case: German)

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

In Case C-137/96: Commission of the European Communities (Agent: Klaus-Dieter Borchardt) against Federal Republic of Germany (Agents: Ernst Röder and Sabine Maaß) — application for a declaration that, by not adopting within the period prescribed all the laws, regulations and administrative provisions necessary for the transposition into domestic law of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty — the Court (Fifth Chamber) composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, J.-P. Puissochet (Rapporteur) and L. Sevón, Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, gave a judgment on 27 November 1997, in which it:

1. *declares that, by not having within the period prescribed adopted all the laws, regulations and administrative provisions necessary to ensure that Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market — with the exception of Article 10 (1), second indent, thereof — was transposed into domestic law, the Federal Republic of Germany has failed to fulfil its obligations under that Directive;*

2. *orders the Federal Republic of Germany to pay the costs.*

(1) OJ C 180, 22.6.1996.

JUDGMENT OF THE COURT

of 2 December 1997

in Case C-336/94 (reference for a preliminary ruling from the Sozialgericht Hamburg): Eftalia Dafeki v. Landesversicherungsanstalt Württemberg (1)

(Freedom of movement for workers — Equal treatment — Social security — Rule of national law according different probative value to certificates of civil status depending on whether they are of national or foreign origin)

(98/C 41/06)

(Language of the case: German)

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

In Case C-336/94: reference to the Court under Article 177 of the EC Treaty from the Sozialgericht (Social Court) Hamburg (Germany), for a preliminary ruling in the proceedings pending before that court between Eftalia Dafeki and Landesversicherungsanstalt Württemberg — on the interpretation of Articles 48 and 51 of the EC Treaty in the light of German provisions under which certificates of civil status are accorded different probative value, depending on whether they are German or foreign — the Court, composed of: H. Ragnemalm (President of the Fourth and Sixth Chambers), acting for the President, G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann (Rapporteur) and L. Sevón, Judges; A. La Pergola, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 2 December 1997, in which it has ruled:

In proceedings for determining the entitlements to social security benefits of a migrant worker who is a Community national, the competent social security institutions and the courts of a Member State must accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.

(1) OJ C 392, 31.12.1994.

JUDGMENT OF THE COURT

of 2 December 1997

in Case C-188/95 (reference for a preliminary ruling from the Østre Landsret: Fantask A/S and Others v. Industriministeriet (Erhvervsministeriet) (1)

(Directive 69/335/EEC — Registration charges on companies — Procedural time-limits under national law)

(98/C 41/07)

(Language of the case: Danish)

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

In Case C-188/95: reference to the Court under Article 177 of the EC Treaty from the Østre Landsret, Denmark, for a preliminary ruling in the proceedings pending before that court between Fantask A/S and Others and Industriministeriet (Erhvervsministeriet) — on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as most recently amended by Council Directive 85/303/EEC of 10 June 1985 (OJ L 156, 15.6.1985, p. 23) — the Court composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and M. Wathelet (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet (Rapporteur), G. Hirsch, P. Jann and L. Sevón, Judges; F. G. Jacobs, Advocate-General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 2 December 1997, the operative part of which is as follows:

1. *On a sound construction of Article 12 (1)(e) of Council Directive 69/335/EEC of 17 July 1969*

concerning indirect taxes on the raising of capital, as most recently amended by Council Directive 85/303/EEC of 10 June 1985, in order for charges levied on registration of public and private limited companies and on their capital being increased to be by way of fees or dues, their amount must be calculated solely on the basis of the cost of the formalities in question. It may, however, also cover the costs of minor services performed without charge. In calculating their amount, a Member State is entitled to take account of all the costs related to the effecting of registration, including the proportion of the overheads which may be attributed thereto. Furthermore, a Member State may impose flat-rate charges and fix their amount for an indefinite period, provided that it checks at regular intervals that they continue not to exceed the average cost of the registrations at issue.

2. *Community law precludes actions for the recovery of charges levied in breach of Directive 69/335/EEC, as amended, from being dismissed on the ground that those charges were imposed as a result of an excusable error by the authorities of the Member State inasmuch as they were levied over a long period without either those authorities or the persons liable to them having been aware that they were unlawful.*

3. *Community law, as it now stands, does not prevent a Member State which has not properly transposed Directive 69/335/EEC, as amended, from resisting actions for the repayment of charges levied in breach thereof by relying on a limitation period under national law which runs from the date on which the charges in question became payable, provided that such a period is not less favourable for actions based on Community law than for actions based on national law and does not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.*

4. *Article 10 of Directive 69/335/EEC, as amended, in conjunction with Article 12 (1)(e) thereof gives rise to rights on which individuals may rely before national courts.*

(1) OJ C 229, 2.9.1995.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 4 December 1997

in Case C-97/96 (reference for a preliminary ruling from the Oberlandesgericht Düsseldorf): Verband deutscher Daihatsu-Händler eV v. Daihatsu Deutschland GmbH (1)

(Company law — Annual accounts — Penalties for non-publication — Article 6 of the First Directive 68/151/EEC)

(98/C 41/08)

(Language of the case: German)

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

In Case C-97/96: reference to the Court under Article 177 of the EC Treaty from the Oberlandesgericht Düsseldorf (Düsseldorf Higher Regional Court) (Germany), for a preliminary ruling in the proceedings pending before that court between Verband deutscher Daihatsu-Händler eV and Daihatsu Deutschland GmbH — on the interpretation of Article 6 of the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41) — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, M. Wathelet (Rapporteur), J. C. Moitinho de Almeida, D. A. O. Edward and J.-P. Puissochet, Judges; G. Cosmas, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 4 December 1997, in which it has ruled:

1. *Article 6 of the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, must be interpreted as precluding the legislation of a Member State from restricting to members or creditors of a company, the central works council or the company's works council the right to apply for imposition of the penalty provided for by the law of that Member State in the event of failure by a company to fulfil the obligations regarding disclosure of annual accounts laid down by the First Directive 68/151/EEC.*

2. *Since a directive cannot of itself impose obligations on an individual, and cannot therefore be relied upon as*

such against such a person, there is no need to examine whether Article 6 of the First Directive 68/151/EEC has direct effect.

(1) OJ C 145, 18.5.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 December 1997

in Case C-55/96 (reference for a preliminary ruling from the Corte d'Appello, Milan): Non-contentious proceedings brought before that court by Job Centre Coop. arl (1)

(Freedom to provide services — Placement of employees — Exclusion of private undertakings — Exercise of official authority)

(98/C 41/09)

(Language of the case: Italian)

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

In Case C-55/96: reference to the Court under Article 177 of the EC Treaty by the Corte d'Appello, Milan, Italy, for a preliminary ruling in the non-contentious proceedings (giurisdizione volontaria) brought before that court by Job Centre Coop. arl — on the interpretation of Articles 48, 49, 55, 56, 59, 60, 62, 66, 86 and 90 of the EC Treaty — the Court (Sixth Chamber) composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, G. F. Mancini and P. J. G. Kapteyn (Rapporteur), Judges; B. Elmer, Advocate-General; L. Hewlett, Administrator, gave a judgment on 11 December 1997, the operative part of which is as follows:

Public placement offices are subject to the prohibition contained in Article 86 of the EC Treaty, so long as application of that provision does not obstruct the performance of the particular task assigned to them. A Member State which prohibits any activity as an intermediary between supply and demand on the employment market, whether as an employment agency or as an employment business, unless carried on by those offices, is in breach of Article 90 (1) of the Treaty where it creates a situation in which those offices cannot avoid infringing Article 86 of the Treaty. That is the case, in particular, in the following circumstances:

— *the public placement offices are manifestly unable to satisfy demand on the market for all types of activity, and*

— *the actual placement of employees by private companies is rendered impossible by the maintenance in force of statutory provisions under which such activities are prohibited and non-observance of that prohibition gives rise to penal and administrative sanctions, and*

— *the placement activities in question could extend to the nationals or to the territory of other Member States.*

(1) OJ C 133, 4.5.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 December 1997

in Case C-246/96 (reference for a preliminary ruling to the Court by the Office of the Industrial Tribunals and the Fair Employment Tribunal): Mary Teresa Magorrian and Irene Patricia Cunningham against Eastern Health and Social Services Board, Department of Health and Social Services (1)

(Equal pay for male and female workers — Article 119 of the EC Treaty — Protocol 2 annexed to the Treaty on European Union — Occupational social security schemes — Exclusion of part-time workers from status conferring entitlement to certain additional pension benefits — Date from which such benefits must be calculated — National procedural time-limits)

(98/C 41/10)

(Language of the case: English)

In Case C-246/96: reference to the Court under Article 177 of the EC Treaty by the Office of the Industrial Tribunals and the Fair Employment Tribunal, Belfast, for a preliminary ruling in the proceedings pending before that court between Mary Teresa Magorrian, Irene Patricia Cunningham and Eastern Health and Social Services Board, Department of Health and Social Services, on the interpretation of Article 119 of the EC Treaty and of Protocol 2 concerning Article 119 of that Treaty, annexed

to the Treaty on European Union — the Court (Sixth Chamber) composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, G. F. Mancini (Rapporteur), P. J. G. Kapteyn, J. L. Murray and G. Hirsch, Judges; G. Cosmas, Advocate-General; L. Hewlett, Administrator, gave a judgment on 11 December 1997, the operative part of which is as follows:

1. *Periods of service completed by part-time workers who have suffered indirect discrimination based on sex must be taken into account as from 8 April 1976, the date of the judgment in Case C-43/75 Defrenne, for the purposes of calculating the additional benefits to which they are entitled.*

2. *Community law precludes the application, to a claim based on Article 119 of the EC Treaty for recognition of the claimants' entitlement to join an occupational pension scheme, of a national rule under which such entitlement, in the event of a successful claim, is limited to a period which starts to run from a point in time two years prior to commencement of proceedings in connection with the claim.*

(1) OJ C 269, 14.9.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 December 1997

in Case C-104/96 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Coöperatieve Rabobank 'Vecht en Plassengebied' BA v. Erik Aarnoud Minderhoud (receiver in bankruptcy of Mediasafe BV) (1)

(Company law — First Directive 68/151/EEC — Scope — Representation of a company — Conflict of interests — Lack of authority of a director to enter into a binding transaction on behalf of the company)

(98/C 41/11)

(Language of the case: Dutch)

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

In Case C-104/96: reference to the Court under Article 177 of the EC Treaty from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) for a preliminary ruling in the proceedings pending before that court between Coöperatieve Rabobank 'Vecht en Plassengebied' BA and Erik Aarnoud Minderhoud (receiver in bankruptcy of Mediasafe BV) — on the interpretation of Article 9(1) of the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41) — the Court (Sixth Chamber), composed of: H. Ragnemalm (Rapporteur), President of the Chamber, G. F. Mancini and P. J. G. Kapteyn, Judges; A. La Pergola, Advocate-General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 16 December 1997, in which it has ruled:

The rules governing the enforceability as against third parties of acts done by members of company organs in circumstances where there is a conflict of interests with the company fall outside the normative framework of the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, and are matters for the national legislature.

(1) OJ C 145, 18.5.1996.

JUDGMENT OF THE COURT

of 18 December 1997

in Case C-129/96 (reference for a preliminary ruling from the Belgian Conseil d'État): Inter-Environnement Wallonie ASBL v. Région Wallonne (1)

(Directive 91/156/EEC — Period for transposition — Effects — Definition of waste)

(98/C 41/12)

(Language of the case: French)

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

In Case C-129/96: reference to the Court under Article 177 of the EC Treaty by the Belgian Conseil d'État for a preliminary ruling in the proceedings pending before that court between Inter-Environnement Wallonie ASBL and Région Wallonne — on the interpretation of Articles 5 and 189 of the EEC Treaty and Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ L 194, 25.7.1975, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ L 78, 26.3.1991, p. 32) — the Court composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and R. Schintgen, Presidents of Chambers, G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward,

J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón (Rapporteur), Judges; F. G. Jacobs, Advocate-General; H. von Holstein, Deputy Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

1. *A substance is not excluded from the definition of waste in Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, merely because it directly or indirectly forms an integral part of an industrial production process.*

2. *The second paragraph of Article 5 and the third paragraph of Article 189 of the EEC Treaty, and Directive 91/156/EEC, require the Member States to which that Directive is addressed to refrain, during the period laid down therein for its implementation, from adopting measures liable seriously to compromise the result prescribed.*

(1) OJ C 180, 22.6.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 December 1997

in Case C-402/96 (reference to the Court by the Oberlandesgericht Frankfurt am Main for a preliminary ruling): concerning the commercial registration of an undertaking in the process of formation, brought by European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung (1)

(European Economic Interest Grouping — Business name)

(98/C 41/13)

(Language of the case: German)

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

In Case C-402/96: reference to the Court under Article 177 of the EC Treaty by the Oberlandesgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court, concerning the commercial registration of an undertaking in the process of formation, brought by European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung — on the interpretation of Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ L 199, 31.7.1985, p. 1) — the Court (Fifth Chamber) composed of: C. Gulmann (Rapporteur), President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, D. A. O. Edward and J.-P. Puissochet, Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) is to be interpreted as meaning that the business name of an EEIG must include the words 'European Economic Interest Grouping' or the initials 'EEIG', whilst the other elements to be included may be imposed by the provisions of internal law applicable in the Member State in which the grouping has its official address.

(1) OJ C 74, 8.3.1997.

Reference for a preliminary ruling from the Bundesgerichtshof by order of that court of 17 June 1997 in proceedings brought by Farmitalia Carlo Erba Srl

(Case C-392/97)

(98/C 41/14)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundesgerichtshof (Federal Court of Justice) of 17 June 1997, which was received at the Court Registry on 18 November 1997, for a preliminary ruling in proceedings brought by Farmitalia Carlo Erba Srl on the following questions:

1. Is it a condition of the application of Article 3(b) of Council Regulation (EEC) No 1768/92 (1) of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products that the product in respect of which the grant of a protection certificate is sought is described as an 'active ingredient' in the medicinal authorization?

   Are, then, the terms of Article 3(b) not satisfied where only one individual salt of a substance is stated in the notice of authorization to be an 'active ingredient', but the grant of a protection certificate is sought for the free basis and/or for other salts of the active ingredient?

2. If the questions at 1 are answered in the negative:

   According to which criteria is it to be determined whether the product is protected by a basic patent within the meaning of Article 3(a), where the grant of a protection certificate is sought for the free base of an active ingredient including any of its salts, but the basic patent in its patent claims mentions only the free base of this substance and, moreover, mentions only a single salt of this free base? Is the wording of the claim for the basic patent or the latter's scope of protection the determining criterion?

(1) OJ L 182, 2.7.1992, p. 1.

Reference for a preliminary ruling from the Verwaltungsgericht Halle by order of that court of 1 October 1997 in the case of Lidl-Fleischwerk Handelshof GmbH & Co. KG v. Landkreis Burgenlandkreis

(Case C-393/97)

(98/C 41/15)

Reference has been made to the Court of Justice of the European Communities by an order of the Verwaltungsgericht Halle (Halle Administrative Court) of 1 October 1997, which was received at the Court Registry on 19 November 1997, for a preliminary ruling in the case of Lidl-Fleischwerk Handelshof GmbH & Co. KG v. Landkreis Burgenlandkreis on the following questions:

1. Do provisions of the European Union, in particular Council Directive 94/65/EC of 14 December 1994 [1], preclude a national provision under which products of comminuted meat such as minced meat and ground meat, even if prepared, may be put on the market on the date of production only, unless they have been packed and labelled in an individual package for sale to the final consumer or have been frozen or deep frozen?

2. If so, do those provisions of the European Union apply also to factual situations in which the production plant is in the same State as that in which the comminuted meat product such as minced or ground meat is to be put on the market?

[1] OJ L 368, 31.12.1994, p. 10.

Reference for a preliminary ruling from the Helsingin Käräjäoikeus by order of that court of 5 November 1997 in the criminal proceedings against Sami Lasse Juhani Heinonen

(Case C-394/97)

(98/C 41/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Helsingin Käräjäoikeus (Helsinki District Court) of 5 November 1997, which was received at the Court Registry on 25 November 1997, for a preliminary ruling in the criminal proceedings against Sami Lasse Juhani Heinonen on the following questions:

1. May the Duty-Free Regulation [1] and the Travel Directive [2] be interpreted as meaning that national limits laid down by Member States on imports by travellers of beer and other alcoholic drinks, based on grounds referred to in the ninth recital in the preamble to the Duty-Free Regulation and in Article 36 of the EC Treaty or on other imperative requirements of the public interest, are compatible with the provisions of the Regulation and the Directive?

2. Do facts (a) to (h) set out in point IV(6) of this order for reference constitute grounds such that a Member State's national restrictions based thereon are compatible with the provisions of the Duty-Free Regulation and the Travel Directive?

3. May a rule limiting travellers' imports of alcoholic drinks, which in this question also includes beer, on the basis of the duration of the journey be regarded as compatible with the provisions of the Duty-Free Regulation and the Travel Directive?

[1] Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ L 105, 23.4.1983, p. 1).

[2] Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232).

Reference for a preliminary ruling by the Tribunal Superior de Justicia del País Vasco (Sala de lo Contencioso-Administrativo) by orders of that court of 30 July 1997 in the case of Administración del Estado against Juntas Generales de Guipuzcoa; Co-defendant: Diputación Foral de Guipuzcoa; Intervener: Gobierno Vasco; Administración del Estado against Juntas Generales del Territorio Histórico de Alava Co-defendant: Diputación Foral de Alava; Intervener: Gobierno Vasco; and Administración del Estado against Juntas Generales del Territorio Histórico de Bizkaia; Intervener: Gobierno Vasco and Diputación Foral de Bizkaia

(Joined Cases C-400/97, C-401/97 and C-402/97)

(98/C 41/17)

Reference has been made to the Court of Justice of the European Communities by orders of the Tribunal Superior de Justicia del País Vasco (Sala de lo Contencioso-Administrativo) (High Court of Justice of the Basque Country, Chamber for Contentious Administrative Proceedings) of 30 July 1997, which was received at the Court Registry on 1 December 1997, for a preliminary ruling in the case of Administración del Estado against Juntas Generales de Guipuzcoa; Co-defendant: Diputación Foral de Guipuzcoa; Intervener: Gobierno Vasco; Administración del Estado against Juntas Generales del Territorio Histórico de Alava Co-defendant: Diputación Foral de Alava; Intervener: Gobierno Vasco; and Administración del Estado against Juntas Generales del Territorio Histórico de Bizkaia; Intervener: Gobierno Vasco and Diputación Foral de Bizkaia on the following question:

On a proper construction of Article 52 of the EC Treaty and, as the case may be, Article 92(1), do those provisions preclude legislation, affecting a territory within an autonomous community of a Member State, on urgent fiscal measures to aid investment and stimulate economic activity, which may benefit taxable persons who pay tax exclusively to the tax authorities for that territory or are resident there for tax purposes and whose volume of transactions in that autonomous community preceding tax year exceeds 25 % of their total volume of transactions, and which does not include among those to whom those measures apply other natural and legal persons resident in the State itself or in another Member State of the European Community?

Action brought on 2 December 1997 by the Commission of the European Communities against the Portuguese Republic

(Case C-404/97)

(98/C 41/18)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 2 December 1997 by the Commission of the European Communities, represented by Dimitris Triantafyllou and Ana Maria Alves Vieira, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to abolish and recover, within the prescribed period, the aid from which EPAC (Empresa para a Agroalimentação e Cereais, SA) unduly benefited, the Portuguese Republic has failed to fulfil its obligations under the EC Treaty and, in particular, under Commission Decision C(97) 2130 of 9 July 1997;

2. order the Portuguese Republic to pay the costs.

Pleas in law and main arguments adduced in support:

Under Articles 189 and 191 of the EC Treaty, the abovementioned Commission Decision should have been implemented by the Portuguese Republic, even if it did have doubts concerning its legality. In Case C-330/97 [1] the Portuguese Republic did not claim that it was absolutely impossible to implement the Decision, given that the fact that the undertaking was being wound up (which as not relied upon in that respect) did not in any event constitute an insurmountable difficulty.

The continued failure by the Portuguese Republic to fulfil its obligations under the abovementioned Decision entails, at the same time, infringement of Article 93(3) of the Treaty, since Portugal continues not to comply with the suspensory effect of the aforementioned Decision which is intended to prevent the payment of aid incompatible with the common market and, indirectly, of Article 93(2), which provides for the adoption of decisions requiring the abolition of incompatible aid.

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[1] OJ C 357, 22.11.1997, p. 14.

Reference for a preliminary ruling by the Finanzgericht Bremen by order of that court of 7 October 1997 in the case of Mövenpick Deutschland GmbH für das Gastgewerbe, (formerly 'Deutsche EIG' Einkaufs- und Importgesellschaft für das Gastgewerbe mbH) against Hauptzollamt Bremen

(Case C-405/97)

(98/C 41/19)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht (Finance Court), Bremen of 7 October 1997, received at the Court Registry on 3 December 1997, for a preliminary ruling in the case of Mövenpick Deutschland GmbH für das Gastgewerbe, (formerly 'Deutsche EIG' Einkaufs- und Importgesellschaft für das Gastgewerbe mbH) v. Hauptzollamt Bremen on the following questions:

1. Is the Common Customs Tariff in the version contained in Annex I to Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ L 241, 27.9.1993, p. 1) amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (Combined Nomenclature 1994) to be interpreted so that dried walnut pieces imported from a non-member country, which were stored deep-frozen in a customs warehouse in the Community and subsequently presented for admission to free circulation in a thawed condition, are to be classified under heading No 0802?

2. If not:

   Was Article 522(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ L 253, 11.10.1993, p. 1), which has since been replaced by the new version of Article 522 introduced by Commission Regulation (EEC) No 3254/94 of 19 December 1994 (OJ L 346, 31.12.1994, p. 1), inoperative?

3. If so:

Should Article 522 in conjunction with Article 526(4) of the Provisions implementing the Community Customs Code, in the versions enacted by Article 1, points 16 and 18, of Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ L 346, 31.12.1994, p. 1), also be applied to customs declarations before 7 January 1995?

Action brought on 4 December 1997 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-406/97)

(98/C 41/20)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 4 December 1997 by the Commission of the European Communities, represented by Michel Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply with Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State [1], or by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive,

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments adduced in support:

The mandatory nature of the provisions of the third paragraph of Article 189 of the EC Treaty requires Member States to adopt the measures necessary to transpose directives addressed to them into their domestic law before the expiry of the period prescribed for doing so. In the present case, that period expired on 15 December 1993 without the Grand Duchy of Luxembourg having brought into force the necessary provisions.

[1] OJ L 74, 27.3.1993, p. 74.

Reference for a preliminary ruling from the Oberster Gerichtshof by order of that court of 22 October 1997 in the case of Landesgrundverkehrsreferent der Tiroler Landesregierung v. (1) Adolf Sparber, (2) Atelier Delta Entwurf- und Planungsgesellschaft mbH in liquidation, (3) Hans-Eberhard Junkersdorf and (4) Maria-Margareta Junkersdorf

(Case C-407/97)

(98/C 41/21)

Reference has been made to the Court of Justice of the European Communities by an order of the Oberster Gerichtshof (Supreme Court), Austria, of 22 October 1997, which was received at the Court Registry on 5 December 1997, for a preliminary ruling in the case of Landesgrundverkehrsreferent der Tiroler Landesregierung v. (1) Adolf Sparber, (2) Atelier Delta Entwurf- und Planungsgesellschaft mbH in liquidation, (3) Hans-Eberhard Junkersdorf and (4) Maria-Margareta Junkersdorf on the following question:

Is Article 70 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded [1], which provides that notwithstanding the obligations under the treaties on which the European Union is founded the Republic of Austria may maintain its existing legislation regarding secondary residences for five years from the date of accession (1 January 1995), to be interpreted as meaning that the transitional provisions in paragraph 40(2) and (5) of the Tiroler Grundverkehrsgesetz 1996 (Landesgesetzblatt für Tirol No 61/1996), which entered into force on 1 October 1996, fall within the definition of existing legislation, or are those provisions to be regarded as new legislation if, as a result of decisions of the Austrian Verfassungsgerichtshof, the provisions of previous Tyrol laws on the sale of land were not applicable in the present case?

[1] OJ C 241, 29.8.1994, p. 1.

Action brought on 5 December 1997 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-409/97)

(98/C 41/22)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 5 December 1997 by the Commission of the European Communities, represented by Marie Wolfcarius, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive;

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are analogous with those relied upon in Case C-406/97 [2], the time-limit for transposition expired on 19 October 1994.

[1] OJ L 348, 28.11.1992, p. 1.
[2] See page 11 of this Official Journal.

Reference for a preliminary ruling by the Pretura Circondariale di Bologna by order of that court of 29 November 1997 in the case of E.D. Srl against Italo Fenocchio

(Case C-412/97)

(98/C 41/23)

Reference has been made to the Court of Justice of the European Communities by order of the Pretura Circondariale (Magistrates Court), Bologna, of 29 November 1997, received at the Court Registry on 5 December 1997, for a preliminary ruling in the case of E.D. Srl against Italo Fenocchio on the following question:

Must the prohibition of issuing an ingiunzione (summary order) where the same is to be served outside the Republic or territories subject to Italian sovereignty — that prohibition being laid down by the last paragraph of Article 633 of the Code of Civil Procedure — be regarded as a restriction or equivalent measure capable of hindering, directly or indirectly, actually or potentially, the free movement of goods, services and capital guaranteed by Articles 34, 59 and 73b of the Treaty of Rome?

Action brought on 4 December 1997 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-413/97)

(98/C 41/24)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 4 December 1997 by the Commission of the European Communities, represented by Michel Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State [1], or by failing to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under Article 18 of that Directive;

2. order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments adduced in support:

The mandatory nature of the provisions of the third paragraph of Article 189 of the EC Treaty requires Member States to adopt the measures necessary to transpose directives addressed to them into their domestic law before the expiry of the period prescribed for doing so. In the present case, that period expired on 15 December 1993 without the Grand Duchy of Luxembourg having brought into force the necessary provisions [2].

[1] OJ L 74, 27.3.1993, p. 74.
[2] See page 11 of this Official Journal.

Action brought on 5 December 1997 by the Commission of the European Communities against the Kingdom of Spain

(Case C-414/97)

(98/C 41/25)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 15 December 1997 by the Commission of the European Communities, represented by Miguel Díaz-Llanos La Roche, Legal Adviser, and Carlos Gómez de la

Cruz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by considering intra-Community acquisitions and imports of arms, ammunition and equipment for exclusively military use, other than the aircraft and warships mentioned in points 23 and 25 of Annex F to Directive 77/388/EEC of 17 May 1977, to be exempt from value added tax (VAT) [1], notwithstanding the provisions of Articles 2(2), 28a, 14 and 28c(B) of Directive 77/388/EEC, the Kingdom of Spain has failed to fulfil its obligations under the Treaty establishing the European Community;

2. order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments adduced in support:

Article 2(2) and Article 28a of Directive 77/388/EEC provide, in a general manner, that all imports and intra-Community acquisitions of goods are to be subject to VAT. Articles 14 and 28c establish a common list of the exemptions which the Member State must — or may — grant, with a view to collecting the Communities' own resources in a uniform manner in all the Member States. Among those exemptions, exhaustively listed in Articles 14 and 28c, there is none which refers to arms, ammunition and equipment for exclusively military use, similar to the exemption granted by Spanish Law No 6/87. Article 28(3)(b), invoked by the Kingdom of Spain, refers to the Member States which on the date on which the Directive entered into force treated as exempt from VAT certain transactions, and authorizes them to continue doing so as a transitional measure. Since no period of time was granted to the Kingdom of Spain by Annex XXXVI or other provisions of the Act concerning the Conditions of Accession of the Kingdom of Spain to the European Community, it introduced VAT by Law No 30/85 which began to have full effect from 1 January 1986. It was not until more than a year later that it was decided to exempt imports and intra-Community acquisitions of military equipment, with retrospective effect as from the date on which VAT began to be charged in Spain.

It is true that the transitional period referred to in Article 28 of Directive 77/388/EEC was initially fixed to last for five years as from 1 January 1978. It is also true that, as the Member States in Council reached no decision, that transitional period has been extended to date and that, in consequence, Member States which then treated the transactions listed in Annex F as exempt may continue to do so. However, that was, beyond a doubt, not the case of the Kingdom of Spain until 1 January 1993. As from that date the Kingdom of Spain has been authorized to grant that exemption, even though only in respect of the transactions referred to in points 23 and 25 of Annex F of Directive 77/388/EEC.

[1] OJ L 145, 13.6.1977, p. 1.

Action brought on 9 December 1997 by the Commission of the European Communities against the Italian Republic

(Case C-415/97)

(98/C 41/26)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 9 December 1997 by the Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State [1], or by failing to inform the Commission thereof, the Italian Republic has failed to fulfil its obligations under that Directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments adduced in support:

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down. That period expired on 15 December 1993 without the Italian Republic having brought into force the necessary provisions.

[1] OJ L 74, 27.3.1993, p. 74.

Action brought on 9 December 1997 by the Commission of the European Communities against the Italian Republic

(Case C-416/97)

(98/C 41/27)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 9 December 1997 by the Commission of the European Communities, represented by Francesco P. Ruggeri Laderchi, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply with:

   (a) Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing [1],

   (b) Council Directive 94/42/EC of 27 July 1994 amending Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine [2],

   (c) Commission Directive 94/16/EC of 22 April 1994 amending Council Directive 74/63/EEC on undesirable substances and products in animal nutrition [3],

   (d) Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat [4],

   or in any event by failing to notify such provisions, the Italian Republic has failed to fulfil its obligations under those Directives;

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments adduced in support:

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired without the Italian Republic having brought into force the necessary provisions in order to comply with the Directives referred to in the Commission's application.

[1] OJ L 340, 31.12.1993, p. 21.
[2] OJ L 201, 4.8.1994, p. 26.
[3] OJ L 104, 23.4.1994, p. 32.
[4] OJ L 340, 31.12.1993, p. 15.

Action brought on 9 December 1997 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-417/97)

(98/C 41/28)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 9 December 1997 by the Commission of the European Communities, represented by Christina Tufvesson, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

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

1. declare that, by failing within the prescribed period to adopt all of the laws, regulations and administrative measures (including measures providing for the imposition of penalties) necessary in order to comply with Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 31 of that Directive;

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments adduced in support:

The mandatory nature of the provisions of the third paragraph of Article 189 and of the first paragraph of Article 5 of the EC Treaty is such as to oblige Member States to whom directives are addressed to adopt the measures necessary for the implementation of such directives within the time-limit prescribed therein. The time-limit in question expired on 1 July 1995 but the Grand Duchy of Luxembourg has not adopted the necessary measures.

[1] OJ L 141, 11.6.1993, p. 27.

Reference for a preliminary ruling from the Netherlands Raad van State by order of that court of 25 November 1997 in the case of ARCO Chemie Nederland Ltd v. Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

(Case C-418/97)

(98/C 41/29)

Reference has been made to the Court of Justice of the European Communities by order of the Netherlands Raad van State (Council of State) of 25 November 1997, received at the Court Registry on 11 December 1997, for a preliminary ruling in the case of ARCO Chemie Nederland Ltd v. Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Minister for Housing, Planning and the Environment) on the following questions:

1. May it be inferred from the mere fact that LUWA bottoms [1] undergo an operation listed in Annex II(B) to Directive 75/442/EEC [2] that that substance has been discarded so as to enable it to be regarded as waste for the purposes of Directive 75/442/EEC?

2. If question 1 is to be answered in the negative, does the reply to the question whether the use of LUWA-bottoms as a fuel is to be regarded as constituting discarding depend on whether:

   (a) LUWA-bottoms constitute waste under contemporary thinking whereby it is of particular relevance whether they may be recovered in an environmentally responsible manner for use as fuel without further processing,

   (b) the use of LUWA-bottoms as a fuel is comparable with an accepted method of waste recovery,

   (c) the substance used is a main product or a by-product (residue)?

(1) The material known as LUWA-bottoms is one of the by-products of the production process used by the appellant. In addition to propylene oxide and tertiary butyl alcohol the production process generates a flow of hydrocarbons containing molybdenum. The molybdenum is from catalysts used for the production of the propylene oxide. In a plant intended for that purpose molybdenum is recovered from the flow of hydrocarbons whereby the material designated by the appellant as LUWA-bottoms is obtained. LUWA-bottoms have a calorific value of 25 to 28 MJ/kg.

(2) OJ L 194, 25.7.1975, p. 47.

Reference for a preliminary ruling from the Hof van Cassatie van België by judgment of that court of 4 December 1997 in the case of Leathertex Divisione Sintetici SpA against BVBA Bodetex

(Case C-420/97)

(98/C 41/30)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hof van Cassatie van België (Belgian Court of Cassation) of 4 December 1997, received at the Court Registry on 11 December 1997, for a preliminary ruling in the case of Leathertex Divisione Sintetici SpA against BVBA Bodetex on the following question:

Are Article 5(1) and Article 2 of the Brussels Convention, in the version applicable to the present case, to be interpreted as meaning that a composite claim founded on different obligations arising from the same contract may be brought before the same court, even though, according to the jurisdictional rules of the State in which the proceedings are brought, one of the contractual obligations on which the claim is based is to be performed in that State and the other is to be performed in another EC Member State, having regard to the fact that the court before which the proceedings are brought decides, on the basis of the claim brought before it, that neither of the two obligations forming the subject matter of the claim is subordinate to the other and that they are of equal rank?

Reference for a preliminary ruling by the Tribunal de Grande Instance de Meaux (First Chamber), by judgment of 13 November 1997, in the case of Yves Tarantik and Direction des Services Fiscaux, Seine-et-Marne

(Case C-421/97)

(98/C 41/31)

Reference has been made to the Court of Justice of the European Communities by judgment of 13 November 1997 of the Tribunal de Grande Instance de Meaux (Regional Court, Meaux), (First Chamber), which was received at the Court Registry on 11 December 1997, for a preliminary ruling in the case of Yves Tarantik v. Direction des Services Fiscaux (Central Tax Office), Seine-et-Marne, on the following questions:

Considering the date of road authorization of the plaintiff's Jaguar car, which has a fiscal horsepower value of 24 hp, bears the registration number 197 AT 77, and was first put on the road on 11 April 1979, and having regard to the graphical representations and outline of the developments in taxation submitted by the plaintiff, on the one hand, and by the French tax authorities, on the other, does the system of taxation applied correspond to objective criteria lacking in any discriminatory effect prohibited by Article 95 of the EEC Treaty? In particular:

— Is the progression coefficient existing between the tax band covering an imported vehicle of more than 18 hp and the tax band covering a similar vehicle of 15 to 16 hp discriminatory or not?

— Do the circulars of 28 December 1956, 23 December 1977, 24 June 1987, 12 January 1988 and 20 September 1991, as retroactively validated by Article 35 of the Finance (Amendment) Law of 22 June 1993, have the effect of making the tax discriminatory in regard to owners of vehicles for which type-approval has not been granted in France, that is to say, vehicles approved on an individual basis?

— If the answer is yes, can the owner of a standard vehicle with a power rating in excess of 100 kW rely on that answer in order to plead, by application of the general principles of Community law such as equality in regard to public charges and the provisions of the European Convention on Human Rights and the Protocols thereto, that the tax is not payable on the ground that it is discriminatory and inequitable?

Reference for a preliminary ruling from the Juzgado de Primera Instancia No 22 de Valencia, by order of that court of 11 November 1997 in the case of Travel Vac, SL v. Manuel José Antelm Sanchís

(Case C-423/97)

(98/C 41/32)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de Primera Instancia (Court of First Instance) No 22, Valencia, of 11 November 1997, which was received at the Court Registry on 15 December 1997, for a preliminary ruling in the case of Travel Vac, SL v. Manuel José Antelm Sanchís on the following questions:

1. Are time-share contracts generally, and the contract at issue in the present case (page 76 in the case file) in particular, to be regarded as falling within the scope of Article 3(2)(a) of Directive 85/577/EEC [1], which contains provisions excluding the application of that Directive?

2. Even if, by virtue of that Article, the contract at issue in the present case, being a time-share contract, is excluded from the application of that Directive, could such exclusion be negated by the fact that the contract is not concerned solely with immovable property but also involves the provision of services and other matters relating exclusively to the fulfilment of obligations (clause 3) which account for the greater part of the consideration payable (inasmuch as the value of the immovable property itself amounts to Pta 285 000 out of the sum of Pta 1 090 000 representing the total value of the contract)?

3. Is the complex of holiday time-share flats offered to consumers in the town of Denia covered by the first indent of Article 1(1) of Directive 85/577/EEC, having regard to the fact that the premises of Travel Vac, SL are located at 5—6º Calle Profesor Beltrán Báguena, Valencia?

4. Is the right of renunciation granted to the consumer by Article 5(1) of the Directive based on a presumption that the exercise of his free will has been affected or manipulated as a result of the circumstances referred to in Article 1 of the Directive; if so, to what extent is that right of renunciation, as guaranteed by the Directive, founded on a connection with deceit generally on the part of the vendor, in the form of the use 'by one of the contracting parties of insidious words or machinations which induce the other to enter into a contract which would not otherwise have been concluded' (Article 1269 of the Spanish Civil Code) and, generally, with the freely given consent which necessarily forms part of any contract (Articles 1254, 1258, 1261 et seq. of the Spanish Civil Code)?

5. Must the notice provided for by Article 5(1) of the Directive be given expressly, or can it, where appropriate, take the form of specific unequivocal acts such as, in the present case, the non-appearance of the consumer at the time stipulated and agreed for signature of ratification on the Bank's premises, on 17 September 1996, three days after signature of the contract appearing on page 76 in the case file, the consumer's position being evidenced and made clear by his appearance in the vendor's premises in Valencia on the same day, 17 September 1996, when he stated orally that 'it was all off and that the documents which he had signed were to be returned to him'?

6. Are the provisions of Article 7 of the Directive concerning the reimbursement of payments, the return of goods and other effects arising in favour of the vendor upon the exercise by the consumer of his right of renunciation pursuant to Article 5 compatible with an agreement to pay 'compensation for damage caused to the vendor' in the form of a lump sum quantified at 25 % of the total price of the transaction, as laid down in clause 4 of the contract (on the reverse of page 76 in the case file)?

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[1] Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 13.12.1985, p. 31).

Reference for a preliminary ruling by the Landgericht Düsseldorf by order of that court of 8 December 1997 in the case of Salomone Haim against Kassenzahnärztliche Vereinigung Nordrhein

(Case C-424/97)

(98/C 41/33)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht (Regional Court) Düsseldorf of 8 December 1997, received at the Court Registry on 15 December 1997, for a preliminary ruling in the case of Salomone Haim v. Kassenzahnärztliche Vereinigung Nordrhein on the following questions:

1. If an official of a legally independent public law body of a Member State breaches primary Community law when applying national law in the context of an individual decision, can the public law body be held liable as well as the Member State?

2. If so: Where a national official has either applied conflicting national law against Community law, or has applied national law in a manner that does not comply with Community law, is there a serious breach of Community law simply on the ground that the official had no discretion in making his decision?

3. Where a national of another Member State has been recognised in the host Member State as having the status of a dental practitioner but does not hold a diploma mentioned in Article 3 of Directive 78/686/EEC [1], may the competent authorities of the host Member State make the admission of such person to treat patients affiliated to social security schemes conditional upon his having the knowledge of languages which he needs for the exercise of his professional activity in the host State?

[1] OJ L 233, 24.8.1978, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

(Third Chamber)

of 16 December 1997

in Case T-19/97: Claude Richter v. Commission of the European Communities [1]

(Officials — Leave on personal grounds — Reinstatement — Place of employment — Duty to have regard to the welfare of officials — Principle of sound administration)

(98/C 41/34)

(Language of the case: French)

In Case T-19/97: Claude Richter, an official of the Commission of the European Communities, residing in Luxembourg, represented by Jean-Noël Louis, Thierry Demaseure and Ariane Tornel, of the Brussels Bar, with an address for service in Luxembourg at Fiduciaire Myson Sàrl, 30 Rue de Cessange, against Commission of the European Communities (Agent: Julian Currall) — application for compensation for the harm which the applicant considered to have suffered as a result of the fact that the Commission did not reinstate him, at the end of his leave on personal grounds, to the first vacant post in his category and grade, in respect of which he was in possession of the requisite abilities — the Court of First Instance (Third Chamber), composed of V. Tiili, President, C. P. Briët and A. Potocki, Judges; H. Jung, Registrar, gave a judgment on 16 December 1997, the operative part of which is as follows:

1. *The application is dismissed.*

2. *Each party shall bear its own costs.*

[1] OJ C 94, 22.3.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 December 1997

in Case T-121/95: European Fertilizer Manufacturers Association (EFMA) v. Council of the European Union [1]

(Anti-dumping duties — Injury — Right to a fair hearing)

(98/C 41/35)

(Language of the case: English)

In Case T-121/95: European Fertilizer Manufacturers Association (EFMA), established in Zurich (Switzerland), represented initially by Dominique Voillemot and Hubert de Broca and subsequently by Dominique Voillemot and Olivier Prost, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe v. Council of the European Union (Agents: Yves Crétien, Antonio Tanca, assisted by Hans-Jürgen Rabe and Georg M. Berrisch), supported by Commission of the European Communities (Agent: Nicholas Khan) — application for annulment of Article 1 of Council Regulation (EC) No 477/95 of 16 January 1995 amending

the definitive anti-dumping measures applying to imports into the Community of urea originating in the former USSR and terminating the anti-dumping measures applying to imports into the Community of urea originating in the former Czechoslovakia (OJ L 49, 4.3.1995, p. 1) — the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition), composed of K. Lenaerts, President, P. Lindh, J. Azizi, J. D. Cooke and M. Jaeger, Judges; B. Pastor, Principal Administrator, for the Registrar, has given a judgment on 17 December 1997 in which it:

1. *dismisses the application;*

2. *orders the applicant to bear its own costs and to pay the costs of the Council;*

3. *orders the Commission to bear its own costs.*

(1) OJ C 189, 22.7.1995.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 December 1997

in Case T-166/95: Mary Karagiozopoulou v. Commission of the European Communities (1)

(Officials — Internal competition for appointing category C staff to category B — Decision of the selection board listing candidates who failed the oral test — Principle of equality of treatment — Assessment by the selection board)

(98/C 41/36)

(Language of the case: French)

In Case T-166/95: Mary Karagiozopoulou, an official of the Commission of the European Communities, residing in Brussels, represented by Ariane Tornel and Thierry Demaseure, and, in the oral procedure, by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange, v. Commission of the European Communities (Agent: Gianluigi Valsesia) — application for annulment of the decision of the selection board in internal competition COM/B/9/93 awarding the applicant a lower mark for the oral test than the minimum required and excluding her from the list of successful candidates — the Court of First Instance (Fourth Chamber), composed of: K. Lenaerts, President, and P. Lindh and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 17 December 1997, in which it:

1. *dismisses the action;*

2. *orders the parties to bear their own costs.*

(1) OJ C 268, 14.10.1995.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 December 1997

in Case T-216/95: Ana María Moles García Ortúzar v. Commission of the European Communities (1)

(Officials — Internal competition for advancement from category C to category B — Decision of the selection board failing candidates at the oral test — Scope of the obligation to state reasons — Assessment by the selection board)

(98/C 41/37)

(Language of the case: French)

In Case T-216/95: Ana María Moles García Ortúzar, an official of the Commission of the European Communities, residing in Brussels, represented by Marc-Albert Lucas, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Evelyne Korn, 21 Rue de Nassau, v. Commission of the European Communities (Agents: Gianluigi Valsesia and Ana Maria Alves Vieira) — application, first, for annulment of the decision of the selection board in internal competition COM/B/9/93 not to enter the applicant's name on the list of suitable candidates and, second, for annulment of the notice of that competition — the Court of First Instance (Fourth Chamber), composed of: K. Lenaerts, President, and P. Lindh and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 17 December 1997, in which it:

1. *dismisses the action;*

2. *orders the parties to bear their own costs.*

(1) OJ C 16, 20.1.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 December 1997

in Case T-217/95: Lucia Passera v. Commission of the European Communities [1]

(Officials — Internal competition for advancement from category C to category B — Decision of the selection board failing candidates at the oral test — Scope of the obligation to state reasons — Assessment by the selection board)

(98/C 41/38)

(Language of the case: French)

In Case T-217/95: Lucia Passera, an official of the Commission of the European Communities, residing at Overijse (Belgium), represented by Marc-Albert Lucas, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Evelyne Korn, 21 Rue de Nassau, v. Commission of the European Communities (Agents: Gianluigi Valsesia and Ana Maria Alves Vieira) — application, first, for annulment of the decision of the selection board in internal competition COM/B/9/93 not to enter the applicant's name on the list of suitable candidates and, second, for annulment of the notice of that competition — the Court of First Instance (Fourth Chamber), composed of: K. Lenaerts, President, and P. Lindh and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 17 December 1997, in which it:

1. *dismisses the action;*

2. *orders the parties to bear their own costs.*

[1] OJ C 16, 20.1.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

(Fourth Chamber)

of 17 December 1997

in Case T-225/95 Fotini Chiou v. Commission of the European Communities [1]

(Officials — Internal competition for movement of officials from Category C to Category B — Decision of the selection board noting the failure of candidates in the oral test — Consistency between the complaint and the application — Principle of equal treatment for men and women — Principle of non-discrimination — Assessment of the selection board)

(98/C 41/39)

(Language of the case: French)

In Case T-225/95: Fotini Chiou, official of the Commission of the European Communities, residing in Brussels, represented by Lucas Vogel, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Christian Kramer, 8—10 Rue Mathias Hardt, against the Commission of the European Communities (Agents: Ana Maria Alves Vieira and Fabrizio Minneci and, for the oral procedure, Gianluigi Valsesia) — application for annulment of the decision of the selection board in internal competition COM/B/9/93 to award the applicant a mark in the oral test lower than the minimum required and not to include her in the list of successful candidates — the Court of First Instance (Fourth Chamber), composed of K. Lenaerts, President, and P. Lindh and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 17 December 1997, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The parties are to bear their own costs.*

[1] OJ C 77, 16.3.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

(Third Chamber)

of 18 December 1997

in Case T-12/94: Frédéric Daffix v. Commission of the European Communities [1]

(Officials — Removal from post — Appeal — Case referred back to the Court of First Instance — Truth of the facts — Burden of proof — Misuse of discretion — Manifest error of assessment — Rights of the defence — Article 7 of Annex IX to the Staff Regulations)

(98/C 41/40)

(Language of the case: French)

In Case T-12/94: Frédéric Daffix, a former official of the Commission of the European Communities, residing in Brussels, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange v. Commission of the European Communities (Agents: Dimitrios Gouloussis and Benoît Cambier) — application for annulment of the Commission's decision of 18 March 1993 removing the applicant from his post and, if necessary, the implied rejection of his complaint — the Court of First Instance (Third Chamber), composed of B. Vesterdorf, President, C. P. Briët and A. Potocki, Judges; A. Mair, Administrator, for the Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

1. *The application is dismissed.*

2. *Each of the parties shall bear all the costs which it has incurred in the proceedings before the Court of First Instance and the Court of Justice.*

[1] OJ C 59, 26.2.1994.

JUDGMENT OF THE COURT OF FIRST INSTANCE

(First Chamber)

of 18 December 1997

in Case T-90/95: Walter Gill v. Commission of the European Communities [1]

(Officials — Medical examinations — Failure to communicate information on state of health — Right to keep his state of health secret)

(98/C 41/41)

(Language of the case: French)

In Case T-90/95: Walter Gill, former official of the Commission of the European Communities, represented by Jean-Noël Louis, Thierry Demaseure and Ariane Tornel, of the Brussels Bar, with an address for service in Luxembourg at Fiduciaire Myson SARL, 30 Rue de Cessange, against Commission of the European Communities (Agents: Julian Curall and Jean-Luc Fagnart) — application for reparation for the harm suffered by the applicant as a result of the service-related fault allegedly committed by the defendant's administration — the Court of First Instance (First Chamber), composed of A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges; H. Jung, Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

1. *The application is dismissed.*

2. *Each party shall bear its own costs.*

3. *The applicant shall bear the costs of the expert.*

[1] OJ C 137, 3.6.1995.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 18 December 1997

in Case T-142/95: Jean-Louis Delvaux v. Commission of the European Communities [1]

(Officials — Promotion — Comparative examination of the merits — Staff report — Statement of reasons — Identical career conditions — Discrimination on grounds of nationality)

(98/C 41/42)

(Language of the case: French)

In Case T-142/95: Jean-Louis Delvaux, an official of the Commission of the European Communities, residing at Rhode-Saint-Genèse (Belgium), represented by Nicolas Lhoëst, of the Brussels Bar, with an address for service in Luxembourg care of Jean-Pascal Lange, 40 Rue de la Syre, Uebersyren, v. Commission of the European Communities (Agents: Julian Currall and Denis Waelbroeck) — application, first, for annulment of the two decisions of the Commission published in Administrative Notices Nos 852 of 2 September 1994 and 859 of 8 September 1994, on the ground that the applicant's name was not included in those notices on the list of officials considered the most deserving of promotion to Grade LA 4 in 1994 or on the list of officials actually promoted to grade LA 4 in 1994, second, for annulment of the decision of the Commission of 3 April 1995 rejecting the applicant's complaint and, third, for an order requiring the defendant to pay the sum of Bfrs 100 000 by way of compensation for the non-material damage suffered as a result of the irregularity of the promotion procedure — the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, and J. Azizi and M. Jaeger, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 18 December 1997, in which it:

1. *dismisses the action;*

2. *orders the parties to bear their own costs.*

[1] OJ C 248, 23.9.1995.

JUDGMENT OF THE COURT OF FIRST INSTANCE

(First Chamber)

of 18 December 1997

in Case T-222/95: Antonio Angelini v. Commission of the European Communities [1]

(Officials — Change of place of employment — Return to the place of original employment — Installation allowance)

(98/C 41/43)

(Language of the case: Italian)

In Case T-222/95: Antonio Angelini, an official of the Commission of the European Communities, posted to the Ispra establishment of the Joint Research Centre, represented by Giuseppe Marchesini, Avvocato with the right of audience before the Court of Cassation of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt, against Commission of the European Communities (Agent: Gianluigi Valsesia) — application for annulment of the decision of the Commission to refuse to pay to the applicant an installation allowance upon the latter's return to his original place of employment, after a period of employment outwith his institution — the Court

of First Instance (First Chamber), composed of A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges; H. Jung, Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

1. *The decision of the Commission, communicated by note of 17 May 1995, denying payment to the applicant of the installation allowance is annulled.*

2. *The Commission is ordered to pay to the applicant the amount of the allowance provided for in Article 5(3) of Annex VII to the Staff Regulations, together with interest at the rate of 8 % per annum as from the date of the application.*

3. *The Commission shall bear its own expenses.*

(1) OJ C 64, 2.3.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

(First Chamber)

of 18 December 1997

in Case T-57/96: Livio Costantini v. Commission of the European Communities (1)

(Officials — Change of place of employment — Return to the place of original employment — Installation allowance — Daily subsistence allowance)

(98/C 41/44)

(Language of the case: Italian)

In Case T-57/96: Livio Costantini, an official of the Commission of the European Communities, posted to the establishment at Ispra of the Joint Research Centre, represented by Giuseppe Marchesini, Avvocato with the right of audience before the Court of Cassation of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt, against Commission of the European Communities (Agent: Gianluigi Valsesia) — application for annulment of the decisions of the Commission refusing to pay to the applicant an installation allowance and a daily subsistence allowance upon the latter's return to his original place of employment after a period of employment outwith his institution — the Court of First Instance (First Chamber), composed of A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges; A. Mair, Administrator, for the Registrar, gave a judgment on 18 December 1997, the operative part of which is as follows:

1. *The decision of the Commission refusing the applicant payment of the installation allowance is annulled.*

2. *The Commission is ordered to pay to the applicant the amount of the allowance provided for by Article 5(3) of Annex VII to the Staff Regulations, together with interest at the rate of 8 % per annum as from the date of the application.*

3. *The remainder of the application is dismissed.*

4. *The Commission shall bear its own costs and one half of the costs of the applicant. The applicant shall bear one half of his own costs.*

(1) OJ C 180, 22.6.1996.

Action brought on 26 November 1997 by Alitalia against the Commission of the European Communities

(Case T-296/97)

(98/C 41/45)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 November 1997 by Alitalia, represented by Antonio Tizzano and Gian Michele Roberti, of the Naples Bar, Mario Siragusa, of the Rome Bar, Giuseppe Scassellati Sforzolini, of the Bologna Bar, Matteo Bay, of the Milan Bar, and Matteo Beretta, of the Bergamo Bar, with an address for service in Luxembourg at the Chambers of Elvinger Hoss & Prussen, 2 Place Winston Churchill.

The applicant claims that the Court should:

— annul in its entirety the Commission's decision of 15 July 1997 relating to Alitalia's recapitalisation, or

In the alternative:

— annul the conditions for granting the aid referred to in Article 1(2) to (8) of the Decision,

— annul also the condition requiring Alitalia to bear the costs of the early retirement scheme provided for by Decree Law No 546/1996,

— order the Commission to pay the costs incurred by Alitalia in the course of these proceedings.

Pleas in law and main arguments adduced in support:

The applicant, a limited private law company operating in the air transport industry, contests the Commission's decision which considered the investment provided for in the restructuring plan submitted to the defendant by the Italian authority to be State aid within the meaning of Article 92 of the EC Treaty.

In support of its claims, the applicant relies on the following pleas in law:

— Infringement and erroneous application of Articles 92(1), 90(1) and 222 of the EC Treaty, inasmuch as the Commission considered that the criterion of the investor operating in a market economy is not fulfilled so far as concerns the investment made by Istituto per la Ricostruzione Industriale (IRI) of Lit 2 750 billion. Alitalia maintains in that regard that the capital injection in question did not preclude the right of option of third parties who were thus free to subscribe to the various tranches of the capital increase in proportion to their shares. Moreover, the Italian Government had clearly stated its firm determination to privatise Alitalia as soon as possible once authorization had been obtained for the capital increase. Finally, its employees agreed to subscribe to a capital increase reserved to them which would give them a 20 % share of the company's capital. The defendant ignored those factors and did not take account of the wide margin of discretion of IRI as an investor, but rather substituted its own assessment for that of IRI and found unsatisfactory the profit rate which the Commission itself had set at a level (20 %) five points higher than that considered normal in the air transport industry (15 %). Furthermore, the Commission did not restrict itself to requiring a 'normal' profitability of 20 %, but instead set an annual rate of return (hurdle rate) which, in its opinion, an investor would require in view of the continuing large risks of the operation. In this regard, the applicant adds that the calculation of profitability is erroneous and the statement of grounds is defective inasmuch as insolvency costs are not included. Moreover, to require Alitalia to bear all the costs of the early retirement programme for employees also entailed a reduction of the internal rate of return (IRR),

— Infringement and erroneous application of the third paragraph of Article 92 and misuse of powers. Alitalia finds it inexplicable that, having decided that the investment was 'State aid', the Commission should have failed to take into account the results which the plan was expected to achieve, above all with regard to deciding whether or not to impose conditions to render the plan 'compatible with the common market', and, secondly with regard to the gradual introduction of such conditions. That led to the placing on the applicant of conditions which are disproportionate, discriminatory, unlawful and unjustified (limitation on capacity and growth, requirement to dispose of more of its non-core business, different solution to that proposed for Air France, not taking into account the importance of the objective of privatisation, prohibition on further State aid, prohibition of acquiring new shares in other air carriers, abolition of all forms of preferential treatment, imposition of an analytical accounting system, prohibition on price leadership, requirement to dispose of the share held in Malév).

Finally, the applicant considers that the defendant did not provide a proper statement of reasons for the contested decision or examined carefully and impartially all the factors relevant to the case. The applicant also claims that it breached the rights of the defence.

Action brought on 2 December 1997 by Vicente Alonso Morales against the Commission of the European Communities

(Case T-299/97)

(98/C 41/46)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 December 1997 by Vicente Alonso Morales, residing in Madrid, represented by Ramón Marés Salvador, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Carlos Amo Quiñones, 2 Rue Gabriel Lippman.

The applicant claims that the Court should:

— annul the decision of 1 October 1997 of the selection board in competition COM/A/1047 to reject the applicant's candidature to that competition and acknowledge the applicant's right to be included in the list of eligible candidates for competition COM/A/1047,

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant, who is an 'ingeniero técnico en industrias agrícolas' (agricultural industry expert), challenges the decision of the selection board for general competition COM/A/1047 to reject his candidature to that

competition. According to that decision, the applicant's certificates and diplomas did not fulfil the conditions laid down in point III.B.2 of the competition notice, according to which candidates were required to have completed full university studies certified by a diploma (degree or equivalent).

The applicant considers that possession of the diploma in 'ingeniería técnica' presupposes full university studies certified by a diploma and that the selection board is imposing a requirement which does not appear in the wording of the vacancy notice.

In support of his claims, the applicant puts forward the following pleas in law:

— Breach of the principle of equal treatment,

— Infringement of Directive 89/48/EEC ([1]), the provisions of which are considered applicable, by way of analogy, to any competition notice,

— Breach of the principle of proportionality, inasmuch as, in the applicant's view, the requirement to hold a long cycle diploma is neither necessary nor appropriate in order to achieve the objective pursued, which is simply that of recruiting into the A/LA category of the Community civil service individuals who have followed full university degree courses certified by a diploma,

— Breach of the principle of legal certainty and of legitimate expectations,

— Breach of the right of access to the Community public service.

The applicant further affirms that, in its judgment in Case T-82/92 Manuel Cortés Jiménez v. Commission [1994] ([2]), the Court of First Instance simply rejected the 'higher' nature of the 'ingeniero técnico' diploma without, however, thereby expressly rejecting the 'full' nature of that diploma.

The applicant also claims that the defendant has misused its power inasmuch as, in his view, the contested act forms part of a staff selection policy intended to prevent access by 'ingenieros técnicos' to the A/LA category.

([1]) Council Directive of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19, 24.1.1989, p. 16).

([2]) ECR II-237.

Action brought on 2 December 1997 by Benito Latino against the Commission of the European Communities

(Case T-300/97)

(98/C 41/47)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 December 1997 by Benito Latino, residing in Brussels, represented by Olivier Eben, of the Brussels Bar, 11 Rue Paul Emile Janson, Brussels.

The applicant claims that the Court should:

— order the Commission to pay, pursuant to Article 73 of the Staff Regulations and Article 14 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, a capital sum, based on the rate of permanent partial incapacity determined by the Court, in respect of the asbestosis contracted by the applicant,

— order the Commission to pay ECU 1 000 000 by way of compensation for the non-material damage suffered by the applicant,

— order the Commission to pay interest at the rate of 10 % per annum on the capital sum found by the Court to be payable in accordance with the rate of permanent partial incapacity determined pursuant to Articles 73 and 14 of the Staff Regulations, and on the capital sum of ECU 1 000 000, such interest to be calculated from 1 August 1997 until payment in full of that capital sum,

— annul, in so far as may be necessary, the decision of the Commission of 1 August 1997 refusing the applicant's request of 11 May 1997,

— order the Commission to pay all the costs.

Pleas in law and main arguments adduced in support:

The applicant, a former official who worked in the Berlaymont building in Brussels as an archivist from 1969 to 1991, has contracted an occupational disease, asbestosis. On 11 February 1997 the appointing authority decided to recognize the applicant as having a permanent partial incapacity (PPI) rate of 5 %, equivalent to a capital sum of Bfrs 639 114.

The applicant maintains that, in view of the seriousness of that mortal illness and the physical consequences resulting from it, which will totally reduce his quality of life, he should be awarded a PPI percentage reflecting with the seriousness of his illness. According to the applicant, the Commission is guilty of having required him to work in a building in which, between 1967 and 1969, the workers were exposed to the 'flaking' of 4 000 tonnes of asbestos on the south and west walls, despite the fact that:

— the Commission knew of, or could not in any event have been unaware of, the dangerous nature of asbestos generally, and, in particular, the danger which it represented for persons performing tasks of an administrative nature and archive work in a building contaminated with asbestos;

— the Commission knew that it lacked sufficient staff to monitor compliance with safety and hygiene standards generally and the protection measures applicable during the course of maintenance works.

The unlawfulness of the conduct in question also results from a disregard of the principles, rights and guarantees contained in the European Social Charter. Those principles, rights and guarantees constitute general principles of Community law with which the Community authorities are required to comply and which the Community judicature is required to monitor. On the basis of that Charter, the applicant claims that all workers are entitled to safety and hygiene at work, that all persons are entitled to the benefit of all such measures as will enable them to enjoy the best possible state of health and that it is necessary, in so far as may be possible, to prevent epidemic, endemic and other illnesses. In the present case, the applicant's rights were disregarded and no measures were taken to prevent diseases caused by contact with asbestos.

Removal from the register of T-173/96 [1]

(98/C 41/48)

(Language of the case: French)

By order of 5 December 1997, the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-173/96: Teresa Maria Rodrigues Gomes de Oliveira v. Commission of the European Communities.

[1] OJ C 388, 21.12.1996.

Removal from the register of Joined Cases T-176/96 and T-108/97 [1]

(98/C 41/49)

(Language of the case: French)

By order of 4 December 1997, the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Joined Cases T-176/96 and T-108/97, Cornelis Volger v. European Parliament.

[1] OJ C 388, 21.12.1996 and OJ C 181, 14.6.1997.

Removal from the register of T-225/97 [1]

(98/C 41/50)

(Language of the case: French)

By order of 17 December 1997, the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-225/97: Asia Motor France SA, Jean-Michel Cesbron, Monin Automobiles SA and Europe Auto Service (EAS) SA v. Commission of the European Communities.

[1] OJ C 318, 18.10.1997.