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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 8 July 1999

in Case C-234/97 (reference for a preliminary ruling from the Juzgado de lo Social No 4 de Madrid): Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado and Ministerio Fiscal [1]

(Recognition of qualifications — Restorer of cultural property — Directives 89/48/EEC and 92/51/EEC — Concept of 'regulated profession' — Article 48 of the EC Treaty [now, after amendment, Article 39 EC])

(1999/C 366/01)

(Language of the case: Spanish)

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

In Case C-234/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Juzgado de lo Social No 4 de Madrid for a preliminary ruling in the proceedings pending before that court between Teresa Fernàndez de Bobadilla and Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado, Ministerio Fiscal — on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — the Court, composed of: G.C. Rodriguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of the Chambers, C. Gulmann, J.L. Murray, D.A.O. Edward (Rapporteur), H. Ragnemalm and L. Sevón, Judges; N. Fennelly, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 8 July 1999, in which it has ruled:

On a proper construction, Article 48 of the EC Treaty (now, after amendment, Article 39 EC):

— *does not preclude the terms of a collective agreement which applies to a public body in a Member State and restricts the right to practice within that body a particular profession which is not regulated for the purposes of Council Directives 89/48/EEC 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 and 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48 solely to those in possession of a qualification awarded by an educational establishment in that Member State or of any other foreign qualification which has been officially recognised by the competent authorities of that Member State,*

— *none the less requires the authorities of the host Member State which are competent to grant official recognition to foreign diplomas or to validate them or, where no general procedure for granting official recognition has been established or is incompatible with the requirements of Community law, the public body itself, to consider, as regards the diplomas awarded in another Member State, the extent to which the knowledge and qualifications certified by the diploma awarded to the person concerned correspond to the knowledge and qualifications required by the host Member State's own legislation. Where they correspond only in part, it is also for the competent national authorities or, where appropriate, the public body itself, to assess whether the knowledge acquired by the person concerned during a course of study or by way of practical experience is sufficient to show possession of knowledge to which the foreign diploma does not attest.*

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[1] OJ C 252 of 16.8.1997.

JUDGMENT OF THE COURT

of 14 September 1999

in Case C-310/97 P: Commission of the European Communities v AssiDomän Kraft Products AB and Others [1]

(Appeal — Effects in relation to third parties of a judgment annulling a measure)

(1999/C 366/02)

(Language of the case: English)

In Case C-310/97 P: Commission of the European Communities (Agent: W. Wils) — appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 10 July 1997 in Case T-227/95 AssiDomän Kraft Products and Others v Commission [1997] ECR II-1185, seeking to have that judgment set aside, the other party to the proceedings being AssiDomän Kraft Products AB, established in Stockholm, Sweden, Iggesunds Bruk AB, established in Ornsköldsvik, Sweden, Korsnäs AB, established in Gävle, Sweden, MoDo Paper AB, established in Ornsköldsvik, Sweden, Södra Cell AB, established in Växjö, Sweden, Stora Kopparbergs Bergslags AB, established in Falun, Sweden, Svenska Cellulosa AB, established in Sundsvall, Sweden, represented by J.E. Pheasant, Solicitor, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of the Chambers, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet (Rapporteur) and R. Schintgen, Judges; D. Ruiz-Jarabo Colomer, Advocate General; A. Rühl , Principal Administrator, for the Registrar, has given a judgment on 14 September 1999, in which it:

1. *Sets aside the judgment of the Court of First Instance of 10 July 1997 in Case T-227/95 AssiDomän Kraft Products and Others v Commission;*

2. *Dismisses the application for annulment lodged on 15 December 1995 by AssiDomän Kraft Products AB and Others before the Court of First Instance;*

3. *Orders AssiDomän Kraft Products AB and the other respondents to bear all the costs incurred before the Court of First Instance and the Court of Justice.*

[1] OJ No C 318 of 18.10.1997.

JUDGMENT OF THE COURT

(First Chamber)

of 14 September 1999

in Case C-170/98: Commission of the European Communities v Kingdom of Belgium [1]

(Failure to fulfil obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport)

(1999/C 366/03)

(Language of the case: French)

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

In Case C-170/98: Commission of the European Communities (Agents: Frank Benyon and Bernard Mongin) v Kingdom of Belgium (Agent: Jan Devadder) — application for a declaration that, by failing either to adjust the agreement with the Republic of Zaire in such a way as to provide for fair, free and non-discriminatory access by Community nationals to the cargo shares due to Belgium or to denounce that agreement, the Kingdom of Belgium has failed to fulfil its obligations under Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), in particular Articles 3 and 4(1) thereof — the Court (First Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and L. Sevón, Judges; A. La Pergola, Advocate General; R. Grass, Registrar, has given a judgment on 14 September 1999, in which it:

1. *Declares that, by failing either to adjust the agreement with the Republic of Zaire (now the Democratic Republic of the Congo) in such a way as to provide for fair, free and non-discriminatory access by Community nationals to the cargo shares due to Belgium or to denounce that agreement, the Kingdom of Belgium has failed to fulfil its obligations under Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, in particular Articles 3 and 4(1) thereof;*

2. *Orders the Kingdom of Belgium to pay the costs.*

[1] OJ No C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(First Chamber)

of 14 September 1999

in Joined Cases C-171/98, C-201/98 and C-202/98: Commission of the European Communities v Kingdom of Belgium and Grand Duchy of Luxembourg [1]

(Failure to fulfil obligations — Regulation (EEC) No 4055/86 — Freedom to provide services — Maritime transport)

(1999/C 366/04)

(Language of the case: French)

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

In Joined Cases C-171/98, C-201/98 and C-202/98: Commission of the European Communities (Agents: Frank Benyon and Bernard Mongin) v Kingdom of Belgium (C-171/98 and C-201/98) (Agent: Jan Devadder) and Grand Duchy of Luxembourg (C-202/98) (Agent: Nicolas Schmit) — applications for declarations that, by concluding and maintaining in force the agreements containing cargo-sharing arrangements with the Togolese Republic (C-171/98 and C-202/98) and the Republic of Mali (C-201/98 and C-202/98) and by failing either to adjust the agreements with the Republic of Senegal and the Republic of Côte d'Ivoire (C-201/98 and C-202/98) in such a way as to provide for fair, free and non-discriminatory access by Community nationals to the cargo shares due to Belgium and Luxembourg or to denounce those agreements, the Kingdom of Belgium (C-171/98 and C-201/98) and the Grand Duchy of Luxembourg (C-202/98) have failed to fulfil their obligations under Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), in particular Articles 3 and 4(1) thereof with respect to the Republic of Senegal and the Republic of Côte d'Ivoire and Article 5 thereof with respect to the Republic of Mali and the Togolese Republic — the Court (First Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and L. Sevón, Judges; A. La Pergola, Advocate General; R. Grass, Registrar, has given a judgment on 14 September 1999, in which it:

1. *Declares that, by concluding and maintaining in force the agreements containing cargo-sharing arrangements with the Togolese Republic (C-171/98 and C-202/98) and the Republic of Mali (C-201/98 and C-202/98) and by failing either to adjust the agreements with the Republic of Senegal and the Republic of Côte d'Ivoire (C-201/98 and C-202/98) in such a way as to provide for fair, free and non-discriminatory access by Community nationals to the cargo shares due to Belgium and Luxembourg or to denounce those agreements, the Kingdom of Belgium (C-171/98 and C-201/98) and the Grand Duchy of Luxembourg (C-202/98) have failed to fulfil their obligations under Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, in particular Articles 3 and 4(1) thereof with respect to the Republic of Senegal and the Republic of Côte d'Ivoire and Article 5 thereof with respect to the Republic of Mali and the Togolese Republic;*

2. *In Cases C-171/98 and C-201/98, orders the Kingdom of Belgium to pay the costs and, in Case C-202/98, orders the Grand Duchy of Luxembourg to pay the costs.*

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[1] OJ No C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 September 1999

in Case C-392/97 (reference for a preliminary ruling from the Bundesgerichtshof): Appeal procedure concerning the creation of a supplementary protection certificate for medicinal products introduced by Farmitalia Carlo Erba Srl [1]

(Proprietary medicinal products — Supplementary protection certificate)

(1999/C 366/05)

(Language of the case: German)

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

In Case C-392/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundesgerichtshof, Germany, for a preliminary ruling in the appeal proceedings brought before that court by Farmitalia Carlo Erba Srl — on the interpretation of Article 3(a) and (b) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1) — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, P. Jann, C. Gulmann (Rapporteur), D.A.O. Edward and L. Sevón, Judges; N. Fennelly, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 16 September 1999, in which it has ruled:

1. *On a proper construction of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products and, in particular, Article 3(b) thereof, where a product in the form referred to in the marketing authorisation is protected by a basic patent in force, the supplementary protection certificate is capable of covering the product, as a medicinal product, in any of the forms enjoying the protection of the basic patent.*

2. *In order to determine, in connection with the application of Regulation No 1768/92 and, in particular, Article 3(a) thereof, whether a product is protected by a basic patent, reference must be made to the rules which govern that patent.*

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(1) OJ No C 41 of 7.2.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 September 1999

in Case C-414/97: Commission of the European Communities v Kingdom of Spain (1)

(Failure of a Member State to fulfil obligations — Imports and acquisitions of armaments — Sixth VAT Directive — National legislation not complying therewith)

(1999/C 366/06)

(Language of the case: Spanish)

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

In Case C-414/97: Commission of the European Communities (Agents: Miguel Díaz-Llanos La Roche and Carlos Gómez de la Cruz) v Kingdom of Spain (Agent: Nuria Diaz Abad) — application for a declaration that, by exempting from value added tax intra-Community imports and acquisitions of arms, ammunition and equipment exclusively for military use, other than the aircraft and warships mentioned in points 23 and 25 of Annex F to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), notwithstanding the provisions of Articles 2(2), 14, 28a and 28c(B) of that directive, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch and J.L. Murray (Rapporteur), Judges; A. Saggio, Advocate General; R. Grass, Registrar, has given a judgment on 16 September 1999, in which it:

1. *Declares that, by exempting from value added tax intra-Community imports and acquisitions of arms, ammunition and equipment exclusively for military use, other than the aircraft and warships mentioned in points 23 and 25 of Annex F to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in the version resulting from Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, notwithstanding the provisions of Articles 2(2), 14, 28a, and 28c(B) of that directive, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

2. *Orders the Kingdom of Spain to pay the costs.*

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(1) OJ No C 41 of 7.2.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 September 1999

in Case C-435/97 (reference for a preliminary ruling from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen): World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others (1)

(Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects)

(1999/C 366/07)

(Language of the case: German)

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

In Case C-435/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Administrative Court, Autonomous Division for the Province of Bolzano), Italy, for a preliminary ruling in the proceedings pending before that court between World Wildlife Fund (WWF) and Others and Autonome Provinz Bozen and Others — on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, J.L. Murray and H. Ragnemalm (Rapporteur), Judges; J. Mischo, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 16 September 1999, in which it has ruled:

1. *Articles 4(2) and 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2 100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.*

2. *In the case of a project requiring assessment under Directive 85/337, Articles 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2) of the Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the Directive, including public participation as provided for in Article 6.*

3. *Article 1(5) of Directive 85/337 is to be interpreted as not applying to a project, such as that at issue in the main proceedings, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.*

4. *Article 1(4) of Directive 85/337 is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive.*

5. *Articles 4(2) and 2(1) of Directive 85/337 are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.*

([1]) OJ No C 72 of 7.3.1998.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 16 September 1999

in Case C-27/98 (reference for a preliminary ruling from the Bundesvergabeamt): Metalmeccanica Fracasso SpA, Leitschutz Handels- und Montage GmbH v Amt der Salzburger Landesregierung für den Bundesminister für wirtschaftliche Angelegenheiten ([1])

(Public works contract — Contract awarded to sole tenderer judged to be suitable)

(1999/C 366/08)

(Language of the case: German)

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

In Case C-27/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundesvergabeamt, Austria, for a preliminary ruling in the proceedings pending before that court between Metalmeccanica Fracasso SpA, Leitschutz Handels- und Montage GmbH and Amt der Salzburger Landesregierung für den Bundesminister für wirtschaftliche Angelegenheiten — on the interpretation of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ 1997 L 328, p. 1) the Court (Fourth Chamber), composed of: P.J.G. Kapteyn (Rapporteur), President of the Chamber, J.L. Murray and H. Ragnemalm, Judges; A. Saggio, Advocate General; H.A. Rül, Principal Administrator, for the Registrar, has given a judgment on 16 September 1999, in which it has ruled:

1. *Article 18(1) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively must be interpreted as meaning that the contracting authority is not required to award the contract to the only tenderer judged to be suitable.*

2. *Article 18(1) of Directive 93/37, as amended by Directive 97/52, can be relied on by an individual before the national courts.*

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(1) OJ No C 94 of 28.3.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 September 1999

in Case C-218/98 (reference for a preliminary ruling from the Conseil de Prud'hommes du Havre): Oumar Dabo Abdoulaye and Others v Régie Nationale des Usines Renault SA (1)

(Interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of Directives 75/117/EEC and 76/207/EEC — Collective agreement providing for an allowance for pregnant women going on maternity leave)

(1999/C 366/09)

(Language of the case: French)

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

In Case C-281/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Conseil de Prud'hommes du Havre, France, for a preliminary ruling in the proceedings pending before that court between Oumar Dabo Abdoulaye and Others and Régie Nationale des Usines Renault SA — on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19) and of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, P. Jann, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann and D.A.O. Edward, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 16 September 1999, in which it has ruled:

The principle of equal pay laid down in Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) does not preclude the making of a lump-sum payment exclusively to female workers who take maternity leave where that payment is designed to offset the occupational disadvantages which arise for those workers as a result of their being away from work.

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(1) OJ No C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 September 1999

in Case C-392/96: Commission of the European Communities v Ireland (1)

(Environment — Directive 85/337/EEC — Assessment of the effects of certain public or private projects — Setting of thresholds)

(1999/C 366/10)

(Language of the case: English)

In Case C-392/96: Commission of the European Communities (Agent: Richard B. Wainwright) v Ireland (Agent: Michael A. Buckley, assisted by Philip O'Sullivan and Niamh Hyland) — application for a declaration that, by failing to adopt all the necessary measures to ensure the correct transposition of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), Ireland has failed to fulfil its obligations under that directive, in particular Article 12 thereof, and under the EC Treaty — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, J.C. Moitinho de Almeida, C. Gulmann, D.A.O. Edward and L. Sevón (Rapporteur), Judges; A. La Pergola, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it:

1. *Declares that, by not adopting, for the classes of projects covered by points 1(d) and 2(a) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the measures necessary to transpose Article 4(2) of that directive correctly, and by not transposing Articles 2(3), 5 and 7 thereof, Ireland has failed to fulfil its obligations under that directive;*

2. *Dismisses the remainder of the application;*

3. *Orders Ireland to pay the costs.*

([1]) OJ No C 40 of 8.2.1997.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 September 1999

in Case C-397/96 (reference for a preliminary ruling from the Landgericht Trier): Caisse de Pension des Employés Privés v Dieter Kordel, Rainer Kordel, Frankfurter Allianz Versicherungs AG ([1])

(Social security — Institution responsible for benefits — Right of action against liable third party — Subrogation)

(1999/C 366/11)

(Language of the case: German)

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

In Case C-397/96: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landgericht Trier (Regional Court, Trier), Germany, for a preliminary ruling in the proceedings pending before that court between Caisse de Pension des Employés Privés and Dieter Kordel, Rainer Kordel, Frankfurter Allianz Versicherungs AG — on the interpretation of Article 93 (1) (a) 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 1983 L 230, p. 6) — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, P. Jann, D.A.O. Edward (Rapporteur), L. Sevón and M. Wathelet, Judges; A. Saggio, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 21 September 1999, in which it has ruled:

1. *On a proper construction of Article 93(1)(a) 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, where an injury has been sustained in the territory of a Member State and has given rise to the payment of social security benefits to the victim or those entitled under him by a social security institution (within the meaning of that regulation) of another Member State, the rights of the victim, or those entitled under him, against the person who caused the injury and to which that institution may be subrogated, and the requirements which must be satisfied to enable an action in damages to be brought before the courts of the Member State where the injury was sustained, are to be determined in accordance with the law of that State, including any applicable rules of private international law.*

2. *On a proper construction of Article 93(1)(a) of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, the subrogation of a social security institution (within the meaning of that regulation) governed by the law of a Member State to the rights of the victim, or those entitled under him, against a person who, in the territory of another Member State, caused an injury which gave rise to the payment by that institution of social security benefits, and the extent of the rights to which that institution is subrogated, are to be determined in accordance with the law of the Member State to which the institution belongs, provided always that the exercise of the right to subrogation provided for by that law cannot exceed the rights, under the law of the Member State where the injury was sustained, of the victim, or those entitled under him, against the person responsible for causing the injury.*

3. *It is for the court hearing an action to identify and apply the relevant provisions of the legislation of the Member State to which the institution responsible for benefits belongs, even if those provisions exclude or limit the subrogation of such an institution to the rights of the recipient of the benefits against the person who caused the injury, or exclude or limit the exercise of those rights by the institution so subrogated.*

([1]) OJ No C 40 of 8.2.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-106/97 (reference for a preliminary-ruling from the College van Beroep voor het Bedrijfsleven): Dutch Antillian Dairy Industry Inc., Verenigde Douane-Agenten BV v Rijksdienst voor de keuring van Vee en Vlees [1]

(Association of the overseas countries and territories — Importation of butter originating in the Dutch Antilles — Health rules relating to milk-based products — Article 131 of the EC Treaty (now, after amendment, Article 182 EC), Article 132 of the EC Treaty (now Article 183 EC), Articles 136 and 227 of the EC Treaty (now, after amendment, Articles 187 EC and 299 EC) — Directive 92/46/EEC — Decision 94/70/EC)

(1999/C 366/12)

(Language of the case: Dutch)

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

In Case C-106/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the College van Beroep voor het Bedrijfsleven, Netherlands, for a preliminary ruling in the proceedings pending before that court between Dutch Antillian Dairy Industry Inc., Verenigde Douane-Agenten BV and Rijksdienst voor de keuring van Vee en Vlees, with Nederlandse Antillen — on the interpretation and validity of Chapter III of Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJ 1992 L 268, p. 1), in particular Article 23 thereof, and on the validity of Commission Decision 94/70/EC of 31 January 1994 drawing up a provisional list of third countries from which Member States authorise imports of raw milk, heat treated milk and milk-based products (OJ 1994 L 36, p. 5) — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, President of Chamber, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón (Rapporteur) and M. Wathelet, Judges; A. La Pergola, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 21 September 1999, the operative part of which is as follows:

1. *The provisions of Chapter III of Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products, which require that imports of milk-based products from third countries comply with certain health rules, must be interpreted as applying to the placing on the Community market of such products, where these are exported from the overseas countries and territories, such as the Dutch Antilles.*

2. *Consideration of the requirements laid down in Chapter III of Directive 92/46, particularly in Article 23 thereof, in the light of Article 132(1) of the EC Treaty (now Article 183(1) EC) and Articles 102 and 103 of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, has disclosed no factor affecting its validity.*

3. *Article 23 of Directive 92/46 must be interpreted as applying to imports from the overseas countries and territories, even where the arrangements provided for by that Directive for trade between Member States have not already been implemented and the lists of approved exporting countries and establishments have not been drawn up in accordance with the method laid down in that provision; given that such lists have not been validly established in accordance with the method laid down in that provision, Commission Decision 94/70/EC of 31 January 1994 drawing up a provisional list of third countries from which Member States authorise imports of raw milk, heat treated milk and milk based products is invalid.*

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[1] OJ No C 142 of 10.5.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-219/97 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Maatschappij Drijvende Bokken BV v Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven [1]

(Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking)

(1999/C 366/13)

(Language of the case: Dutch)

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

In Case C-219/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Hoge Raad der Nederlanden, Netherlands, for a preliminary ruling in the proceedings pending before that court between Maatschappij Drijvende Bokken BV and Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven — on the interpretation of

Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of the Chambers, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; F.G. Jacobs, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

1. *A decision taken by organisations representing employers and workers in a given sector, in the context of a collective agreement, to set up in that sector a single pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation to that fund compulsory for all workers in that sector does not fall within the scope of Article 85 of the EC Treaty (now Article 81 EC).*

2. *Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC), Article 5 of the EC Treaty (now Article 10 EC) and Article 85 of the Treaty do not prohibit a decision by the public authorities to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector.*

3. *A pension fund charged with the management of a supplementary pension scheme set up by a collective agreement concluded between organisations representing employers and workers in a given sector, to which affiliation has been made compulsory by the public authorities for all workers in that sector, is an undertaking within the meaning of Article 85 et seq. of the Treaty.*

4. *Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.*

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(1) OJ No C 228 of 26.7.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-307/97 (reference for a preliminary ruling from the Finanzgericht Köln): Compagnie de Saint-Gobain, Zweigniederlassung Deutschland v Finanzamt Aachen-Innenstadt [1]

(Freedom of establishment — Taxes on companies' income — Tax concessions)

(1999/C 366/14)

(Language of the case: German)

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

In Case C-307/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht Köln, Germany, for a preliminary ruling in the proceedings pending before that court between Compagnie de Saint-Gobain, Zweigniederlassung Deutschland and Finanzamt Aachen-Innenstadt — on the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn and G. Hirsch, Presidents of the Chambers, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet (Rapporteur) and R. Schintgen, Judges; J. Mischo, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) preclude the exclusion of a permanent establishment in Germany of a company limited by shares having its seat in another Member State from enjoyment, on the same conditions as those applicable to companies limited by shares having their seat in Germany, of tax concessions taking the form of:

— *an exemption from corporation tax for dividends received from companies established in non-member countries (corporation tax relief for international groups), provided for by a treaty for the avoidance of double taxation concluded with a non-member country,*

— *the crediting, against German corporation tax, of the corporation tax levied in a State other than the Federal Republic of Germany on the profits of a subsidiary established there, provided for by German legislation, and*

— *an exemption from capital tax for shareholdings in companies established in non-member countries (capital tax relief for international groups), also provided for by German legislation.*

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(1) OJ No C 318 of 18.10.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-378/97 (reference for a preliminary ruling from the Arrondissementsrechtbank te Rotterdam): criminal proceedings against Florus Ariël Wijsenbeek [1]

(Freedom of movement for persons — Right of citizens of the European Union to move and reside freely — Border controls — National legislation requiring persons coming from another Member State to present a passport)

(1999/C 366/15)

(Language of the case: Dutch)

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

In Case C-378/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Arrondissementsrechtbank te Rotterdam, Netherlands, for a preliminary ruling in the criminal proceedings before that court against Florus Ariël Wijsenbeek — on the interpretation of Articles 7a and 8a of the EC Treaty (now, after amendment, Articles 14 EC and 18 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet and P. Jann, Presidents of the Chamber, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón (Rapporteur) and M. Wathelet, Judges; G. Cosmas, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

As Community law stood at the time of the events in question in the main proceedings, neither Article 7a nor Article 8a of the EC Treaty (now, after amendment, Articles 14 EC and 18 EC) precluded a Member State from requiring a person, whether or not a citizen of the European Union, under threat of criminal penalties, to establish his nationality upon his entry into the territory of that Member State by an internal frontier of the Community, provided that the penalties applicable are comparable to those which apply to similar national infringements and are not disproportionate, thus creating an obstacle to the free movement of persons.

[1] OJ No C 387 of 20.12.1997.

JUDGMENT OF THE COURT

(First Chamber)

of 21 September 1999

in Case C-362/98: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 93/103/EC)

(1999/C 366/16)

(Language of the case: Italian)

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

In Case C-362/98: Commission of the European Communities (Agents: Pieter Jan Kuijper and Antonio Aresu) v Italian Republic (Agent: Umberto Leanza, assisted by Danilo Del Gaizo) — application for a declaration that, by failing to adopt and/or by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1993 L 307, p. 1), the Italian Republic has failed to fulfil its obligations under the EC Treaty — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 21 September 1999, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Italian Republic has failed to fulfil its obligations under Article 13(1) thereof;*

2. *Orders the Italian Republic to pay the costs.*

[1] OJ No C 358 of 21.11.1998.

JUDGMENT OF THE COURT

of 28 September 1999

in Case C-440/97 (reference for a preliminary ruling from the Cour de Cassation): GIE Groupe Concorde and Others v The Master of the vessel 'Suhadiwarno Panjan' and Others [1]

(Brussels Convention — Jurisdiction in contractual matters — Place of performance of the obligation)

(1999/C 366/17)

(Language of the case: French)

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

In Case C-440/97: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Cour de Cassation, France, for a preliminary ruling in the proceedings pending before that court between GIE Groupe Concorde and Others and The Master of the vessel 'Suhadiwarno Panjan' and Others — on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Rapporteur) (Presidents of Chambers), J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet and R. Schintgen, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 28 September 1999, in which it has ruled:

On a proper construction of Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, the place of performance of the obligation, within the meaning of that provision, is to be determined in accordance with the law governing the obligation in question according to the conflict rules of the court seized.

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[1] OJ No C 55 of 20.2.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 September 1999

in Case C-231/97 (reference for a preliminary ruling from the Nederlandse Raad van State): A.M.L. van Rooij v Dagelijks bestuur van het waterschap de Dommel [1]

(Environment — Directive 76/464/EEC — 'Discharge' — Possibility for a Member State to adopt a wider definition of 'discharge' than that in the directive)

(1999/C 366/18)

(Language of the case: Dutch)

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

In Case C-231/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Nederlandse Raad van State, Netherlands, for a preliminary ruling in the proceedings pending before that court between A.M.L. van Rooij and Dagelijks bestuur van het waterschap de Dommel, third party: Gebr. Van Aarle BV — on the interpretation of Article 1(2) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch (Rapporteur) and R. Schintgen, Judges; A. Saggio, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 29 September 1999, in which it has ruled:

1. *The term 'discharge' in Article 1(2)(d) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community must be interpreted as covering the emission of contaminated steam which is precipitated on to surface water. The distance between those waters and the place of emission of the contaminated steam is relevant only for the purpose of determining whether the pollution of the waters cannot be regarded as foreseeable according to general experience, so that the pollution is not attributable to the person causing the steam.*

2. *The term 'discharge' in Article 1(2)(d) of Directive 76/464 must be interpreted as covering the emission of contaminated steam which is first precipitated on to land and roofs and then reaches the surface water via a storm water drain. It is not material in this respect whether the drain in question belongs to the establishment concerned or to a third party.*

(1) OJ No C 252 of 16.8.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 September 1999

in Case C-232/97 (reference for a preliminary ruling from the Nederlandse Raad van State): L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland (1)

(Environment — Directives 76/464/EEC, 76/769/EEC and 86/280/EEC — 'Discharge' — Possibility for a Member State to adopt more stringent measures than those provided for in Directive 76/464/EEC — Effect of Directive 76/769/EEC on such a measure)

(1999/C 366/19)

(Language of the case: Dutch)

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

In Case C-232/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Nederlandse Raad van State for a preliminary ruling in the proceedings pending before that court between L. Nederhoff & Zn. and Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland — on the interpretation of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23), Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ 1976 L 262, p. 201), as amended by European Parliament and Council Directive 94/60/EC of 20 December 1994 (OJ 1994 L 365, p. 1), and Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464 (OJ 1986 L 181, p. 16) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch (Rapporteur) and R. Schintgen, Judges; A. Saggio, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 29 September 1999, in which it has ruled:

1. *The term 'discharge' in Article 1(2)(d) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community must be interpreted as not including the pollution from significant sources, including multiple and diffuse sources, referred to in Article 5(1) of Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464.*

2. *The expression 'significant sources ... (including multiple and diffuse sources)' in Article 5(1) of Directive 86/280 must be interpreted as not including the escape of creosote from wooden posts placed in surface water, where the pollution caused by that substance is attributable to a person.*

3. *The term 'discharge' in Article 1(2)(d) of Directive 76/464 must be interpreted as including the placing by a person in surface water of wooden posts treated with creosote.*

4. *Directive 76/464 permits Member States to make the authorisation for a discharge subject to additional requirements not provided for in that directive, in order to protect the aquatic environment of the Community against pollution caused by certain dangerous substances. The obligation to investigate or choose alternative solutions which have less impact on the environment constitutes such a requirement, even if it may have the effect of making the grant of authorisation impossible or altogether exceptional.*

5. *The limitative conditions for the use of creosote laid down in point 32 of Annex I to Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as amended by European Parliament and Council Directive 94/60/EC of 20 December 1994, do not preclude an authority of a Member State, when considering applications for authorisation concerning the introduction into surface water by professional users of wood treated with that substance, from establishing criteria of assessment such that its use is impossible or altogether exceptional.*

(1) OJ No C 252 of 16.8.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 September 1999

in Case C-56/98 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Modelo SGPS SA v Director-Geral dos Registos e Notariado [1]

(Directive 69/335/EEC — Indirect taxes on the raising of capital — Charge for drawing up a notarially attested act recording an increase in share capital and a change in a company's name and registered office)

(1999/C 366/20)

(Language of the case: Portuguese)

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

In Case C-56/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Supremo Tribunal Administrativo, Portugal, for a preliminary ruling in the proceedings pending before that court between Modelo SGPS SA and Director-Geral dos Registos e Notariado, in the presence of the Ministério Público — on the interpretation of Articles 4(3), 10 and 12(1)(e) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (11), p. 412), as amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, J.L. Murray and H. Ragnemalm (Rapporteur), Judges; G. Cosmas, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 29 September 1999, in which it has ruled:

1. *Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as meaning that charges constitute taxes for the purposes of the directive where they are collected for drawing up notarially attested acts recording a transaction covered by the directive, under a system where notaries are employed by the State and the charges in question are paid in part to that State for the financing of its official business.*

2. *A charge payable for drawing up a notarially attested act recording an increase in share capital or a change in a company's name or registered office is, where it amounts to a tax for the purposes of Directive 69/335, as amended by Directive 85/303, in principle prohibited under Article 10(c) thereof.*

3. *'Fees or dues' within the meaning of Article 12(1)(e) of Directive 69/335, as amended by Directive 85/303, do not cover a charge collected for drawing up a notarially attested act recording an increase in share capital or a change in a company's name or registered office, such as the charge at issue in the main proceedings, the amount of which increases in direct proportion to the share capital raised and in respect of which there is no upper limit.*

4. *Article 10 of Directive 69/335, as amended by Directive 85/303, creates rights on which individuals may rely in proceedings before the national courts.*

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[1] OJ No C 113 of 11.4.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-179/95: Kingdom of Spain v Council of the European Union [1]

(Fisheries — Regulation laying down limits on and distributing fishing opportunities among Member States — Fishing quota exchanges — Annulment)

(1999/C 366/21)

(Language of the case: Spanish)

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

In Case C-179/95: Kingdom of Spain (Agents: A. Navarro González and R. Silva de Lapuerta) v Council of the European Union (Agents: J. Carbery and G.L. Ramos Ruano), supported by Commission of the European Communities (Agents: T. van Rijn and B. Vilá Costa) — application for annulment of the final sentence of point 1.1(i) of Annex IV to Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (OJ 1995 L 71, p. 5) and of the fifth heading, on anchovies, in Annex I to Council Regulation (EC) No 746/95 of 31 March 1995 amending Regulation (EC) No 3362/94 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1995 L 74, p. 1) — the Court (Sixth Chamber), composed of: G. Hirsch, President of the Second Chamber, acting as President of the Second Chamber (Rapporteur), J.L. Murray and H. Ragnemalm, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 5 October 1999, in which it:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to pay the costs;*

3. *Orders the Commission of the European Communities to pay its own costs.*

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(1) OJ No C 208 of 12.8.1995.

Action brought on 9 September 1999 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-334/99)

(1999/C 366/22)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 9 September 1999 by the Federal Republic of Germany, represented by Claus-Dieter Quassowski of the Federal Ministry of Finance, Bonn, and Joachim Sedemund, Rechtsanwalt, Berlin, with an address for service at the office of Wolf-Dieter Plessing, Federal Ministry of Finance, Graurheindorfer Strasse 108, D-53117 Bonn.

The Federal Republic of Germany claims that the Court should:

1. Annul Articles 4 to 7 of the Commission's decision K(1999) 2264 endg. of 8 July 1999 concerning 'State aid granted by Germany to Gröditzer Stahlwerke GmbH and its subsidiary Walzwerk Burg GmbH';

2. Order the Commission, pursuant to Article 23 of the ECSC Statute of the Court of Justice, to transmit all files since 1994 concerning this aids proceeding to the Court of Justice and allow the applicant to inspect those files;

3. Order the Commission to pay the costs.

Pleas in law and main arguments

— Irregular composition of the Commission: At the time of the decision, a Member of the Commission was 'on holiday', for which no provision is made in the Treaty, and the transfer of his area of responsibility to another Commissioner had the result that he could no longer exercise his office; the number of the Commissioners with the authority to make a decision was thus effectively reduced to nineteen.

— Infringement of the duty to act within a reasonable time, and of the principles of sound administrative practice and legal certainty: Although the Commission was informed by notifications in 1994 and 1995 of financial measures already carried out and planned for the future, it fed the legitimate expectation of the Federal Government and the undertakings concerned over a period of three years that it would not raise any objections to the financial allocation of the restructuring on grounds of State aids law. In any event, there can be no question of demanding back the subsidies already paid before the end of 1995, since before the opening of the State aid proceedings in August 1997 the Commission had allowed more than three years to elapse in which it did not claim that the information before it was insufficient. In respect of the notified intentions to pay subsidies also, the Commission did not at any time before August 1997 invoke the suspensive effect of Article 93(3) of the EC Treaty (old version) or of Article 6.4.4 of the Fifth Steel Aids Code or Article 6.4.1 of the Sixth Steel Aids Code.

— Infringement of the duty to state reasons

— Erroneous application of the ECSC Treaty to the competitive assessment of non-ECSC production: The Commission bases its decision on assumptions of the danger of a spillover effect, and not on factual determination of disproportionate application of resources in the ECSC area; it gives insufficient weight to an accountant's report proving the contrary.

— Erroneous assessment of the investment subsidies under the Fifth Steel Aids Code: The Commission behaves inconsistently when it argues that the subsidies concerned were not notified on time, whereas it itself called upon the Federal Government to withdraw notification that was made on time. In any event, the mere formal infringement of a duty to notify does not justify final demand for repayment where the substantive permissibility of the aid has not been examined.

— Erroneous assessment of the investment subsidies for the non-ECSC area: The Commission having itself acknowledged in the decision that in respect of the investment subsidies a clear distinction was to be made between the application of the EC and the ECSC Treaties, its reference to the approval criteria of the ECSC Treaty and the Fifth Steel Aids Code is unlawful. Moreover, the EC activities of Gröditzer Stahlwerke do not constitute a 'sensitive sector' within the meaning of the Treuhand regulation cited by the Commission or the restructuring guidelines of the Commission. The 'Framework for certain steel sectors not covered by the ECSC Treaty' (1) cited by the Commission in its reasoning contains no material criteria for examining aids in favour of the steel production areas described in that regulation and individually distinguished from each other.

In carrying out the required assessment exclusively in accordance with Article 87(3) of the EC Treaty, the Commission should in the exercise of its discretion have applied to this case the approval criteria which it applied in numerous other cases of restructuring measures, and in particular several comparable cases concerning the Treuhand, but also in the cases of Société Marseillaise de Crédit (2) or Olympic Airways (3).

Finally, the Commission should have cleared the notified measures in accordance with Article 87(2)(c) of the EC Treaty. Despite knowledge of all the relevant. circumstances, the Commission passes over that provision without a word of justification.

— Legally erroneous assumption of aid elements in the privatisation procedure: The Commission wrongly assumes, with reference to the case-law of the Court of Justice [4], that in the sale/liquidation comparative cost accounting only the liquidation value determined by the accountants was to be taken into account. Under German law, however, the owner is responsible both for the liquidation costs and the costs of restoring the site, and in this case the loans from shareholders could not be called in from the mass of the insolvency.

The Commission's criticism of the privatisation procedure expressed in the contested decision infringes the prohibition of contradictory conduct, since in many cases the Commission made on objection to comparable privatisation procedures. Moreover, the Commission's demands are not based on a realistic assessment even of the procedures that are normal even in the private sector for the disposal of shareholdings through the intervention of investment banks. The Federal Government therefore takes the view that the privatisation as such does not contain any aids. That is, however, ignored by the Commission. On this point, moreover, insufficient grounds are stated for the decision (infringement of the fourth indent of the second subparagraph of Article 5 of the ECSC Treaty, Article 15 of that treaty, and Article 253 of the EC Treaty).

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(1) OJ No C 320 of 13.12.1988, p. 3.
(2) OJ No L 198 of 30.7.1999, p. 1.
(3) OJ No L 128 of 21.5.1999, p. 1.
(4) Joined Cases C-278/92, C-279/92 and C-280/92 Spain v Commission (1994) ECR I-4103.

Reference for a preliminary ruling by the Landesgericht Korneuburg (Austria) by order of that court of 17 September 1999 in the case of SEIKO Kabushiki Kaisha v Mohammed Ibrahim

(Case C-362/99)

(1999/C 366/23)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht (Regional Court) Korneuburg (Austria) of 17 September 1999, received at the Court Registry on 30 September 1999, for a preliminary ruling in the case of SEIKO Kabushiki Kaisha v Mohammed Ibrahim on the following question:

On a proper construction of Article 1 thereof, is Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (*Official Journal of the European Communities* L 341 of 30 December 1994) also applicable to situations in which goods of the type specified therein are, in the course of transit between two countries not belonging to the European Community, temporarily detained by the customs authorities in a Member State on the basis of that regulation, at the request of a holder of rights who claims that his rights have been infringed and whose undertaking has its registered office in a non-member country?

Action brought on 4 October 1999 by the Portuguese Republic against the Commission of the European Communities

(Case C-365/99)

(1999/C 366/24)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 4 October 1999 by the Portuguese Republic, represented by Luís Fernandes, Director of the Legal Service of the Directorate-General for the European Communities of the Ministry of Foreign Affairs, and Maria João Abecassis, Assistant in the Private Office of the Minister for Agriculture, Rural Development and Fisheries, acting as Agents, and by Carlos Aguiar and Tiago Ferreira de Lima, of the Lisbon Bar, and Gerard van der Wal, of the Brussels Bar, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer.

The applicant claims that the Court should:

a) declare the present action admissible;

b) annul Commission Decision 99/517/EC [1] in so far as it replaced the words '1 August 1999' in Article 4 of Decision 98/653/EC [2] with the words '1 February 2000';

c) order the Commission to pay the costs incurred by the Portuguese Republic.

Pleas in law and main arguments

Portugal is appealing the decision to extend the restriction on exports, laid down in Article 4 of Decision 98/653/EC, to 1 February 2000, adopted by the Commission by Decision 99/517/EC, on the following grounds:

— Lack of statement of reasons or facts: the Commission was required to show that the extension of the period was justified and that the facts justify a derogation from Article 28 of the EC Treaty. In view of the findings of the mission of 14 to 18 June 1999, the Commission failed to do so.

— The decision is contrary to the Animal Health Code of the International Office of Epizootic Diseases: the Commission disregarded the Code in decisions 98/653/EC and 99/517/EC. Contrary to Article 3.2.13.8 Portuguese exports of meat and meat products are totally prohibited until 1 February 2000 despite the fact that Portugal, which falls within the category of countries with a low incidence of BSE, observed the conditions laid down in Article 3.2.13.8.

— Breach of essential procedural requirements and of the principle of sound administrative practice: the Standing Veterinary Committee did not have access to all the relevant and recent information (in particular the 'draft' findings of the mission of the Food and Veterinary Office (FVO-DG XXIV) of 14 to 18 June 1999 and Portugal's comments) which were made available to the Commission and/or should have been made available before the Standing Veterinary Committee was consulted and before the decision was adopted to extend the period prescribed by Article 4 of Decision 98/653/EC.

— Breach of the principle of proportionality: extension of the period prescribed in Article 4 of Decision 98/653/EC exceeds the limits of what is appropriate and necessary in view of the grounds and objectives of Decision 98/653/EC, regard being had to the situation in Portugal, the level of its exports of beef and meat products, and the policy of the Commission and the Community vis-à-vis the United Kingdom and Switzerland.

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(1) Commission Decision 99/517/EC of July 1999 amending Decision 98/653/EC concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal — OJ 1999 L 197, p. 45.

(2) Decision 98/653/EC concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal — OJ 1998 L 311, p. 23.

Reference for a preliminary ruling from the French Conseil d'État (Council of State), by order of that court of 28 July 1999 in the case of Joseph Griesmar v Minister for Economic Affairs, Finance and Industry and Minister for the Civil Service, State Reform and Decentralisation

(Case C-366/99)

(1999/C 366/25)

Reference has been made to the Court of Justice of the European Communities by an order of the French Conseil d'État, of 28 July 1999, which was received at the Court Registry on 4 October 1999, for a preliminary ruling in the case of Joseph Griesmar v Minister for Economic Affairs, Finance and Industry and Minister for the Civil Service, State Reform and Decentralisation on the following questions. The French Council of State asks the Court of Justice to rule on the following questions:

1. Are the pensions provided by the French retirement pension scheme for civil servants pay within the meaning of Article 119 of the Treaty of Rome (now Article 141 of the Treaty establishing the European Community)?

   If so, in the light of the requirements of paragraph 3 of Article 6 of the agreement annexed to Protocol No 14 on social policy, is the principle of equal pay breached by the provisions of Article L. 12(b) of the civil and military retirement pensions code?

2. If Article 119 of the Treaty of Rome is not applicable, do the provisions of Directive 79/7/EEC of 19 December 1978 (1) prevent France from maintaining in force provisions such as Article L. 12(b) of the civil and military retirement pensions code?

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(1) On the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6 of 10.1.1979, p. 24).

Reference for a preliminary ruling by the Landesgericht Korneuburg (Austria) by order of that court of 1 September 1999 in the case of La Chemise Lacoste S.A. v Coalle FA-93

(Case C-368/99)

(1999/C 366/26)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht (Regional Court) Korneuburg (Austria) of 1 September 1999, received at the Court Registry on 4 October 1999, for a preliminary ruling in the case of La Chemise Lacoste S.A. v Coalle FA-93 on the following question:

On a proper construction of Article 1 thereof, is Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (*Official Journal of the European Communities* L 341 of 30 December 1994) also applicable to situations in which goods of the type specified therein are, in the course of transit between two countries not belonging to the European Community, temporarily detained by the customs authorities in a Member State on the basis of that regulation, at the request of a holder of rights who claims that his rights have been infringed and whose undertaking has its registered office in a Member State of the European Community?

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 23 June 1999 in the case of Liberexim B.V. v Inspecteur Belastingdienst/Douane District Arnhem

(Case C-371/99)

(1999/C 366/27)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 23 June 1999, received at the Court Registry on 4 October 1999, for a preliminary ruling in the case of Liberexim B.V. v Inspecteur Belastingdienst/Douane District Arnhem (Tax Inspectorate/Arnhem Customs District) on the following questions:

1. What is to be understood by the words 'cease to be covered' ('onttrekken') by the external transit arrangements within the meaning of Article 7(3) of the Sixth Directive, if such cessation does not occur in a regular manner — that is to say, otherwise than by the goods being declared for free circulation:

   (a) is this the first operation which, in relation to the goods, is carried out contrary to any provision connected with those arrangements, and is it relevant whether in this operation there is an intention to bring the goods — inter alia through completion of the operation — into circulation within the Community contrary to that provision; or

   (b) does such cessation occur (only) once the goods — in the present case following breaking of the seals — have been unloaded from the means of transport without compliance with the obligation to produce the goods with documentation at the office of destination in accordance with Article 22(1) of the transit regulation; is it relevant whether in this operation there is an intention to bring the goods — inter alia through completion of the operation — into circulation within the Community contrary to the Community provisions; or

   (c) should the words 'cease to be covered' be construed as referring to the totality of the operations which result in the goods being brought into circulation within the Community otherwise than in a regular manner?

2. If the answer to the first question is in accordance with heading (c), where does this cessation occur: does it occur in the place where the first irregular operation is carried out, or in the place where a subsequent operation is carried out, in particular the place where the goods — in the present case following breaking of the seals — are unloaded from the means of transport?

Action brought on 7 October 1999 by the Kingdom of Spain against the Commission of the European Communities

(Case C-374/99)

(1999/C 366/28)

An action against the Commission of the European Communities was brought before the Court of Justice on 7 October 1999 by the Kingdom of Spain, represented by Mónica López-Monís Gallego, Abogado del Estado, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais.

The applicant claims that the Court of Justice should:

— Annul the Commission's decision of 28 July 1999 amending Decision 99/187/EC [1] as regards the financial adjustments imposed on the Kingdom of Spain and contested in the application, and

— order the defendant institution to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain challenges the contested decision as regards the financial adjustments imposed in the following sectors:

1. Aid for the consumption of olive oil

PTE 6 206 113 141 corresponding to an adjustment of 10 % of the expenditure incurred by Spain for the 1994 and 1995 financial years.

Such a large adjustment, amounting to 10 % of the entire expenditure declared by Spain, contained in the contested decision is not in any way justified pursuant to the general Community law principle of proportionality. The system for monitoring aid for the consumption of olive oil is an altogether reliable system and the basic checks demanded by Community legislation have been properly carried out. In particular, as recognised by the Conciliation Body itself, the importance of the risk of any losses for the EAGGF may be non-existent. In any event, in the contested decision the Commission goes counter to its own measures in taking into consideration the application of sanctions and the proper supervision of the procedures (although Spain considers itself to have acted correctly without infringing Community law) in its communication on guidelines for the calculation of the budgetary implications in preparing the Decision on the clearance of the accounts of the EAGGF, Guarantee Section, on the basis of auxiliary and not basic cheeks. That should, of itself, lead in any event to a much smaller adjustment than that imposed in the decision.

2. Premiums for sheep or goats

A total of PTE 159 802 819 corresponding to an adjustment of 5 % of the payments made in the provinces of Palencia, Salamanca, Orense and Castellón and of 2 % of the payments made in the province of Lugo in the financial years 1994 and 1995 for the marketing year 1993. The higher amounts considered by the Commission also include payments made in 1993, a financial year which had already been cleared by Decision 97/33/EC of 23 April 1997 and Decision 97/608/EC of 30 July 1997 in which distinct penalties were imposed for various reasons, no sum being separated for subsequent clearance.

In general, breach of the following principles of Community law:

— principle of the right to a hearing: this principle has been breached in all the adjustments contested in the application. It was formally observed, but the Commission's replies are in practice confined to repetition of the same points, without contradiction or rebuttal of the arguments put forward;

— lack of evidence of the wrongful conduct attributed to the Member State: the Commission based the adjustments either on circumstantial factors or suspicions, or on data rebutted or corrected by the Spanish authorities;

— the principle of sound administration;

— in the alternative, breach of the principle of proportionality.

(1) OJ L 61 of 10.3.1999, p. 37.

Action brought on 7 October 1999 by the Kingdom of Spain against the Commission of the European Communities

(Case C-375/99)

(1999/C 366/29)

An action against the Commission of the European Communities was brought before the Court of Justice on 7 October 1999 by the Kingdom of Spain, represented by Mónica López-Monís Gallego, Abogado del Estado, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais.

The applicant claims that the Court of Justice should:

— Annul the Commission's decision of 28 July 1999, excluding from Community financing certain expenditure by the Member States in respect of the financial adjustments imposed on the Kingdom of Spain and contested in the application;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain expresses its disagreement with the flat-rate adjustment amounting to 5 % of the expenditure declared and with the way in which the Commission's staff acted, for the following reasons:

(A) Since the financial adjustment was not calculated in the formal notification on the ground that it was subject to the sending of further information, it was not possible to know whether the conditions laid down in Commission Decision 94/442/EC (1) in order to seek the intervention of the Conciliation Body had been satisfied.

(B) The formal notification document states that, because of the laxity of the implementing legislation in the Member State, it was proposed in the clearance of the accounts for the financial years 1996 and 1997 to impose a financial adjustment of 5 % of the expenditure declared by Spain

under tariff headings 2 1 1 1, 2 1 1 2 and 2 1 1 3. Since the expenditure declared by Spain under tariff heading 2 1 1 3 was negative, it was considered that the Commission would not take account of that line for the purposes of the calculation of the total amount of the financial adjustment. However, the adjustment in respect of heading 2 1 1 3 made by the Commission corresponds solely to the item relating to purchases and not to the total amount of expenditure declared by Spain under the tariff heading during the financial year, which significantly increases the proposed adjustment, thus departing from the letter of the official communication.

(C) The differences found during the prior inspection referred to in the summary report are similar to those detected in other Member States, where the percentage applied in the financial adjustment has been only 2 % as opposed to the 5 % applied to Spain.

([1]) OJ L 182 of 16 July 1994, p. 45.

Action brought on 7 October 1999 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-377/99)

(1999/C 366/30)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 October 1999 by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat, and Claus-Dieter Quassowski, Regierungsdirektor, of the Federal Ministry of Financial Affairs, 108 Graurheindorfer Strasse, D-53117 Bonn.

The applicant claims that the Court should:

— Annul Commission Decision COM(1999) 2476 fin. of 28 July 1999 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as under Article 2 the sum of DEM 18 236 469,20 is not accepted by the EAGGF but charged to the Federal Republic of Germany;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The action is directed against the fact that the contested decision charged to the Federal Republic of Germany, with respect to Mecklenburg-Vorpommern, instead of a financial correction of 2 % a correction of 5 %, and hence an amount in excess of DEM 12 157 646,13, namely DEM 18 236 469,20, for 1995 for the arable crops sector.

The Commission was not able, in the annex to the Summary Report, to produce any comprehensible and substantiated reasons to show that the entire 'on-the-spot control' measure in Mecklenburg-Vorpommern was defective and that all the defects taken together led to a substantial risk of loss for the EAGGF, justifying a correction of 5 %. In particular, it was unable, on the basis of its inspection visit to Mecklenburg-Vorpommern in 1998, to adduce any new facts capable of justifying that assessment.

The increase of the financial correction from 2 % to 5 % by the Commission is unlawful because the Commission complied neither with the principle that the administrative authorities are bound by the reservation they formulated nor with the necessary procedural rules with respect to the procedure for closure of the accounts, in particular arbitration. The Commission further incorrectly exercised its discretion with respect to assessment of the defects actually found.

Altogether, the Commission has not shown conclusively why in its definitive fixing of the financial correction it departed both from its originally intended rate of correction and from the rate proposed by the arbitration body of not more than 2 %.

Reference for a preliminary ruling by the Bundesarbeitsgericht by order of that court of 23 March 1999 in the case of Pensionskasse für die Angestellten der Barmer Ersatzkasse VVAG v Hans Menauer

(Case C-379/99)

(1999/C 366/31)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesarbeitsgericht (Federal Labour Court) of 23 March 1999, received at the Court Registry on 7 October 1999, for a preliminary ruling in the case of Pensionskasse für die Angestellten der Barmer Ersatzkasse VVAG v Hans Menauer on the following question:

Must Article 119 of the EC Treaty [Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC] be interpreted to mean that pension funds must be considered to be employers and are obliged to treat men and women equally as regards payments of occupational old-age pensions, even though disadvantaged employees have a claim, which is protected in the event of insolvency and therefore precludes discrimination, against the body directly responsible for provision of a pension, that is to say their employer as a party to the employment contract.

Action brought on 8 October 1999 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-386/99)

(1999/C 366/32)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 8 October 1999 by the Commission of the European Communities, represented by Claudia Schmidt, 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 C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Commission Directive 96/65/EC [1] of 11 October 1996 adapting to technical progress for the fourth time Council, Directive 88/379/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations and modifying Directive 91/442/EEC on dangerous preparations the packaging of which must be fitted with child-resistant fastenings, the Federal Republic of Germany has failed to fulfil its obligations under the third paragraph of Article 249 EC in conjunction with Article 3(1) of that directive;

(2) alternatively, declare that the Federal Republic of Germany has failed to fulfil its obligation to notify the Commission without delay of the measures taken to transpose the directive;

(3) order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The third paragraph of Article 249 EC requires each Member State to which a directive is addressed to transpose the provisions thereof into national law within the time-limit prescribed for that purpose, in such a way as to give full effect thereto. The time-limit laid down in Article 3 of the directive expired on 31 May 1998, but Germany has not adopted the necessary measures in that regard.

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[1] OJ L 265 of 18.10.1996, p. 17.

Action brought on 8 October 1999 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-387/99)

(1999/C 366/33)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 8 October 1999 by the Commission of the European Communities, represented by Claudia Schmidt, 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 C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by classifying as medicinal products vitamin and mineral nutrient preparations which have been lawfully produced and/or placed on the market as food supplements in other Member States, where the daily dose of such vitamins and minerals is more than three times that recommended by the German Gesellschaft für Ernährung, the Federal Republic of Germany has infringed its obligations under Article 28 EC;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

Infringement of Article 28 EC: the obstacle to trade resulting from the practice followed by the German administrative authorities and courts cannot be justified on grounds of public health or consumer protection, since that practice is not in accordance with the principle of proportionality. It is an established scientific fact that the threshold at which increasing doses of vitamins become harmful is not reached at the same rate in the case of all vitamins. Consequently, to regard all vitamins in global/abstract terms, in such a way as necessarily to apply the strictest criterion, is to go beyond what is necessary and permissible in order to achieve the goal of health protection under Community law; it is disproportionate.

Reference for a preliminary ruling by the Tribunal du Travail, Tournai (Section de Mouscron) by judgment of that court of 5 October 1999 in the case of Institut national d'assurances sociales pour travailleurs indépendants against Claude Hervein and Hervillier SA and Institut national d'assurances sociales pour travailleurs indépendants against Guy Lorthiois and Comtexbel SA

(Case C-393/99 and case C-394/99)

(1999/C 366/34)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal du Travail, Tournai (Section de Mouscron) (Labour Court, Tournai, Mouscron section) of 5 October 1999, received at the Court Registry on 13 October 1999, for a preliminary ruling in the case of

— Institut national d'assurances sociales pour travailleurs indépendants against Claude Hervein and Hervillier SA and

— Institut national d'assurances sociales pour travailleurs indépendants against Guy Lorthiois and Comtexbel SA

on the following questions.

Pleas in law and main arguments

1. Is Article 14c(l)b of Council Regulation 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 [1] and Annex VII to Regulation No 1408/71, to be declared invalid in the light of Articles 48 and 52 of the Treaty inasmuch as it provides that persons who pursue an activity as employees in one Member State and an activity as self-employed persons in another Member State are subject to the legislation of both those Member States?

2. Can that invalidity be relied on to call into question membership and contributions due under the provision found to be invalid for periods which predate delivery of the judgment finding it to be invalid, except (if the answer is no) as regards workers or persons entitled under them who have already brought legal proceedings or made an equivalent claim under national law before that date?

[1] OJ 1983 L 230, p. 6.

Action brought on 13 October 1999 by the Commission of the European Communities against the Hellenic Republic

(Case C-397/99)

(1999/C 366/35)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 13 October 1999 by the Commission of the European Communities, represented by Dimitris Triantafillos and Barry Doherty, of its Legal Service, 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 claims that the Court should:

— declare that, by not adopting within the time-limit laid down all the measures necessary in order to comply with Article 2(2) of Directive 96/2/EC [1] with regard to mobile and personal communications, in conjunction with the second and third paragraphs of Article 3a of Directive 90/388/EEC on competition in the markets for telecommunications services, as amended by Directive 96/2/EC, the Hellenic Republic has failed to fulfil its obligations under the Treaty and those directives;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Member States are required by the binding character of the third paragraph of Article 249 and Article 10 EC (ex third paragraph of Article 189 and Article 5 of the EC Treaty) to adopt the measures needed to transpose directives into national law before the expiry of the period laid down for that purpose and to communicate those measures immediately to the Commission.

Up until now the Hellenic Republic has not adopted the measures necessary in order to implement fully Article 2(2) of Directive 96/2/EC and the second and third paragraphs of Article 3a of Directive 90/388/EEC, as amended by Directive 96/2/EC, which had to be implemented no later than 15 February 1996; it has thereby failed to fulfil its obligations under the Treaty and those directives.

[1] OJ No L 20 of 26.1.1996, p. 59.

Action brought on 20 October 1999 by the Italian Republic against the Commission of the European Communities

(Case C-403/99)

(1999/C 366/36)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 20 October 1999 by the Italian Republic, represented by Umberto Leanza, acting as Agent, assisted by Danilo Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde.

The applicant claims that the Court should:

— annul the contested regulation [1];

— order the Commission to pay the costs.

Pleas in law and main arguments

(1) The Commission established a measure of general application of the provision laid down by the Council in Article 5 of Regulation No 2799/98 [2], applicable to all direct aid affected by the freezing of the conversion rates, which did not take into consideration the various operative events giving rise to the entitlement to aid.

In the contested regulation the Commission, without giving the slightest reason for its decision, fixed the level of direct aid where the date of the operative event was 1 July 1999, and did not increase it by applying the weighting provided for in Article 6 of Regulation No 2813/98 [3].

Determination of the maximum amounts of the aid in question is contrary to the general determination adopted by the Commission in Article 6 of Regulation No 2813/98 and is vitiated by the fact that it infringes the aforementioned Article.

Finally, the reasons which led the Commission to adopt the contested provision are not set out at all in the preamble to the contested regulation which thus also infringes Article 253 EC and is in breach of essential procedural requirements inasmuch as it is vitiated by a lack of a statement of reasons and misuse of powers.

(2) The unlawfulness of the contested regulation is even more evident in view of the fact that, although the intention had been to fix, by way of Regulation No 755/99 [4], of 12 April 1999, the maximum amounts of direct aid in respect of which the dates of the relevant operative events were 1 and 3 January 1999, the Commission had instead applied the increase provided for by Article 6 of Regulation No 2813/98. The different treatment afforded to aid the date of whose operative event was 1 July 1999 is not justified in any way.

The contested regulation is also vitiated inasmuch as it infringes Article 40 of the EC Treaty (now, after amendment, Article 34 EC), which prohibits any discrimination between producers, and is in breach of the principle of equal treatment.

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[1] Commission Regulation (EC) No 1639/1999 of 26 July 1999 fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 July 1999, OJ 1999 L 194, p. 33.
[2] OJ 1998 L 349, p. 1.
[3] OJ 1998 L 349, p. 48.
[4] OJ 1999 L 98, p. 8.

Action brought on 22 October 1999 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-406/99)

(1999/C 366/37)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 22 October 1999 by the Commission of the European Communities, represented by Götz zur Hausen, 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 C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt within the prescribed time-limit the measures necessary in order to comply with Directive 96/56/EC [1] of the European Parliament and the Council of 3 September 1996 amending Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty;

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

The pleas in law and main arguments are the same as in Case C-386/992 [2]; the time-limit laid down in Article 2 of the directive expired on 1 June 1998.

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[1] OJ L 236 of 18.9.1996, p. 35.
[2] See p. 20 of this Official Journal.

Action brought on 28 October 1999 by the Commission of the European Communities against the Republic of Austria

(Case C-411/99)

(1999/C 366/38)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 28 October 1999 by the Commission of the European Communities, represented by Josef Christian Schieferer, 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 C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt and communicate to the Commission the laws, regulations and administrative measures necessary in order to comply with Directive 95/47/EC [1] of the European Parliament and the Council of 24 October 1995 on the use of standards for the transmission of television signals, the Republic of Austria has failed to fulfil its obligations under that directive;

(2) order the Republic of Austria to pay the costs.

The pleas in law and main arguments are the same as in Case C-386/99 [2]; the time-limit laid down in Article 8 of the directive expired on 23 August 1996.

[1] OJ L 281 of 23.11.1995, p. 51.
[2] See p. 20 of this Official Journal.

Removal from the register of Case C-474/98 [1]

(1999/C 366/39)

By order of 20 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-474/98 (reference for a preliminary ruling by the Tribunal Administratif de Lille): Clinique Grégoire SA v Direction Régionale des Impôts du Nord-Pas-de-Calais.

[1] OJ No C 71 of 13.3.1999.

Removal from the register of Case C-116/99 [1]

(1999/C 366/40)

By order of 21 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-116/99: Commission of the European Communities v Italian Republic.

[1] OJ No C 188 of 3.7.1999.

Removal from the register of Case C-349/98 [1]

(1999/C 366/41)

By order of 22 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-349/98: Commission of the European Communities v Italian Republic.

[1] OJ No C 340 of 7.11.1998.

Removal from the register of Case C-12/99 [1]

(1999/C 366/42)

By order of 23 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-12/99: Commission of the European Communities v Portuguese Republic.

[1] OJ C 71 of 13.3.1999.

Removal from the register of Case C-92/99 [1]

(1999/C 366/43)

By order of 24 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-92/99: Commission of the European Communities v Portuguese Republic.

[1] OJ C 160 of 5.6.1999.

Removal from the register of Case C-151/99 [1]

(1999/C 366/44)

By order of 28 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-151/99: Commission of the European Communities v Ireland.

[1] OJ C 188 of 3.7.1999.

Removal from the register of Case C-31/99 [1]

(1999/C 366/45)

By order of 29 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-31/99: Commission of the European Communities v French Republic.

[1] OJ C 86 of 27.3.1999.

Removal from the register of Case C-32/99 [1]

(1999/C 366/46)

By order of 29 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-32/99: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 86 of 27.3.1999.

Removal from the register of Case C-185/99 [1]

(1999/C 366/47)

By order of 29 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-185/99 (reference for a preliminary ruling, from the Regeringsrätten): Riksskatteverket v X, Y and Z.

[1] OJ No C 204 of 17.7.1999.

Removal from the register of Case C-186/99 [1]

(1999/C 366/48)

By order of 29 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-186/99 (reference for a preliminary ruling, from the Regeringsrätten): Riksskatteverket v X.

[1] OJ No C 204 of 17.7.1999.

Removal from the register of Case C-210/99 [1]

(1999/C 366/49)

By order of 30 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-210/99: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 204 of 17.7.1999.

Removal from the register of Case C-211/99 [1]

(1999/C 366/50)

By order of 30 September 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-211/99: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 204 of 17.7.1999.

Removal from the register of Case C-100/98 [1]

(1999/C 366/51)

By order of 4 October 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-100/98: Kingdom of Sweden v Council of the European Union.

[1] OJ No C 209 of 4.7.1998.

Removal from the register of Case C-44/99 [1]

(1999/C 366/52)

By order of 4 October 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-44/99: Commission of the European Communities v French Republic.

[1] OJ C 100 of 10.4.1999.

Removal from the register of Case C-121/99 [1]

(1999/C 366/53)

By order of 6 October 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-121/99: Commission of the European Communities v Hellenic Republic.

[1] OJ C 188 of 3.7.1999.

Removal from the register of Case C-227/99 [1]

(1999/C 366/54)

By order of 8 October 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-227/99: Commission of the European Communities v Portuguese Republic.

[1] OJ C 226 of 7.8.1999.

Removal from the register of Case C-200/99 [1]

(1999/C 366/55)

By order of 13 October 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-200/99: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 226 of 7.8.1999.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 October 1999

in Case T-228/97: Irish Sugar plc v Commission of the European Communities [1]

(Article 86 of the EC Treaty (now Article 82 EC) — Dominant position and joint dominant position — Abuse — Fine)

(1999/C 366/56)

(Language of the case: English)

In Case T-228/97: Irish Sugar plc, established in Carlow, Ireland, represented by Alexander Böhlke, of the Brussels and Frankfurt am Main Bars, and Scott Crosby, Solicitor, with an address for service in Luxembourg at the Chambers of Victor Elvinger, 31 Rue d'Eich v Commission of the European Communities (Agents: Klaus Wiedner and Conor Quigley) — application for the annulment of Commission Decision 97/624/EC of 14 May 1997 relating to a proceeding pursuant to Article 86 of the EC Treaty (IV/34.621, 35.059/F-3 — Irish Sugar plc) (OJ 1997 L 258, p. 1) or, in the alternative, for the annulment of the third and fourth paragraphs of Article 3 of the operative part of that decision, in so far as they contain instructions exceeding the scope of the abuses established in points 5 and 6 of Article 1, and reduction of the fine imposed on the applicant by Article 2 of the operative part — the Court (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 7 October 1999, in which it:

1. *Annuls Article 1(1) of the contested decision in so far as it finds that between 1986 and 1988 the applicant granted selectively low prices to the customers of a French sugar importer;*

2. *Reduces the fine imposed on the applicant by Article 2 of the contested decision to EUR 7 883 326;*

3. *Dismisses the remainder of the action;*

4. *Orders the applicant to pay its own costs and two thirds of the Commission's costs;*

5. *Orders the Commission to pay one third of its own costs.*

(1) OJ No C 318 of 18.10.97.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 October 1999

in Case T-51/98: Ann Ruth Burrill and Alberto Noriega Guerra v Commission of the European Communities [1]

(Officials — Working conditions — Maternity leave — Shared between both parents)

(1999/C 366/57)

(Language of the case: French)

In Case T-51/98: Ann Ruth Burrill, an official of the Commission of the European Communities, and Alberto Noriega Guerra, a member of the temporary staff of the Commission of the European Communities, residing at Rosières, Belgium, represented by Georges Vandersanden, Laure Levi and Marie-Ange Marx, 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: Gianluigi Valsesia and Julian Currall), supported by the Council of the European Union (Agents: Thérèse Blanchet and Martin Bauer) — application for annulment of the Commission's decision of 24 February 1998 refusing the applicants' request that part of the maternity leave provided for by Article 58 of the European Community Staff Regulations be shared between both parents such that, during the period concerned, each parent would work half-time — the Court of First Instance (Fifth Chamber), composed of J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 26 October 1999, the operative part of which is as follows:

1. *The application is rejected.*

2. *Each of the parties shall bear its own costs.*

(1) OJ No C 184 of 13.6.1998.

ORDER OF THE COURT OF FIRST INSTANCE

of 30 September 1999

in Case T-182/98: UPS Europe SA v Commission of the European Communities [1]

(State aid — Letter from the Commission to a complainant — Act open to challenge — Inadmissibility)

(1999/C 366/58)

(Language of the case: English)

In Case T-182/98: UPS Europe SA, established in Brussels, represented by Tom R. Ottervanger, of the Rotterdam Bar, and Dirk Arts, of the Brussels Bar, with an address for service in Luxembourg at the chambers of Loeff Claeys and Verbeke, 5 Rue Charles Martel v Commission of the European Communities (Agent: James Flett) — application for the annulment of the Commission's letter of 2 October 1998 (Ref. D/54021) — the Court (Fourth Chamber, Extended Composition), composed of: R.M. Moura Ramos, President, and M.R. García-Valdecasas, V. Tiili, P. Lindh and P. Mengozzi, Judges; H. Jung, Registrar, has made an order on 30 September 1999, in which it:

1. *dismisses the application as inadmissible;*

2. *orders the document produced as Annex 1 to the applicant's observations on the plea of inadmissibility, lodged at the Registry of the Court of First Instance on 18 February 1999, to be removed from the file in Case T-182/98;*

3. *dismisses the ancillary application for the remainder;*

4. *orders the Commission to bear its own costs and to pay one third of the costs incurred by the applicant;*

5. *orders the applicant to bear two thirds of its own costs.*

[1] OJ No C 20 of 23.1.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 15 September 1999

in Case T-11/99: Firma Léon Van Parys NV and Others v Commission of the European Communities [1]

(Agriculture — Common organisation of the markets — Bananas — Action for annulment — Persons individually concerned — Restricted group of operators — Inadmissibility)

(1999/C 366/59)

(Language of the case: Dutch)

In Case T-11/99: Firma Léon Van Parys NV, established in Antwerp (Belgium), Pacific Fruit Company NV, established in Antwerp, Pacific Fruchtimport GmbH, established in Hamburg (Germany), and Pacific Fruit Company Italy SpA, established in Rome, represented by Philippe Vlaemminck, Lode Van Den Hende and Julien Holmens, of the Ghent Bar, with an address for service in Luxembourg at the Chambers of Messrs Loesch & Wolter, 11 Rue Goethe, v Commission of the European Communities (Agent: Hubert van Vliet) — application for annulment of Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community — the Court of First Instance (Fifth Chamber), composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; H. Jung, Registrar, made an order on 15 September 1999, the operative part of which is as follows:

1. *The action is dismissed as inadmissible;*

2. *The applicants are to bear their own costs and to pay, jointly and severally, the costs of the Commission, including those incurred in the proceedings for interim measures;*

3. *There is no need to rule on the applications to intervene made by the Kingdom of Spain and the French Republic;*

4. *The Kingdom of Spain and the French Republic are to bear their own costs in relation to the proceedings for interim measures.*

[1] OJ C 71 of 13.3.1999.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 16 July 1999

in Case T-143/99 R: Hortiplant SAT v Commission of the European Communities

(Procedure for interim relief — Urgency)

(1999/C 366/60)

(Language of the case: Spanish)

In Case T-143/99 R: Hortiplant SAT, whose registered office is at Amposta, (Spain), represented by Concepción Fernández Vicien, of the Barcelona Bar, and Eva Contreras Ynzenga, of the Madrid Bar, Cuatrecasas Chambers, 78 Avenue d'Auderghem, 1040 Brussels, against Commission of the European Communities (Agent: Juan Guerra Fernández) — application for suspension of operation of Commission Decision C (1999) 537 of 4 March 1999 withdrawing Community aid granted — the President of the Second Chamber of the Court of First Instance made an order on 16 July 1999, the operative part of which reads as follows:

1. *The application for interim relief is dismissed.*

2. *Costs are reserved.*

Action brought on 9 September 1999 by Royal Olympic Cruises Ltd, Valentine Oceanic Trading Inc., Caroline Shipping Inc., Simpson Navigation Ltd, Solar Navigation Corporation, Ocean Quest Sea Carriers Ltd, Athena 2004 SA, Elliniki Etairia Diipirotikon Grammon AE and Freewind Shipping Company against the Council of the European Union and the Commission of the European Communities

(Case T-201/99)

(1999/C 366/61)

(Language of the case: Greek)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 September 1999 by Royal Olympic Cruises Ltd, Valentine Oceanic Trading Inc., Caroline Shipping Inc., Simpson Navigation Ltd, Solar Navigation Corporation, Ocean Quest Sea Carriers Ltd, Athena 2004 SA and Freewind Shipping Company whose registered offices are in Monrovia, Liberia, and Elliniki Etairia Diipirotikon Grammon AE, whose registered office is in Piraeus, Greece, represented by Nikolaos Skandamis, of the Athens Bar, and Andreas Potamianos of the Piraeus Bar, with an address for service in Luxembourg at the Chambers of Stéphan Le Goueff, 9 Avenue Guillaume, L-1651 Luxembourg.

The applicants claim that the Court should:

— grant their application in its entirety;

— declare that, by collaborating in acts of the European Union which are unlawful under international law, the Council of the European Union and the Commission of the European Communities have offended against the fundamental Community law principle of the protection of legitimate expectations in the field of the freedom to provide maritime transport services and maritime recreational services;

— award the applicants USD 73 963 000 in damages under Article 235 EC and the second paragraph of Article 288 EC.

Pleas in law and main arguments

Admissibility of the action

A. Legal interest in bringing proceedings

B. Exhaustion of domestic remedies

Merits of the action

A. Unlawful measures and conduct

1. Unlawful conduct of the Member States of the European Union which are also members of NATO

2. Unlawful conduct of the European Union

   a) Collaboration of the European Union in the armed intervention against the Federal Republic of Yugoslavia as autonomous conduct which is unlawful under international and European Union law

   b) Legal liability of the European Union resulting from the unlawful obligations assumed by its members by virtue of decisions of the North Atlantic Council

3. Unlawful conduct of the European Community

   a) Conduct for which the European Community is vicariously liable

   b) Autonomous unlawful conduct of the European Community

      (i) Infringement of a superior rule of law for the protection of individuals

      (ii) Sufficiently serious breach

H a r m

1. Loss of income due to cancelled and lost bookings

   a) Cancelled bookings

   b) Lost bookings

2. Loss of income by reason of reduction of the price of the services offered

3. Harm resulting from the increased burden on the budget for financing the construction of new ships, by reasony of interest due on additional borrowing

4. Lower profits by reason of loss of income in future seasons and of clientele.

Action brought on 30 September 1999 by Gitte Rasmussen against Council of the European Union

(Case T-221/99)

(1999/C 366/62)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 30 September 1999 by Gitte Rasmussen, residing in Brussels, represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

— annul the Council decision declaring that the applicant's absences between 28 September 1998 and 18 March 1999 were unlawful;

— annul the Council's decision to issue the applicant with a written warning by way of disciplinary action;

— order the Council to make a token payment to the applicant of one euro by way of compensation for the non-physical damage suffered;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant contests the finding that her absences were unlawful, submitting that:

— the Council infringed Article 59(3) of the Staff Regulations in refusing to request the Invalidity Committee to determine the validity of the medical certificates submitted by the applicant as evidence that her absences were caused by illness; and

— the Council is in breach of its obligations to give reasons for its decisions and to respect the rights of the defence, in that it has failed to produce any information of a medical nature which would enable the doctor treating the applicant to understand the reasons which have led the medical officers checking the certificates submitted to question their validity.

As regards the disciplinary action, the applicant points out that this was taken following her refusal to undergo periodical medical examinations. She emphasises in this connection that she was acting on the advice of her own doctor who believed that such examinations might have a deleterious effect on her health, a view which, according to the applicant, was recently confirmed by the Invalidity Committee's decision of 23 March 1999 finding her definitively incapable of performing her duties in view of the seriousness of the illness afflicting her. The applicant argues that she is not in breach, therefore, of the Staff Regulations and that, consequently, the decision to take disciplinary action lacks legal foundation and, at the very least, is vitiated by a manifest error of assessment.

Lastly, the applicant maintains that, by requiring her to undergo medical examinations deleterious to her health, the Council acted in dereliction of its duty on a number of counts, thereby incurring liability.

Action brought on 5 October 1999 by Jean-Claude Martinez and Charles de Gaulle against the European Parliament

(Case T-222/99)

(1999/C 366/63)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 5 October 1999 by Jean-Claude Martinez, residing at Montpellier (France), and Charles de Gaulle, residing in Paris, represented by François Wagner, of the Nice Bar, 2 Rue de la Poissonnerie, Nice.

The applicants claim that the Court should:

— annul the decision of the European Parliament dated 14 September 1999 concerning the interpretation of the Rules of Procedure;

— declare the interpretation of Rule 29(1) of the Rules of Procedure proposed by the Committee on Constitutional Affairs and the Rules of Procedure to be contrary to the Community legal order, the rule of law, the founding principles of the Union and fundamental rights.

Pleas in law and main arguments

The applicants, who are Members of the European Parliament, state that on 19 July 1999 the constitution of the 'Groupe Technique des Députés Indépendants (TDI) — Groupe mixte' was communicated to the President of the Parliament, in accordance with Rule 29 of the Parliament's Rules of Procedure. At the plenary sitting on 20 July all the political groups opposed the creation of that mixed group. The Committee on Constitutional Affairs and the Rules of Procedure was therefore called upon to provide an opinion on the conformity of that new group with Rule 29(1) of the Rules of Procedure. It proposed an interpretation to the effect that it is not possible, within the meaning of that rule, to accept the constitution of a group which openly denies possessing any political character and the existence of any political affinities between its members. On 14 September 1999 the matter was submitted to a vote of the Parliament, which, by a simple majority, adopted the interpretation proposed by the Committee. It is that decision of the Parliament which is contested in the present case.

In support of their action, the applicants advance two pleas in law:

(a) The discriminatory nature of the contested decision:

— the contested interpretation necessarily involves unequal treatment, inasmuch as it has the effect of denying the Members concerned the administrative advantages and the benefit of being able to participate in the work of the Parliament which are conferred by membership of a Parliamentary group;

— the contested interpretation diverges from most European legislative systems and parliamentary practices.

(b) Failure to respect the Community's legal order and the rule of law in the substantive sense of the term:

— the contested interpretation violates the general principle of legal certainty, in that it is manifestly contrary to the spirit of the Rules of Procedure and fails to observe the principle of the protection of legitimate expectations, which has crystallised around the provision in question over the last twenty years;

— the contested interpretation infringes fundamental rights, by disregarding the right to freedom of association and the principle of equal treatment.

Action brought on 26 October 1999 by Marie-Josée Bollendorff against the European Parliament

(Case T-260/99)

(1999/C 366/64)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 26 October 1999 by Marie-Josée Bollendorff, resident in Bertrange, Luxembourg, represented by Laurent Mosar, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 8 Rue Notre-Dame.

The applicant claims that the Court should:

— annul the decision by which the appointing authority held her absence from 9 March 1999 to 12 March 1999 to be unauthorised and deducted 28.50 working hours from her annual leave;

— in the alternative, in so far as is necessary annul the express decision of the European Parliament, notified on 26 July 1999, rejecting her complaint under Article 90(2) of the Staff Regulations;

— order the European Parliament to pay the applicant the sum of LUF 100 000 by way of damages for non-pecuniary harm;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

The applicant disputes that her absences were improper, contending:

— that the second paragraph of Article 25 of the Staff Regulations has been infringed in that the defendant did not notify her of any decision withdrawing days of leave;

— that her right to a fair hearing has been infringed in that she was not asked to explain her conduct, in particular as regards her failure to attend the medical examinations. Nor should the validity of the medical certificate produced by her have been denied without her first undergoing a medical examination;

— that Article 60 of the Staff Regulations has been erroneously applied in that the aim of that provision is to penalize the production of medical certificates issued purely to oblige the patient and not the infringement of a duty of good faith. Since the defendant alleged that the applicant had infringed a duty of good faith, it was required to found its decision solely on Article 86 of the Staff Regulations instead of on Article 60.

The applicant submits finally that, by failing to comply with the Staff Regulations and refusing to assist her in proceedings against the medical officer, the defendant has infringed Article 24 of those Regulations so as to give rise to liability on its part.

Partial removal from the register in Joined Cases T-85/93 and Others [1]

(1999/C 366/65)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal of Cases T-85/93, T-87/93, T-126/93, T-130/93, T-35/94, T-40/94, T-198/94, T-212/94, T-227/94, T-236/94, T-237/94, T-238/94, T-278/94, T-279/94, T-281/94, T-283/94, T-284/94, T-349/94, T-350/94, T-357/94 and T-360/94 from the list of Joined Cases T-85/93 and Others: Helmut Bösl and Others v Council of the European Union and Commission of the European Communities.

[1] OJ Nos C 178 of 18.7.1990, C 34 of 9.2.1991, C 90 of 26.3.1994, C 218 of 6.8.1994, C 304 of 29.10.1994 and C 370 of 24.12.1994.

Partial removal from the register in Joined Cases T-85/93 and Others [1]

(1999/C 366/66)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal of the names of the applicants Peter Dalhaus, Klaus Buck, Karl-Heinz Rohler and Ludger Beckhoff from the list of applicants in Case T-247/94 - Joined Cases T-85/93 and Others: Helmut Bösl and Others v Council of the European Union and Commission of the European Communities.

[1] OJ No C 233 of 20.8.1994.

Partial removal from the register in Joined Cases T-320/94 and Others [1]

(1999/C 366/67)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal of Cases T-320/94, T-323/94, T-324/94, T-332/94, T-333/94, T-344/94, T-345/94 and T-351/94 from the list of Joined Cases T-320/94 and Others: Klaus Harings and Others v Council of the European Union and Commission of the European Communities.

[1] OJ No C 351 of 10.12.1994.

Removal from the register of Joined Cases T-363/94 and Others [1]

(1999/C 366/68)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Joined Cases T-363/94 and Others: Benno and Hans Georg Theunissen and Others v Council of the European Union and Commission of the European Communities.

[1] OJ No C 370 of 24.12.1994, C 400 of 31.12.1994, C 54 of 4.3.1995, C 74 of 25.3.1995 and C 119 of 13.5.1995.

Partial removal from the register in Joined Cases T-366/94 and Others [1]

(1999/C 366/69)

(Language of the cases: German)

By order of 29 September 1999, the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal of Cases T-366/94, T-3/95, T-14/95, T-120/95 and T-124/95 from the list of cases in Joined Cases T-366/94 and Others: Hilde Diekmeier and Others v Council of the European Union and Commission of the European Communities.

[1] OJ No C 370 of 24.12.1994, No C 54 of 4.3.1995, No C 74 of 25.3.1995, No C 174 of 8.7.1995 and No C 208 of 12.8.1995.

Removal from the register of Case T-385/94 [1]

(1999/C 366/70)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-385/94: Johann Wißmüller v Council of the European Union and Commission of the European Communities.

[1] OJ No C 392 of 31.12.1994.

Removal from the register of Case T-397/94 [1]

(1999/C 366/71)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-397/94: Gerjet Meyenburg v Council of the European Union and Commission of the European Communities.

[1] OJ No C 400 of 31.12.1994.

Removal from the register of Case T-399/94 [1]

(1999/C 366/72)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-399/94: Josef Speckbacher v Council of the European Union and Commission of the European Communities.

[1] OJ No C 392 of 31.12.1994.

Removal from the register of Case T-160/95 [1]

(1999/C 366/73)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-160/95: Harald Meuser v Council of the European Union and Commission of the European Communities.

[1] OJ No C 248 of 23.9.1995.

Removal from the register of Case T-202/95 [1]

(1999/C 366/74)

(Language of the case: German)

By order of 29 September 1999 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-202/95: Heinrich Gottmann v Council of the European Union and Commission of the European Communities.

[1] OJ No C 351 of 30.12.1995.

Removal from the register of Case T-150/96 [1]

(1999/C 366/75)

(Language of the case: French)

By order of 19 October 1999 the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-150/96: Austin Rowan v Commission of the European Communities.

[1] OJ No C 354 of 23.11.1996.

Removal from the register of Case T-198/96 [1]

(1999/C 366/76)

(Language of the case: French)

By order of 19 October 1999 the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-198/96: Christine Dalby v Commission of the European Communities.

[1] OJ No C 54 of 22.2.1997.

Removal from the register of Case T-218/96 [1]

(1999/C 366/77)

(Language of the case: French)

By order of 19 October 1999 the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-218/96: Paul Hodson v Commission of the European Communities.

[1] OJ No C 54 of 22.2.1997.

Removal from the register of Case T-59/98 [1]

(1999/C 366/78)

(Language of the case: English)

By order of 13 October 1999, the President of the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-59/98: Honeywell Inc. v Commission of the European Communities.

[1] OJ No C 234 of 25.7.1998.

Removal from the register of Case T-97/98 [1]

(1999/C 366/79)

(Language of the case: French)

By order of 9 July 1999 the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-97/98: Maurizio Gastaldello v Committee of the Regions of the European Union.

[1] OJ No C 258 of 15.8.1998.

Removal from the register of Case T-78/99 [1]

(1999/C 366/80)

(Language of the case: English)

By order of 13 October 1999, the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-78/99: Sonia Marion Elder and Robert Dale Elder v Commission of the European Communities.

[1] OJ No C 174 of 19.6.1999.

Removal from the register of Case T-162/99 R

(1999/C 366/81)

(Language of the case: French)

By order of 22 October 1999, the President of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-162/99 R: Luigia Dricot-Daniele, Patricia De Palma and Claudine Hamptaux v Commission of the European Communities.