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JUDGMENT OF THE COURT

(Third Chamber)

of 20 January 2000

in Case C-414/98 (reference for a preliminary ruling fom Verwaltungsgericht Schwerin): Landerzeugergemeinschaft eG Gross Godems v Amt für Landwirtschaft Parchim [1]

(Agriculture — Regulation (EEC) No 4115/88 — Aid for the extensification of production — Penalties applicable)

(2000/C 102/01)

(Language of the case: German)

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

In Case C-414/98, reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Verwaltungsgericht Schwerin (Germany) for a preliminary ruling in the proceedings pending before that court between Landerzeugergemeinschaft eG Gross Godems and Amt für Landwirtschaft Parchim on the interpretation of Article 16 of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production (OJ 1988 L 361, p. 13), as amended by Commission Regulation (EEC) No 838/93 of 6 April 1993 (OJ 1993 L 88, p. 16) — the Court (Third Chamber), composed of J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 20 January 2000, in which it has ruled:

1. *Article 16(1) of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production, as amended by Commission Regulation (EEC) No 838/93 of 6 April 1993, must be interpreted to mean that the method of calculating the reduction of extensification aid which it lays down is applicable where the discrepancy between the number of units for which the aid is requested and the number of units measured exceeds two hectares but is less than 10 % of the surface for which aid is requested.*

2. *The reduction of extensification aid laid down by the second sentence of Article 16(1) of Regulation No 4115/88, as amended by Regulation No 838/93, covers the whole period of the undertaking given by the beneficiary of the aid, unless the latter can prove that the discrepancy between the number of units for which aid was requested and the number of units measured is neither intentional nor the result of negligence on its part.*

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[1] OJ C 33 of 6.2.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 January 2000

in Joined Cases C-104/89 and C-37/90 (applications for damages): J.M. Mulder, W.H. Brinkhoff, J.M.M. Muskens, T. Twijnstra (C-104/89) and Otto Heinemann (C-37/90) v Council of the European Union and Commission of the European Communities [1]

(Additional levy on milk — Non-contractual liability — Reparation and assessment of damage)

(2000/C 102/02)

(Languages of the case: Dutch and German)

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

In Joined Cases C-104/89 and C-37/90: J.M. Mulder, W.H. Brinkhoff, J.M.M. Muskens, T. Twijnstra, represented by H.J. Bronkhorst, of the Hague Bar, and E.H. Pijnacker Hordijk, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 11 Rue Goethe, and Otto Heinemann, represented by M. Düsing, Rechtsanwalt, Münster, with an address for service in Luxembourg at the Chambers of Lambert, Dupong and Konsbruck, 14a Rue des Bains, v Council of the European Union (Agents in Case C-104/89: Arthur Brautigam and G. Houttuin and, in Case C-37/90: A. Brautigam) and Commission of the European Communities (Agents in Case C-104/89: T. van Rijn and, in Case C-37/90: D. Booss, assisted by H.-J. Rabe) — application for damages under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, acting for the President of the Sixth Chamber, G. Hirsch (Rapporteur) and H. Ragnemalm, Judges; A. Saggio, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 January 2000, in which it:

— *in Case C-104/89 orders:*

1. (a) *The Council of the European Union and the Commission of the European Communities jointly and severally to pay to Mr Mulder compensation in the sum of NLG 555 818;*

   (b) *Interest at the annual rate of 1,85 % to be paid on that sum in respect of the period from 1 October 1984 to the date of delivery of the interlocutory judgment;*

   (c) *Default interest at the annual rate of 8 % to be paid on that sum in respect of the period from the latter date to the date of actual payment;*

2. (a) *The Council and the Commission jointly and severally to pay to Mr Brinkhoff compensation in the sum of NLG 362 383;*

   (b) *Interest at the annual rate of 1,85 % to be paid on that sum in respect of the period from 5 May 1984 to the date of delivery of the interlocutory judgment;*

   (c) *Default interest at the annual rate of 8 % to be paid on that sum in respect of the period from the latter date to the date of actual payment;*

3. (a) *The Council and the Commission jointly and severally to pay to Mr Muskens compensation in the sum of NLG 324 914;*

   (b) *Interest at the annual rate of 1,85 % to be paid on that sum in respect of the period from 22 November 1984 to the date of delivery of the interlocutory judgment;*

   (c) *Default interest at the annual rate of 8 % to be paid on that sum in respect of the period from the latter date to the date of actual payment;*

4. (a) *The Council and the Commission jointly and severally to pay to Mr Twijnstra compensation in the sum of NLG 579 570;*

   (b) *Interest at the annual rate of 1,85 % to be paid on that sum in respect of the period from 10 April 1985 to the date of delivery of the interlocutory judgment;*

   (c) *Default interest at the annual rate of 8 % to be paid on that sum in respect of the period from the latter date to the date of actual payment;*

— *in Case C-37/90 orders:*

5. (a) *The Council and the Commission jointly and severally to pay to Mr Heinemann compensation in the sum of DEM 17 411;*

   (b) *Interest at the annual rate of 1,5 % to be paid on that sum in respect of the period from 20 November 1984 to the date of delivery of the interlocutory judgment;*

   (c) *Default interest at the annual rate of 7 % to be paid on that sum in respect of the period from the latter date to the date of actual payment;*

— *in both cases:*

6. *Dismisses the remainder of the actions;*

7. *Orders the Council and the Commission to bear their own costs and jointly and severally to pay 90 % of the applicants' costs apart from the costs of the expert's report commissioned by the Court. The costs of that report shall be borne jointly and severally, as to 90 %, by the Council and the Commission. Since the remaining 10 % of those costs is to be borne by all of the applicants in the two cases, that percentage shall be borne as to 22 % each by the applicants in Case C-104/89 and as to 12 % by Mr Heinemann.*

(1) OJ C 109 of 29.4.1989. OJ C 71 of 21.3.1990.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 January 2000

in Case C-8/98 (reference for a preliminary ruling from the Landgericht Heilbronn): Dansommer A/S v Andreas Götz (1)

(Brussels Convention — Article 16(1) — Exclusive jurisdiction in proceedings having as their object tenancies of immovable property — Scope)

(2000/C 102/03)

(Language of the case: German)

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

In Case C-8/98: reference to the Court, pursuant to 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 Landgericht Heilbronn (Germany) for a preliminary ruling in the proceedings pending before that court between Dansommer A/S and Andreas Götz — on the interpretation of Article 16(1) (a) 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 text — 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 (Sixth Chamber) composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and G. Hirsch, Judges; Advocate General: A. La Pergola; Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 27 January 2000, in which it has ruled:

The rule laid down in Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, conferring exclusive jurisdiction in proceedings having as their object tenancies of immovable property is applicable to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.

The ancillary clauses relating to insurance in the event of cancellation and to guarantee of repayment of the price paid by the client, which are contained in the general terms and conditions of the contract concluded between that organiser and the tenant, and which do not form the subject of the dispute in the main proceedings, do not affect the nature of the tenancy as a tenancy of immovable property within the meaning of that provision of the Convention.

(1) OJ C 72 of 7.3.1998.

JUDGMENT OF THE COURT

of 27 January 2000

in Case C-190/98 (reference for a preliminary ruling from the Oberlandesgericht Linz): Volker Graf v Filzmoser Maschinenbau GmbH (1)

(Freedom of movement for workers — Compensation on termination of employment — Refusal where a worker terminates his contract of employment in order to take a job in another Member State)

(2000/C 102/04)

(Language of the case: German)

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

In Case C-190/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Oberlandesgericht (Higher Regional Court) Linz, Austria, for a preliminary ruling in the proceedings pending before that court between Volker

Graf and Filzmoser Maschinenbau GmbH — on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — the Court, composed of G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, L. Sevón, R. Schintgen (Rapporteur), Presidents of Chambers, P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges, Advocate General: N. Fennelly; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 27 January 2000, in which it has ruled:

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) does not preclude national provisions which deny a worker entitlement to compensation on termination of employment if he terminates his contract of employment himself in order to take up employment in another Member State, when those provisions grant him entitlement to such compensation if the contract ends without the termination being at his own initiative or attributable to him.

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(1) OJ C 234 of 25.7.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 3 February 2000

in Case C-207/98 (reference for a preliminary ruling from Landesarbeitsgericht Mecklenburg-Vorpommern): Silke-Karin Mahlburg v land Mecklenburg-Vorpommern (1)

(Equal treatment for men and women — Access to employment — Refusal to employ a pregnant woman)

(2000/C 102/05)

(Language of the case: German)

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

In Case C-207/98, reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Landesarbeitsgericht Mecklenburg-Vorpommern (Germany) for a preliminary ruling in the proceedings pending before that court between Silke-Karin Mahlburg and land Mecklenburg-Vorpommern — on the interpretation of Article 2(1) 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 (Sixth Chamber), composed of: P.J.G. Kapteyn (Rapporteur), acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges, Advocate General; A. Saggio, Registrar; H. von Holstein, Deputy Registrar, has given a judgment on 3 February 2000, in which it has ruled:

Article 2(1) and (3) 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 precludes a refusal to appoint a pregnant woman to a post for an indefinite period on the ground that a statutory prohibition on employment attaching to the condition of pregnancy prevents her from being employed in that post from the outset and for the duration of the pregnancy.

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(1) OJ C 234 of 25.7.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 3 February 2000

in Case C-293/98 (reference for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción de Oviedo): Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Hostelería Asturiana SA (Hoasa) (1)

(Copyright — Satellite broadcasting and cable retransmission)

(2000/C 102/06)

(Language of the case: Spanish)

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

In Case C-293/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Juzgado de Primera Instancia e Instrucción de Oviedo, Spain, for a preliminary ruling in the proceedings pending before that court between Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) and Hosteleria Asturiana SA (Hoasa) — on the interpretation of Article 1 of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15) the Court (Sixth Chamber), composed of: P.J.G. Kapteyn (Rapporteur), acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges; A. La Pergola, Advocate General ; H. von Holstein, Deputy Registrar, has given a judgment on 3 February 2000, in which it has ruled:

The question whether the reception by a hotel establishment of satellite or terrestrial television signals and their distribution by cable to the various rooms of that hotel is an 'act of communication to the public' or 'reception by the public' is not governed by Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, and must consequently be decided in accordance with national law.

(1) OJ C 299 of 26.9.1998.

JUDGMENT OF THE COURT

of 8 February 2000

in Case C-17/98 (reference for a preliminary ruling from the Arrondissementsrechtbank te 's-Gravenhage): Emesa Sugar (Free Zone) NV v Amba (1)

(Conditions governing association of overseas countries and territories — Decision 97/803/EC — Sugar imports — ACP/OCT cumulation of origin — Assessment of validity — National court — Interim measures)

(2000/C 102/07)

(Language of the case: Dutch)

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

In Case C-17/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Arrondissementsrechtbank te 's-Gravenhage (Netherlands) for a preliminary ruling in the proceedings pending before that court between Emesa Sugar (Free Zone) NV and Aruba — on the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1997 L 329, p. 50) — the Court, composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida and D.A.O. Edward (Presidents of Chambers), P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 February 2000, in which it has ruled:

1. *Examination of the first ten questions submitted has disclosed no factor of such a kind as to affect the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community.*

2. *Interim measures vis-à-vis a non-Community authority can be ordered by a national court in the event of an infringement of Community law being imminent only:*

   — *if that court entertains serious doubts as to the validity of the Community measure implemented by that authority and, should the question of the validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice;*

   — *if there is urgency and a threat of serious and irreparable damage to the applicant;*

   — *and if the national court takes due account of the Community's interests.*

   The fact that such interim measures would be ordered vis-à-vis an authority of an overseas country or territory (OCT) by a court of a Member State, in accordance with its domestic law, is not such as to affect the conditions under which the temporary protection of individuals must be ensured in proceedings before the national courts when the dispute concerns a matter of Community law.

(1) OJ C 94 of 28.3.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 February 2000

in Case C-50/96 (reference for a preliminary ruling from the Landesarbeitsgericht Hamburg): Deutsche Telekom AG v Lilli Schröder (1)

(Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers from a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law)

(2000/C 102/08)

(Language of the case: German)

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

In Case C-50/96: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landesarbeitsgericht Hamburg (Germany) for a preliminary ruling in the

proceedings pending before that court between Deutsche Telekom AG, formerly Deutsche Bundespost Telekom, and Lilli Schröder — on the interpretation of 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 the Protocol concerning Article 119 of the Treaty establishing the European Community, annexed to the EC Treaty — the Court (Sixth Chamber), composed of. R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges; G. Cosmas, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 10 February 2000, in which it has ruled:

1. *The exclusion of part-time workers from an occupational pension scheme such as that at issue in the main proceedings constitutes discrimination prohibited by Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) if that measure affects a considerably higher percentage of female workers than male workers and is not justified on objective grounds unrelated to any discrimination based on sex.*

2. *Where the exclusion of part-time workers from an occupational pension scheme constitutes indirect discrimination prohibited by Article 119 of the Treaty, the possibility of relying on the direct effect of that article is subject to a limitation in time whereby periods of service of such workers are to be taken into account only from 8 April 1976, the date of the judgment in Case 43/75 Defrenne II [1976] ECR 455, for the purposes of their retroactive membership of such a scheme and calculation of the benefits to which they are entitled, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim.*

3. *The limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty, resulting from the judgment in Defrenne II, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.*

4. *Community law, in particular the principle of non-discrimination on grounds of nationality and Article 119 of the Treaty, does not preclude provisions of a Member State which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme, notwithstanding the risk of distortions of competition between economic operators of the various Member States to the detriment of employers established in the first Member State.*

([1]) OJ C 133 of 4.5.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 February 2000

in Joined Cases C-234/96 and C-235/96 (references for preliminary rulings from the Landesarbeitsgericht Hamburg): Deutsche Telekom AG v Agnes Vick (C-234/96), Ute Conze (C-235/96) ([1])

(Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers affiliated to a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law)

(2000/C 102/09)

(Language of the case: German)

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

In Joined Cases C-234/96 and C-235/96: references to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landesarbeitsgericht Hamburg (Germany) for preliminary rulings in the proceedings pending before that court between Deutsche Telekom AG and Agnes Vick (C-234/96), Ute Conze (C-235/96) — 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) and of the Protocol on Article 119 of the Treaty establishing the European Community, annexed to the EC Treaty — the Court (Sixth Chamber), composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges; G. Cosmas, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 10 February 2000, in which it has ruled:

1. *The limitation in time of the possibility of relying on the direct effect 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), resulting from the judgment in Case 43/75 Defrenne v Sabena [1976] ECR 455, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.*

2. *The fact that the relevant national provisions prohibit all discrimination against workers by reason of the fact that they work part time, and not by reason of their sex, does not affect the answer to be given to the first question.*

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(1) OJ C 269 of 14.9.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 February 2000

in Joined Cases C-270/97 and C-271/97 (references for preliminary rulings from the Landesarbeitsgericht Niedersachsen): Deutsche Post AG v Elisabeth Sievers (C-270/97), Brunhilde Schrage (C-271/97) (1)

(Equal pay for men and women — Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — Protocol concerning Article 119 of the EC Treaty — Occupational social security schemes — Exclusion of part-time workers affiliated to a supplementary occupational retirement pension scheme — Retroactive membership — Entitlement to a pension — Relationship between national law and Community law — Interpretation consonant with Community law)

(2000/C 102/10)

(Language of the case: German)

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

In Joined Cases C-270/97 and C-271/97: references to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landesarbeitsgericht Niedersachsen (Germany) for preliminary rulings in the proceedings pending before that court between Deutsche Post AG and Elisabeth Sievers (C-270/97), Brunhilde Schrage (C-271/97) — 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) and of the Protocol concerning Article 119 of the Treaty establishing the European Community, annexed to the EC Treaty — the Court (Sixth Chamber), composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges; G. Cosmas, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 10 February 2000, in which it has ruled:

1. *The limitation in time of the possibility of relying on the direct effect 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), resulting from the judgment in Case 43/75 Defrenne v Sabena [1976] ECR 455, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.*

2. *Article 119 of the Treaty does not preclude provisions of a Member State which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of a private occupational pension scheme and to receive a pension under that scheme, notwithstanding the risk of distortions of competition between economic operators of the various Member States to the detriment of employers established in the first Member State.*

3. *National courts are required to interpret their national law as far as possible in the light of the wording and purpose of the relevant Community provisions, in particular Article 119 of the Treaty, in order to ensure application of the principle of equal pay for men and women.*

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(1) OJ C 271 of 6.9.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 February 2000

in Case C-340/97 (reference for a preliminary ruling from the Bayerisches Verwaltungsgericht Ansbach): Ömer Nazli, Caglar Nazli, Melike Nazli v Stadt Nürnberg (1)

(EEC-Turkey Association Agreement — Freedom of movement for workers — Articles 6(1) and 14(1) of Decision No 1/80 of the Association Council — Registration as duly belonging to the labour force of a Member State — Turkish worker detained pending trial and subsequently sentenced to a suspended term of imprisonment — Expulsion on general preventive grounds)

(2000/C 102/11)

(Language of the case: German)

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

In Case C-340/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bayerisches

Verwaltungsgericht Ansbach (Bavarian Administrative Court, Ansbach), Germany, for a preliminary ruling in the proceedings pending before that court between Ömer Nazli, Caglar Nazli, Melike Nazli and Stadt Nürnberg — on the interpretation of Articles 6(1) and 14(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey — the Court (Sixth Chamber), composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and G. Hirsch, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 10 February 2000, in which it has ruled:

1. *A Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey.*

2. *Article 14(1) of Decision No 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.*

(1) OJ C 357 of 22.11.1997.

JUDGMENT OF THE COURT

(Second Chamber)

of 17 February 2000

in Case C-156/97: Commission of the European Communities v Van Balkom Non-Ferro Scheiding BV (1)

(Arbitration clause — Rescission of a contract — Right to reimbursement of advance payments)

(2000/C 102/12)

(Language of the case: German)

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

In Case C-156/97: Commission of the European Communities (Agents: H. van Lier and G. zur Hausen, assisted by B. Wägenbaur) v Van Balkom Non-Ferro Scheiding BV, established in Oss, Netherlands, represented by D. Baas, Rechtsanwalt, Mannheim, Postfach 10 27 50, D-68027 Mannheim — application for recovery of an advance payment which the Commission made to the defendant in respect of a demonstration project in the field of the production of energy from crushed motor vehicle scrap metal — the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, G. Hirsch (Rapporteur) and V. Skouris, Judges; J. Mischo, Advocate General; L. Hewlett, Administrator, and then H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 17 February 2000, in which it:

1. *Orders Van Balkom Non—Ferro Scheiding BV to pay to the Commission of the European Communities the sum of EUR 251 649, plus interest on that sum as from 1 May 1995 at the percentage rates, published on the first working day of each month, which the European Monetary Cooperation Fund charges in respect of its euro transactions;*

2. *Dismisses the application as to the remainder;*

3. *Orders Van Balkom Non-Ferro Scheiding BV to pay the costs.*

(1) OJ C 212 of 12.7.1997.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 24 February 2000

in Case C-434/97: Commission of the European Communities v French Republic [1]

(Action for failure to fulfil obligations — Directive 92/12/EEC — Specific tax levied on beverages with a high alcohol content)

(2000/C 102/13)

(Language of the case: French)

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

In Case C-434/97: Commission of the European Communities (Agents: H. Michard and E. Traversa) v French Republic (Agents K. Rispal-Bellanger and G. Mignot) — application for a declaration that, by maintaining in force the provisions of Article 26 of Law No 83-25 of 19 January 1983 on the scope and tax base of the 'social security' contribution levied on alcoholic beverages, the French Republic has failed to fulfil its obligations under Article 3(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), read in conjunction with, in particular, Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — the Court (Fifth Chamber), composed of: J.C. Moitinho de Almeida, President of the Sixth Chamber, acting as President of the Fifth Chamber, L. Sevón, C. Gulmann, J.-P. Puissochet and M. Wathelet (Rapporteur), Judges; A. Saggio, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 24 February 2000, in which it:

1. *Dismisses the application;*

2. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 94 of 28.3.1998.

ORDER OF THE COURT

of 11 January 2000

in Case C-295/98: Italian Republic v Commission of the European Communities [1]

(EAGGF — Clearance of accounts — Belated nature of the action — Inadmissibility)

(2000/C 102/14)

(Language of the case: Italian)

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

In Case C-295/98: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo and G. Castellani Pastoris) v Commission of the European Communities (Agent: F.P. Ruggeri Laderchi) — application for partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28), in so far as it makes financial adjustments to certain expenditure declared by the Italian Republic — the Court, composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón and R. Schintgen, Presidents of Chambers, P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm, M. Wathelet (Rapporteur) and V. Skouris, Judges; S. Alber, Advocate General; R. Grass, Registrar, has made an order on 11 January 2000, the operative part of which is as follows:

1. *The application is dismissed as manifestly inadmissible.*

2. *The Italian Republic is ordered to pay the costs.*

([1]) OJ C 327 of 24.10.1998.

Reference for a preliminary ruling from the Korkein Hallinto-oikeus by order of that court of 17 December 1999 in the case of Stagecoach Finland v Helsingin Kaupunki and HKL-Bussiliikenne

(Case C-513/99)

(2000/C 102/15)

Reference has been made to the Court of Justice of the European Communities by an order of the Korkein Hallinto-oikeus (Supreme Administrative Court), Finland, of 17 December 1999, which was received at the Court Registry on 28 December 1999, for a preliminary ruling in the case of Stagecoach Finland v Helsingin Kaupunki and HKL-Bussiliikenne on the following questions:

1. Are the provisions on the scope of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84), in particular Article 2(1)(a), (2)(c) and (4), to be interpreted as meaning that that directive applies to a procedure of a city which is a contracting entity for the award of a contract concerning the operation of bus transport within the city, if

   — the city is responsible for the planning, development, implementation and other arrangement and supervision of public transport in its area,

   — for the above functions the city has a public transport committee and a city transport department subordinate thereto,

   — within the city transport department there is a planning unit which acts as an ordering unit which prepares proposals for the public transport committee on which routes should be put out to tender and what level of quality of services should be required, and

   — within the city transport department there are production units, economically distinct from the rest of the transport department, including a unit which provides bus transport services and takes part in tender procedures relating thereto?

2. Are the European Community provisions on public procurement, in particular Article 36(1) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) or the equivalent Article 34(1) of Directive 93/38/EEC, to be interpreted as meaning that, when organising a tender procedure concerning the operation of bus transport within the city, a city which is a contracting entity may, among the criteria for awarding the contract on the basis of the economically most advantageous tender, take into account, in addition to the tender price and the quality and environment programme of the transport operator and various other characteristics of the bus fleet, the low nitric oxide emissions and low noise level of the bus fleet offered by a tendering undertaking, in a manner announced beforehand in the tender notice, such that if the nitric oxide emissions or noise level of the individual buses are below a certain level, extra points for the fleet may be taken into account in the comparison?

3. If the answer to the above question is affirmative, an answer is requested to the following question also: Are the European Community provisions on public procurement to be interpreted as meaning that the awarding of extra points for the above-mentioned characteristics relating to nitric oxide emissions and noise level of the fleet is, however, not permitted if it is known beforehand that the department operating bus transport belonging to the city which is the contracting entity is able to offer a bus fleet possessing the above characteristics, which in the circumstances only a few undertakings in the sector are otherwise able to offer?

Reference for a preliminary ruling from the Korkein Hallinto-oikeus by order of that court of 31 December 1999 in the proceedings brought by Palin Granit Oy and Vehmassalon Kansanterveystyön Kuntayhtymän Hallitus

(Case C-9/00)

(2000/C 102/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Korkein Hallinto-oikeus (Supreme Administrative Court), Finland, of 31 December 1999, which was received at the Court Registry on 13 January 2000, for a preliminary ruling in the proceedings brought by Palin Granit Oy and Vehmassalon Kansanterveystyön Kuntayhtymän Hallitus on the following questions:

Is leftover stone resulting from stone quarrying to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste [1], as amended by Council Directive 91/156/EEC of 18 March 1991 [2], having regard to points (a) to (d) below?

(a) What relevance, in deciding the above question, does it have that the leftover stone is stored on a site adjoining the place of quarrying to await subsequent use? Is it relevant generally whether it is stored on the quarrying site, a site next to it or further away?

(b) What relevance does it have that the leftover stone is the same as regards its composition as the basic rock from which it has been quarried, and that it does not change its composition regardless of how long it is kept or how it is kept?

(c) What relevance does it have that the leftover stone is harmless to human health and the environment? To what extent generally is importance to be attached to its possible effect on health and the environment in assessing whether it is waste?

(d) What relevance does it have that the intention is to transfer the leftover stone in whole or in part away from the storage site for recovery, for example for landfill or breakwaters, and that it could be used as such without processing or similar measures? To what extent in this connection should attention be paid to how definite plans the holder of the leftover stone has for such recovery and to how soon after the leftover stone has been deposited on the storage site the recovery takes place?

(1) OJ L 194 of 25.7.1975, p. 39.
(2) OJ L 78 of 26.3.1991, p. 32.

Reference for a preliminary ruling from the Collège juridictionnel de la région de Bruxelles-Capitale (judicial board of the Brussels-Capital region) by order of that court of 9 December 1999 in the case of François De Coster v Collège des Bourgmestre et Echevins de Watermael-Boitsfort

(Case C-17/00)

(2000/C 102/17)

Reference has been made to the Court of Justice of the European Communities by an order of the Collège juridictionnel de la région de Bruxelles-Capitale of 9 December 1999, which was received at the Court Registry on 19 January 2000, for a preliminary ruling in the case of François De Coster v Collège des Bourgmestre et Echevins de Watermael-Boitsfort on the following question:

'Are Articles 1 to 3 of the tax regulation on satellite dishes adopted in a vote by the municipal council of Watermael-Boitsfort sitting in public on 24 June 1997 introducing a tax on satellite dishes compatible with Articles 59 to 66 of the Treaty establishing the European Community of 25 March 1957?'

Reference for a preliminary ruling by the Supreme Court, Dublin, by order of that court of 30 July 1999, in the case of SIAC Construction Ltd against The County Council of the County of Mayo

(Case C-19/00)

(2000/C 102/18)

Reference has been made to the Court of Justice of the European Communities by an order of the Supreme Court, Dublin, of 30 July 1999, which was received at the Court Registry on 24 January 2000, for a preliminary ruling in the case of SIAC Construction Ltd against The County Council of the County of Mayo, on the following question:

In a situation where an authority is awarding a contract pursuant to the provisions of the second indent of Article 29.1 of Council Directive (71/305/EEC) (1), Chapter 2 of 26 July 1971 as applied in the national law of a Member State, and where the authority shall have specified the 'Award criteria (other than price)' as being that the contract would be awarded to 'the competent contractor submitting a tender which is adjudged to be the most advantageous to the' (awarding authority) 'in respect of cost and technical merit' and where the three lowest tenders shall have been contractors of accepted competence and shall have submitted valid tenders of accepted technical merit, and where the tender prices of the three lowest tenderers shall not have diverged greatly, is the awarding authority obliged to award the contract to the contractor who shall have tendered the lowest price or is the awarding authority entitled to award the contract to the contractor with the second lowest price on the basis of the professional report of its consulting engineer that the ultimate cost of the contract to the awarding authority is likely to be less if the contract is awarded to the contractor who tendered the second lowest price than it would be if the contract were awarded to the contractor who tendered the lowest price?

(1) Concerning the co-ordination of procedures for the award of public works contracts (OJ L 185 of 16.8.1971, p. 5) (SE SER1 71(II) p. 682).

Appeal brought on 27 January 2000 by the Council of the European Union against the judgment delivered on 1 December 1999 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-125/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa) and the United Kingdom of Great Britain and Northern Ireland, and the Council of the European Union, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Commission of the European Communities, and T-152/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa), and the Commission of the European Communities, supported by Stichting Kwaliteitsgarantie Vleeskalveren sector (SKV) and the Council of the European Union

(Case C-23/00 P)

(2000/C 102/19)

An appeal against the judgment delivered on 1 December 1999 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-125/96 [1] Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa) and the United Kingdom of Great Britain and Northern Ireland, and the Council of the European Union, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Commission of the European Communities, and T-152/96 [2] Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa), and the Commission of the European Communities, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Council of the European Union, was brought before the Court of Justice of the European Communities on 27 January 2000 by the Council of the European Union, represented by Mrs Moyra Sims-Robertson and Mr Ignacio Díez Parra, Legal Advisers, acting as agents, with an address for service in Luxembourg at the office of Mr Alessandro Morbilli, Director of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg.

The Appellant claims that the Court should:

— rule on the objection of inadmissibility raised by the Council in Case T-125/96;

— set aside that part of the decision of the Court of First Instance dispensing with the need to rule on the objection of inadmissibility raised by the Council.

Pleas in law and main arguments

In accordance with the terms of the judgment, the Council has been entirely successful in its defence of all claims raised before the Court, namely, in the action for partial annulment of Council Directive 96/22/EC [3] and the claim for compensation arising from the adoption of the said directive in Case T-125/96 and the related plea of illegality raised in the context of the action for the partial annulment of Commission Regulation 1312/96 [4] in Case T-152/96.

Notwithstanding the apparently successful outcome of the action, the Council lodges the present appeal in relation to the judgment in Case T-125/96, as it considers that the Court of First Instance committed a fundamental error of law by failing to properly examine the Council's plea of inadmissibility. In the submission of the Council, failure by the Court to firstly rule on the right of a natural or legal person to bring annulment proceedings against a directive, prior to its consideration of the merits of the case, is in contradiction with the letter and the spirit of Article 230(4)EC and in contradiction with the Court's own case-law.

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(1) OJ C 318 of 26.10.1996, p. 15.

(2) OJ C 354 of 23.11.1996, p. 32.

(3) Of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ L 125, 23.05.96, p. 3).

(4) Of 8 July 1996 amending Annex III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ L 170 of 9.7.1996, p. 8).

Reference for a preliminary ruling by the Commissione Tributaria Regionale di Venezia — Sezione No 31, by order of that court of 9 December 1999 in the case of Ufficio delle Entrate di Venezia 2 against Hôtel Plaza SpA

(Case C-25/00)

(2000/C 102/20)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Regionale di Venezia 2 — Sezione 31 (Regional Tax Court, Venice — Section 31) of 9 December 1999, received at the Court Registry on 28 January 2000, for a preliminary ruling in the case of Ufficio delle Entrate di Venezia 2 against Hôtel Plaza SpA on the following questions:

a) Is a direct, extraordinary, periodic tax (0.75 % per annum; Decree-Law No 394/92, converted into Law No 461/92, extended by Decree-Law No 564/94, converted into Law No 656/94 and extended by Law No 549/95) compatible with Community law, and in particular with Directive No 69/335/EEC? [1]

b) Having regard to the teleological criterion which, EEC case-law shows, is to be preferred to literal and systematic criteria, is it lawful to levy the tax on assets upon capital, as defined under the heading 'Passivo/A) Patrimonio netto/I Capitale' in Article 2424 [2] of the Civil Code, as amended by Article 5 of Decree-Law No 127/91, where that capital has already been assessed to an initial tax on contributions in accordance with Presidential Decree No 131/86?

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[1] Council Directive of 17 July 1969 (OJ, English Special Edition 1969 (II), p. 405).

[2] Article 2424 of the Civil Code sets out a number of balance sheet items.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office), by order of that court of 21 December 1999, in the case of The Queen against Secretary of State for the Environment, Transport and the Regions, ex parte: Omega Air Ltd

(Case C-27/00)

(2000/C 102/21)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office), of 21 December 1999, which was received at the Court Registry on 31 January 2000, for a preliminary ruling in the case of the Queen against Secretary of State for the Environment, Transport and the Regions, ex parte: Omega Air Ltd, on the following question:

Is Article 2(2) of Council Regulation (EC) No 925/1999 [1] invalid insofar as it defines 'recertificated civil subsonic jet aeroplanes' so that re-engined aeroplanes 'with engines having a by-pass ratio of three or more' are not subject to prohibitions imposed by the Regulation but aeroplanes wholly re-engined with engines having a by-pass ratio of less than three are subject to prohibitions, having regard in particular to:

(i) the duty to give reasons under Article 253 of the EC Treaty;

(ii) the general principle of proportionality;

(iii) such rights as private parties may derive from the General Agreement on Tariffs and Trade and/or the Agreement on Technical Barriers to Trade?

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[1] On the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of volume 1, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993) (OJ L 115 of 4.5.1999, p. 1) and Corrigendum (OJ L 120 of 8.5.1999, p. 47).

Reference for a preliminary ruling from the Oberster Gerichtshof by order of that court of 14 December 1999 in the case of Liselotte Kauer v Pensionsversicherungsanstalt der Angestellten

(Case C-28/00)

(2000/C 102/22)

Reference has been made to the Court of Justice of the European Communities by an order of the Oberster Gerichtshof (Supreme Court), Austria, of 14 December 1999, which was received at the Court Registry on 1 February 2000, for a preliminary ruling in the case of Liselotte Kauer v Pensionsversicherungsanstalt der Angestellten on the following question:

Is Article 94(1) to (3) 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 [1], as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 [2], as amended by Council Regulation (EEC) No 1249/92 of 30 April 1992 [3], to be interpreted as precluding a national provision under which, for the purpose of pension insurance, periods of child-rearing in the country are to be regarded as substitute qualifying periods but such periods in a Member State of the EEA (in this case Belgium) are to be regarded as such only where they occur after that Agreement entered into force (1 January 1994) and, in addition, only on condition that entitlement to a cash benefit

stemming from maternity insurance under the (Austrian) Allgemeines Sozialversicherungsgesetz (General Law on Social Security) (ASVG) or another (Austrian) federal law or to a maternity benefit under the (Austrian) Betriebshilfegesetz exists, or existed, in respect of that child?

(1) OJ, English Special Edition 1971 (II), p. 416.
(2) OJ 1983 L 230, p. 6.
(3) OJ 1992 L 136, p. 28.

Reference for a preliminary ruling by the First Chamber of the Cour de Cassation (Belgium) by judgment of that court of 21 January 2009 in the case of Conseil National de l'Ordre des Architectes against Nicholas Dreessen

(Case C-31/00)

(2000/C 102/23)

Reference has been made to the Court of Justice of the European Communities by judgment of the First Chamber of the Cour de Cassation (Court of Cassation) (Belgium) of 21 January 2000, which was received at the Court Registry on 7 February 2000, for a preliminary ruling in the case of Conseil National de l'Ordre des Architectes against Nicholas Dreessen on the following question:

Do Articles 5 and 52 of the Treaty of Rome mean that the competent authority of a Member State before which a Community national who holds a diploma obtained in another Member State makes an application for authorisation to practise a profession to which access is, in accordance with national legislation, subject to the possession of a diploma or a vocational qualification, is required to take account of the diploma relied upon by the applicant and to make a comparison between the competence and qualifications evidenced by that diploma and the competence and qualifications required under the national rules, even where there exists, with regard to the profession in question, a directive adopted by the Council on the basis of Article 57(1) and (2) of the Treaty, and that directive provides, so far as concerns courses of study started or followed during a transitional period, an exhaustive list of the diplomas or certificates, awarded in the various Member States, enabling practice of the profession concerned in the other Member States, where the applicant falls within the scope of those transitional arrangements and the diploma on which he relies is not included in that exhaustive list?

Appeal brought on 7 February 2000 by the Commission of the European Communities against the judgment delivered on 1 December 1999 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-125/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa) and the United Kingdom of Great Britain and Northern Ireland, and the Council of the European Union, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Commission of the European Communities, and T-152/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa), and the Commission of the European Communities, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Council of the European Union

(Case C-32/00 P)

(2000/C 102/24)

An appeal against the judgment delivered on 1 December 1999 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-125/96 (1) Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa) and the United Kingdom of Great Britain and Northern Ireland, and the Council of the European Union, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Commission of the European Communities, and T-152/96 (2) Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn Ltd, supported by Fédération Européenne de la Santé Animale (Fedesa), and the Commission of the European Communities, supported by Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) and the Council of the European Union, was brought before the Court of Justice of the European Communities on 7 February 2000 by the Commission of the European Communities, represented by Mr Xavier Lewis, Member of the Legal Service, acting as agent, with an address for service in Luxembourg at the office of Mr Carlos Gómez de la Cruz, Centre Wagner.

The Appellant claims that the Court should:

1. Annul that part of the judgment of the Court of First Instance of 1 December 1999 in Joined Cases T-125/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn v. Council of the European Union and T-152/96 Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn v. Commission of the European Communities which annuls Commission Regulation (EC) No 1312/96 of 8 July 1996 amending Annex III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1996 L 170, p. 8) in so far as it restricts the validity of the MRLs which it establishes for clenbuterol to certain specified therapeutic indications for bovines and equines;

2. Dismiss the action for annulment of Regulation 1312/96 lodged by Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn in T-152/96 as unfounded;

3. Order Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn to pay the costs of this appeal;

4. Order Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn to bear the costs of the action for annulment in Case T-152/96.

Pleas in law and main arguments

The Commission submits that the Court of First Instance erred in law in finding that the Commission had exceeded its powers by restricting the validity of the maximum residue limits (MRLs) established in Regulation 1312/96.

The Commission also submits that the reasoning used to support that conclusion is contradictory, incomplete and wrong.

([1]) OJ C 318 of 26.10.1996, p. 15.
([2]) OJ C 354 of 23.11.1996, p. 32.

Action brought on 8 February 2000 by the Commission of the European Communities against the United Kingdom

(Case C-35/00)

(2000/C 102/25)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 8 February 2000 by the Commission of the European Communities, represented by Mr Richard Wainwright, Principal Legal Adviser, and Ms Lena Ström, Legal Adviser, acting as agents, with an address for service in Luxembourg at the office of Mr Carlos Gómez de la Cruz, Centre Wagner.

The Applicant claims that the Court should:

— declare that, by failing to draw up waste-management plans in conformity with all the requirements of Directives 75/442/EEC ([1]), 91/689/EEC ([2]) and 94/62/EC ([3]) concerning waste and/or inform the Commission thereof, the United Kingdom Government has failed to fulfil its obligations under Articles 7, 6 and 14 respectively of these Directives,

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

The existing waste management plans currently notified to the Commission under Article 7 of Directive 75/442/EEC do not appear to cover the whole territory of the United Kingdom. From the information provided the Commission has had to conclude that the United Kingdom has not notified sufficient waste plans to cover the whole territory of the United Kingdom.

As regards Directive 91/689/EEC, an examination of Annex I of the Reasoned Opinion shows that 21 of the notified plans do not contain the requisite information relating to hazardous waste. By virtue of Article 6 of this directive, the United Kingdom authorities are required to draw up plans for the management of hazardous waste. From the information provided, the United Kingdom has failed to fulfil this obligation.

Furthermore, as regards Directive 94/62/EC, only one plan appears to include a chapter on packaging waste. By virtue of Article 14 of this directive, the United Kingdom authorities are required to include a specific chapter on the management of packaging and packaging waste in an Article 7 waste plan. From the information provided, the United Kingdom has failed to fulfil this obligation.

([1]) Of the Council of 15 July 1975 on waste (OJ L 194 of 25.7.1975, p. 39).
([2]) Of the Council of 12 December 1991 on hazardous waste (OJ L 377 of 31.12.1991, p. 20).
([3]) Of the European Parliament and Council of 20 December 1994 on packaging and packaging waste (OJ L 365 of 31.12.1994, p. 10).

Action brought on 14 February 2000 by the Commission of the European Communities against Ireland

(Case C-46/00)

(2000/C 102/26)

An action against Ireland was brought before the Court of Justice of the European Communities on 14 February 2000 by the Commission of the European Communities, represented by Karen Banks, Legal Adviser, and Bernard Mongin, member of the Legal Service acting as agents, with an address for service at the office of Carlos Gómez de la Cruz, also of the Legal Service of the Commission, Wagner Centre, Kirchberg, Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to notify the laws, regulations or administrative provisions necessary to comply with Commission Directive 98/21/EC of 8 April 1998 [1] amending Council Directive 93/16/EEC [2] to facilitate the free movement of doctors and the mutual recoginition of their diplomas, certificates and other evidence of formal qualifications, or by failing to adopt the measures necessary to comply with it, Ireland has failed to fulfil its obligations under that Directive

2) order Ireland to pay the costs of these proceedings.

Pleas in law and main arguments

Article 249 EC (ex Article 189 of the EC Treaty), under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 31 December 1998 without Ireland having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

(1) OJ L 119 of 22.4.1998, p. 15.
(2) OJ L 165 of 7.7.1993, p. 1.

Removal from the register of Case C-255/92 P (1)

(2000/C 102/27)

By order of 9 December 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-255/92 P: BASF AG v Commission of the European Communities.

(1) OJ C 187 of 24.7.1992.

Removal from the register of Case C-129/99 (1)

(2000/C 102/28)

By order of 10 December 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-129/99: Federal Republic of Germany v Commission of the European Communities.

(1) OJ C 188 of 3.7.1999.

Removal from the register of Case C-399/95 (1)

(2000/C 102/29)

By order of 13 December 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-399/95: Federal Republic of Germany v Commission of the European Communities.

(1) OJ C 77 of 16.3.1996.

Removal from the register of Case C-195/96 (1)

(2000/C 102/30)

By order of 13 December 1999 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-195/96: Federal Republic of Germany v Commission of the European Communities.

(1) OJ C 247 of 24.8.1996.

Removal from the register of Case C-333/98 (1)

(2000/C 102/31)

By order of 17 January 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-333/98 (reference for a preliminary ruling from the Commissione dei v i Provvedimenti dell'Ufficio Italiano Brevetti e Marchi): Merck & Co Inc. v Ufficio Italiano Brevetti e Marchi.

(1) OJ C 327, 24.10.1998.

Removal from the register of Case C-291/99 (1)

(2000/C 102/32)

By order of 18 January 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-291/99 (reference for a preliminary ruling from the Tribunale di Trieste, Prima Sezione Civile): Crossbow Srl v Ministero delle Finanze.

(1) OJ C 314, 30.10.1999.

Removal from the register of Case C-25/99 [1]

(2000/C 102/33)

By order of 21 January 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-25/99: Commission of the European Communities v Republic of Austria.

[1] OJ C 86, 27.3.1999.

Removal from the register of Case C-346/99 [1]

(2000/C 102/34)

By order of 25 January 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-346/99: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 333, 20.11.1999.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 December 1999

in Joined Cases T-190/95 and T-45/96, Société de Distribution de Mécaniques et d'Automobiles (Sodima) v Commission of the European Communities [1]

(Competition — Distribution of motor-vehicles — Examination of complaints — Action for declaration for failure to act, for annulment and for compensation — Inadmissibility)

(2000/C 102/35)

(Language of the case: French)

In Joined Cases T-190/95 and T-45/95: Société de Distribution de Mécaniques et d'Automobiles (Sodima), established in Istres, France, represented by Dominique Rafoni, liquidator and Jean-Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon, v Commission of the European Communities (Agents: initially Giuliano Marenco and Guy Charrier, then Giuliano Marenco and Loïc Guérin) — Application for, first, a declaration that the Commission unlawfully failed to define its position following a complaint by the applicant under Article 85 of the EC Treaty (now Article 81 EC) and under Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16); secondly, annulment of an alleged implied refusal to notify the facts of the case to the applicant; thirdly, annulment of an alleged implied decision to join the applicant's complaint with other complaints; and, fourthly, compensation for damage — The Court of First Instance (First Chamber), composed of B. Vesterdorf, President and J. Pirrung and M. Vilaras, Judges; H. Jung, Registrar, has given a judgment on 13 December 1999, in which it:

1. *Dismisses the application in Case T-190/95 as inadmissible;*

2. *Rules that there is no further need to decide on the application for failure to act in Case T-45/96;*

3. *Dismisses the remainder of the application in Case T-45/96 as inadmissible.*

4. *Orders the applicant to bear the costs of Case T-190/95. Each of the parties is ordered to bear its own costs relating to Case T-45/96.*

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(1) OJ C 333, 9.12.1995 and C 145, 18.5.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 December 1999

in Joined Cases T-9/96 and T-211/96, Européenne Automobile SARL v Commission of the European Communities [1]

(Competition — Distribution of motor-vehicles — Examination of complaints — Action for a declaration of failure to act, for annulment and for compensation)

(2000/C 102/36)

(Language of the case: French)

In Joined Cases T-9/96 and T-211/96, Européenne Automobile SARL, established in Carcassonne, France, represented by Jean-Claude Fourgoux, of the Paris Bar with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix Bourbon, v Commission of the European Communities (Agents: initially Giuliano Marenco and Guy Charrier, then Giuliano Marenco and Loïc Guérin) — Application for annulment of the Commission Decision of 9 October 1996 dismissing a complaint by the applicant under Article 85 of the EC Treaty (now Article 81 EC) and for compensation for damage — The Court of First Instance (First Chamber), composed of B. Vesterdorf, President and J. Pirrung and M. Vilaras, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 13 December 1999, in which it:

1. *Dismisses the application in Case T-211/96;*

2. *Orders the applicant to bear the costs of Case T-211/96;*

3. *Orders Case T-9/96 to be struck off the register;*

4. *Orders the Commission to bear the costs of Case T-9/96.*

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(1) OJ C 95, 30.3.1996 and C 54, 22.2.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 December 1999

in Case T-158/96: Acciaierie di Bolzano SpA v Commission of the European Communities [1]

(ECSC Treaty — Action for annulment — State aid — Decision finding aid incompatible and ordering its repayment — Unnotified aid — Steel Aid Code applicable — Rights of the defence — Protection of legitimate expectations — Interest rate applicable — Statement of reasons)

(2000/C 102/37)

(Language of the case: Italian)

In Case T-158/96: Acciaierie di Bolzano SpA, established in Bolzano (Italy), represented initially by Giulio Macrí and Bruno Nascimbene, of the Milan Bar, and Massimo Condinanzi, of the Biella Bar, and subsequently by Mr Nascimbene alone, with an address for service in Luxembourg at the Chambers of Franco Colussi, 36 Rue de Wiltz, supported by Falck SpA, established in Milan (Italy), represented initially by Giulio Macrí and Franco Colussi, of the Milan Bar, and subsequently by Mr Macrí and Massimo Condinanzi, of the Biella Bar, with an address for service in Luxembourg at the Chambers of Franco Colussi, 36 Rue de Wiltz, and by the Italian Republic (Agents: Umberto Colesanti and Aiello Giacomo) against the Commission of the European Communities (Agents: Enrico Traversa, Paul Nemitz, Enrico Altieri and, in the oral proceedings, Tito Ballarino) — application for the annulment of Commission Decision 96/617/ECSC of 17 July 1996 concerning aid granted by the Autonomous Province of Bolzano (Italy) to Acciaierie di Bolzano (OJ 1996 L 274, p. 30) — the Court of First Instance (Fifth Chamber, Extended Composition), composed of J.D. Cooke, President of the Chamber, R. Garcia-Valdecasas, P. Lindh, J. Pirrung and M. Vilaras, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 16 December 1999, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and to pay the costs of the Commission;*

3. *Orders each intervener to bear its own costs.*

[1] OJ C 54, 22.2.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 February 2000

in Case T-183/97: Carla Micheli and Others v Commission of the European Communities [1]

(Action for annulment — Community policy for research and technological development — MAST III Programme — Decision adopting the list of project proposals eligible for a Community contribution —Exclusion of a proposal for Community financing — Interest in bringing an action — No need to adjudicate)

(2000/C 102/38)

(Language of the case: Italian)

In Case T-183/97: Carla Micheli, Andrea Peirano, Carlo Nike Bianchi and Marinella Abbate, represented by Wilma Viscardini Donà, Mariano Paolin and Simonetta Donà, of the Padua Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 39 Rue Mathias Hardt, against the Commission of the European Communities (Agents: Eugenio de March and Alberto Dal Farro) — application for the annulment of the Commission's decision establishing the list of project proposals eligible for a Community contribution under the specific programme of research and technological development, including demonstration, in the field of marine science and technology (1994 to 1998), in so far as it excludes the POSIBLE project coordinated by Carla Micheli, which decision was notified by the Commission's letter of 26 March 1997, received by fax on 17 April 1997 and by post on 20 May 1997 — the Court of First Instance (Fourth Chamber), composed of R.M. Moura Ramos, President of the Chamber, V. Tiili and P. Mengozzi, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 17 February 2000, the operative part of which is as follows:

1. *There is no further need to adjudicate on this case;*

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

[1] OJ C 271 of 6.9.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 February 2000

in Case T-241/97: Stork Amsterdam BV v Commission of the European Communities [1]

(Competition — Administrative procedure — Examination of complaints — Infringement of Article 85 of the EC Treaty (now Article 81 EC) — Comfort letters — Reopening the procedure — Statement of reasons — Duty to provide — Extent — Cooperation agreement — Exclusive mutual supply clause — No-compete clause)

(2000/C 102/39)

(Language of the case: Dutch)

In Case T-241/97: Stork Amsterdam BV, established in Amsterdam, represented by A.J. Braakman, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe, against Commission of the European Communities (Agents: Wouter Wils and Hans Gilliams), supported by Serac Group, established in Paris, represented by Mary-Claude Mitchell, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Guy Harles, 8-10 Rue Mathias Hardt — application for annulment of the decision contained in the Commission's letter of 20 June 1997 rejecting the complaint made by the applicant with a view to obtaining a declaration that a cooperation agreement it entered into with Serac Group to market complete production lines for manufacturing plastic bottles and filling them aseptically with liquid foods is incompatible with Article 85 of the EC Treaty (now Article 81 EC) — the Court of First Instance (Fourth Chamber), composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 17 February 2000, in which it:

1. *Annuls the Commission's decision contained in its letter of 20 June 1997, rejecting the complaint made by the applicant seeking a declaration that a cooperation agreement between Stork Amsterdam BV and Serac Group for marketing production lines for manufacturing plastic bottles and aseptically filling them with liquid foods is incompatible with Article 85 of the EC Treaty (now Article 81 EC);*

2. *Orders the Commission to bear its own costs and to pay those incurred by the applicant, apart from those occasioned to the applicant by the intervention of Serac which shall bear its own costs, and the applicant to bear the costs it has incurred as a result of Serac's intervention.*

(1) OJ C 357 of 22.11.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 December 1999

in Case T-300/97: Benito Latino v Commission of the European Communities [1]

(Officials — Occupational disease — Exposure to asbestos — Rate of permanent partial invalidity — Irregularity of the opinion of the medical board — Failure to state reasons)

(2000/C 102/40)

(Language of the case: French)

In Case T-300/97: Benito Latino, a former official of the Commission of the European Communities, residing in Brussels, represented initially by Olivier Eben, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Jean Tonner, 29 Rue du Fossé, Esch-sur-Alzette, and subsequently by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire, 2-4 Rue Beck, v Commission of the European Communities (Agents: Julian Currall and Jean-Luc Fagnart) — application, first, for annulment of the Commission's decision of 11 February 1997 acknowledging the applicant's occupational disease and fixing his rate of permanent partial invalidity at 5 % and, second, for compensation for the non—material damage allegedly suffered by the applicant — the Court of First Instance (Second Chamber), composed of: A. Potocki, President, and C.W. Bellamy and A.W.H. Meij, Judges; H. Jung, Registrar, has given a judgment on 15 December 1999, in which it:

1. *Annuls the Commission's decision of 11 February 1997 concerning the applicant's request for acknowledgement of his occupational disease;*

2. *Dismisses the remainder of the application;*

3. *Orders the Commission to pay the costs.*

(1) OJ C 41 of 7.2.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 December 1999

in Case T-27/98: Albert Nardone v Commission of the European Communities [1]

(Officials — Occupational disease — Exposure to asbestos and other substances — Rate of permanent partial invalidity — Irregularity of the opinion of the medical board)

(2000/C 102/41)

(Language of the case: French)

In Case T-27/98: Albert Nardone, a former official of the Commission of the European Communities, residing at Piétrain (Belgium), represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire, 2-4 Rue Beck, v Commission of the European Communities (Agents: Julian Currall and Jean-Luc Fagnart) — application for annulment of the Commission's decision of 29 May 1997 concerning a request for acknowledgement of the applicant's occupational disease and fixing his rate of permanent partial invalidity at 6 % — the Court of First Instance (Second Chamber), composed of: A. Potocki, President, and C.W. Bellamy and A.W.H. Meij, Judges; H. Jung, Registrar, has given a judgment on 15 December 1999, in which it:

1. *Annuls the Commission's decision of 29 May 1997 concerning the applicant's request for acknowledgement of his occupational disease;*

2. *Orders the Commission to pay the costs.*

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[1] OJ C 94 of 28.3.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 February 2000

in Joined Cases T-32/98 and T-41/98: Government of the Netherlands Antilles v Commission of the European Communities [1]

(Association of the overseas countries and territories — Regulation (EC) No 2352/97 — Regulation (EC) No 2494/97 — Application for annulment — Admissibility — OCT Decision — Safeguard measure — Causal link)

(2000/C 102/42)

(Language of the case: Dutch)

In Joined Cases T-32/98 and T-41/98: Government of the Netherlands Antilles, represented by M. Slotboom and P.V.F. Bos, of the Rotterdam Bar, with an address for service at the Chambers of M. Loesch, 11, Rue Goethe v Commission of the European Communities (Agents: T. van Rijn and P.L. Kuijper), supported by Kingdom of Spain (Agent: N. Díaz Abad) — application in Case T-32/98, for the annulment of Commission Regulation (EC) No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 326, p. 21) and, in Case T-41/98, for the annulment of Commission Regulation (EC) No 2494/97 of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97 (OJ 1997 L 343, p. 17) — the Court (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 10 February 2000, in which it:

1. *Joins Cases T-32/98 and T-41/98 for the purposes of the judgment;*

2. *Annuls Commission Regulation (EEC) No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories;*

3. *Annuls Commission Regulation (EEC) No 2494/97 of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97;*

4. *Orders the Commission to pay its own costs and those of the Netherlands Antilles Government in both cases;*

5. *Orders the intervener to bear its own costs in both cases.*

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(1) OJ C 113 of 11.4.1998 and C 137 of 2.5.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 3 February 2000

in Joined Cases T-46/98 and T-151/98: Council of European Municipalities and Regions (CEMR) v the Commission of the European Communities (1)

(Action for annulment — European Regional Development Fund — Reduction of financial assistance — Failure to state reasons — Legitimate expectations — Legal certainty)

(2000/C 102/43)

(Language of the case: French)

Joined Cases T-46/98 and T-151/98, Council of European Municipalities and Regions (CEMR), an association formed under French law, established in Paris, represented by Daniel M. Tomasevic and Francis Herbert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Katia Manhaeve, 56-58, Rue Charles Martel, against Commission of the European Communities, (Agent: Peter Oliver) — application for the annulment of the Commission's decision reducing the financial assistance granted to the applicant by the European Regional Development Fund for the European City Cooperation System Programme — the Court of First Instance of the European Communities (Fourth Chamber), composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges; A. Mair, Administrator, for the Registrar has given a judgment on 3 February 2000, in which it:

1. *Annuls the Commission decision contained in Debit Note No 970004505 F relating to the European City Cooperation System Project No 91/00/29/003, issued in December 1997 and amended on 15 July 1998, in so far as it concerns the refusal of cofinancing in respect of expenditure declared by the Commission to be ineligible, with the exception of expenditure connected with the Strasbourg General Assembly in the amounts of ECU 101 598 and ECU 256 882;*

2. *Dismisses the remainder of the application in Case T-46/98;*

3. *Rules that there is no need to adjudicate in Case T-151/98;*

4. *Orders the Commission to bear all the costs.*

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(1) OJ C 151 of 16.5.1998 and C 358 of 21.11.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 1 February 2000

in Case T-63/98: Transpo Maastricht BV and Marco Ooms v Commission of the European Communities (1)

(Inland waterway transport — Structural improvements — Application of Regulation (EEC) No 1101/89 — Exemption)

(2000/C 102/44)

(Language of the case: Dutch)

In Case T-63/98: Transpo Maastricht BV, established in Maastricht, Netherlands and Marco Ooms, of Terneuzen, Netherlands, represented by M. J. van Dam, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Fernand Entringer, 34A Rue Philippe II v Commission of the European Communities (Agents: M. Lugard and L. Pignataro) — application for the annulment of the Commission's decision of 13 February 1998 refusing to grant the applicants, in respect of the vessel Durance, an exemption under Article 8(3)(c) of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25) — the Court of First Instance (Fifth Chamber), composed of: J.D. Cooke, President, and R. García-Valdecasas and P. Lindh, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 1 February 2000, in which it:

1. *Dismisses the application;*

2. *Orders the applicants to bear their own costs and to pay those incurred by the Commission jointly and severally.*

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(1) OJ C 184 of 13.6.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 December 1999

in Case T-143/98: Michael Cendrowicz v Commission of the European Communities [1]

(Officials — Appointments — Determination of the level at which posts are to be filled — Vacancy notice — Consideration of the comparative merits — Manifest error)

(2000/C 102/45)

(Language of the case: French)

In Case T-143/98: Michael Cendrowicz, an official of the Commission of the European Communities, represented by Marc-Alber Lucas, of the Liège Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sarl, 30 Rue de Cessange, against Commission of the European Communities (Agents: Christine Berardis-Kayser and Florence Duvieusart-Clotuche) — application for, first, annulment of the decision of the Commission appointing Carlos Camino to post COM/98/97 as Head of Unit 1 'India, Nepal, Bhutan, Sri Lanka' in Directorate C of Directorate-General 1B, of the decision rejecting his application for that post and, in so far as necessary, the decision rejecting his claim for damages and, secondly, a claim for damages — the Court of First Instance (Fourth Chamber), composed of R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, gave a judgment on 16 December 1999, in which it:

1. *Dismisses the application.*

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

[1] OJ C 340 of 1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 December 1999

in Case T-144/98: Dino Cantoreggi v European Parliament [1]

(Officials — Promotion — Examination of comparative merits)

(2000/C 102/46)

(Language of the case: French)

In Case T-144/98: Dino Cantoreggi, an official of the European Parliament, residing in Brussels, represented by Eric Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim, v European Parliament (Agents: Yannis Pantalis and Denis Waelbroeck), supported by N, represented by Jean-Noël Louis and Greta-Françoise Parmentier, of the Brussels Bar, and Cathy Arendt, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 49 Boulevard Royal — application for annulment of a refusal of promotion — the Court of First Instance (Second Chamber), composed of: A. Potocki, President, and J. Pirrung and A.W.H. Meij, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 15 December 1999, in which it:

1. *Annuls the decisions of the European Parliament of 12 February, 25 February and 22 June 1998, respectively appointing N to the post of head of the Buildings Management Division, rejecting the application of the applicant for that post and rejecting the applicant's complaint;*

2. *Orders the European Parliament to bear its own costs and to pay the applicant's costs;*

3. *Orders N, as intervener, to bear his own costs.*

[1] OJ C 340 of 7.11.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 December 1999

in Case T-198/98: Micro Leader Business v Commission of the European Communities [1]

(Competition — Complaint — Rejection — Articles 85 and 86 of the EC Treaty (now Articles 81 and 82 EC) — Prohibition on importing software marketed in a third country — Exhaustion of copyright — Directive 91/250/EEC)

(2000/C 102/47)

(Language of the case: French)

In Case T-198/98, Micro Leader Business, a company incorporated under French law, established in Aulnay-sous-Bois, France, represented by Silvestre Tandeau de Marsac, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Brucher and Seimetz, 10 Rue de Vianden, against Commission of the European Communities, (Agents: initially José Crespo Carrillo, and Loïc Guérin and, subsequently, Giuliano Marenco, and Loïc Guérin) — application for annulment of the Commission's decision of 15 October 1998 (Case IV/36.219 Micro Leader/Microsoft) definitively rejecting the applicant's complaint that the actions of Microsoft France and Microsoft Corporation in seeking to prevent French-language editions of Microsoft software packages marketed in Canada from being imported into France are contrary to Articles 85 and 86 of the EC Treaty (now Articles 81 and 82 EC) — the Court of First Instance of the European Communities (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 16 December 1999, in which it:

1. *Annuls the Commission's decision of 15 October 1998 (Case IV/36.219 Micro Leader/Microsoft) definitively rejecting the applicant's complaint that the actions of Microsoft France and Microsoft Corporation in seeking to prevent French-language editions of Microsoft software packages marketed in Canada from being imported into France are contrary to Articles 85 and 86 of the EC Treaty (now Article 81 EC and 82 EC).*

2. *Orders the Commission to pay the costs.*

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[1] OJ C 71 of 13.3.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 3 February 2000

in Case T-60/99: Malcolm Townsend v Commission of the European Communities [1]

(Officials — Joint sickness insurance scheme — Cover for spouses)

(2000/C 102/48)

(Language of the case: French)

In Case T-60/99: Malcolm Townsend, an official of the Commission of the European Communities, residing at Sterrebeek (Belgium), represented by Jean-Noël Louis and Greta-Françoise Parmentier, 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: Julian Currall and Florence Duvieusart-Clotuche) — application for annulment of the decision of the Brussels Settlements Office of 12 March 1998 refusing to reimburse to the applicant certain medical expenses incurred by his wife — the Court of First Instance (Single Judge), composed of: V. Tiili, sitting as a single judge; J. Palacio González, Administrator, for the Registrar, has given a judgment on 3 February 2000, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 160 of 5.6.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 7 February 2000

in Case T-168/94 (92): Blackspur DIY Ltd and Others v Council of the European Union [1]

(Taxation of costs)

(2000/C 102/49)

(Language of the case: English)

In Case T-168/94 (92): Blackspur DIY Ltd, having its registered office in Unsworth, Bury (United Kingdom), Steven Kellar, J.M.A. Glancy and Ronald Cohen, residing in Manchester (United Kingdom), represented by K.P.E. Lasok, Barrister, instructed by C. Khan, Solicitor, with an address for service in

Luxembourg at the Chambers of Maria Dennewald, 12 Avenue de la Porte Neuve, v Council of the European Union (Agents: Frédéric Anton and Georg Berrisch) — application for taxation of costs following the judgment of the Court of First Instance of 18 September 1995 in Case T-168/94 Blackspur and Others v Council and Commission [19951 ECR II-2627 — the Court of First Instance (First Chamber, Extended Composition), composed of: B. Vesterdorf, President, A. Potocki, A.W.H. Meij, M. Vilaras and N. Forwood, Judges; H. Jung, Registrar, has made an order on 7 February 2000, the operative part of which is as follows:

The total amount of the costs to be reimbursed jointly and severally by Blackspur DIY Ltd and by Steven Kellar, J.M.A. Glancy and Ronald Cohen to the Council of the European Union is fixed at DEM 32 860.

(1) OJ C 277 of 15.10.1993.

ORDER OF THE COURT OF FIRST INSTANCE

of 4 February 2000

in Case T-147/96: Howard Batho v Commission of the European Communities (1)

(Officials — Objection of inadmissibility — New and substantial fact — Confirmatory act — Classification in grade — Article 31(2) of the Staff Regulations)

(2000/C 102/50)

(Language of the case: French)

In Case T-147/96: Howard Batho, official of the Commission of the European Communities, residing in Honnekinberg, Belgium, represented by J.-N. Louis and T. Demaseure, of the Brussels Bar, with an address for service in Luxembourg at the Société de Gestion Fiduciaire SARL, 2-4 Rue Beck, against Commission of the European Communities (Agents: G. Valsesia and J. Currall) — application for annulment of the Commission decision of 12 February 1996 classifying the applicant — the Court of First Instance (single judge) has made an order on 4 February 2000 in which it:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

(1) OJ C 354 of 23.11.1996.

ORDER OF THE COURT OF FIRST INSTANCE

of 6 December 1999

in Case T-81/98: Patricia Boyes v Commission of the European Communities (1)

(Death of the applicant — Proceedings not continued by her successors — No need to adjudicate)

(2000/C 102/51)

(Language of the case: English)

In Case T-81/98: Patricia Boyes, residing in Porlock, United Kingdom, represented by Becket Bedford, Barrister, of the Bar of England and Wales, and John Kelly, Sarah Ferdinand and Jatinder Sandhu, of Ferdinand Kelly, Solicitors, 21 Bennetts Hill, Birmingham v Commission of the European Communities (Agents: Klaus Wiedner and Xavier Lewis), supported by The Grand Pub Company Ltd, whose registered office is in London, represented by John Boyce and Bertrand Louveaux, Solicitors, with an address for service in Luxembourg at the Chambers of Philippe Hoss, 2 Place Winston Churchill — application for annulment of the Commission's decision of 5 March 1998 (Case IV/94.907/F3 - NAIL) rejecting the applicant's complaint under Article 3(2) of Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87) concerning the standard lease used by Inntrepreneur Estates Ltd for letting its licensed premises in the United Kingdom, requiring tenants to purchase certain specified types of beer exclusively from the supplier designated by the lessor, and for compensation for the damage allegedly suffered by reason of that decision — the Court (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; H. Jung, Registrar, has made an order on 6 December 1999, the operative part of which is as follows:

1. *There is no need to adjudicate on the application.*

2. *The parties, including the intervener, shall bear their own costs.*

(1) OJ C 234 of 25.7.1998.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 15 December 1999

in Case T-191/98 R II, Cho Yang Shipping Co. Ltd v Commission of the European Communities [1]

(Competition — Payment of a fine — Bank guarantee — Proceedings for interim relief — Urgency — Interim measures)

(2000/C 102/52)

(Language of the case: English)

In Case T-191/98 R II, Cho Yang Shipping Co., Ltd, established in Seoul, South Korea, represented by Nicolas Bromfield and Christopher Thomas, Solicitors, with an address for service in Luxembourg at the Chambers of De Bandt, Van Hecke, Lagae and Loesch, 11 Rue Goethe v Commission of the European Communities (agent: M. Richard Lyal) — application for suspension of the operation of Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (Case No IV/35.134 — Trans-Atlantic Conference Agreement) (OJ 1999 L 95, p. 1) in so far as, in Article 8, it imposes a fine of EUR 13 750 000 on the applicant, the President of the Court has made an order on 15 December 1999 according to which:

1. *The obligation on the applicant to provide a bank guarantee in favour of the Commission as a condition for avoiding the immediate recovery of the fine imposed on it by Article 8 of Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (Case No IV/35.134 — Trans-Atlantic Conference Agreement) (OJ 1999 L 95, p. 1) is suspended until the order disposing of the present proceedings for interim relief has been made.*

2. *The suspension granted in paragraph 1 above shall cease to have effect if the applicant does not lodge the following documents at the Registry of the Court of First Instance before 1 April 2000:*

   (a) *its annual accounts ('balance sheet'; 'statement of income'; 'statement of cash flow') for the financial year ending on 31 December 1999, drawn up and certified by a firm of auditors of international repute;*

   (b) *a letter from the firm referred to in (a) above certifying that those annual accounts reflect the amount, by way of both principal sum and interest, of the fine imposed on the applicant by the contested decision.*

3. *Until the present proceedings for interim relief have been disposed of, interest at the rate of 7,5 % shall continue to accrue on the fine imposed on the applicant, in accordance with Article 10 of Commission Decision 1999/243/EC of 16 September 1998.*

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[1] OJ C 281 of 2.10.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 February 2000

in Case T-5/99 Pantelis Andriotis v Commission of the European Communities and European Centre for the Development of Vocational Training (CEDEFOP) [1]

(CEDEFOP — Procedure awarding a public services procurement contract — Call for tenders for architect's services — No notice publishing the results of the award procedure — Legal interest in bringing proceedings — Manifestly inadmissible)

(2000/C 102/53)

(Language of the case: Greek)

In Case T-5/99: Pantelis Andriotis, residing in Thessaloniki (Greece), represented by Stella Ioannidou, of the Thessaloniki Bar, with an address in Luxembourg at the Chambers of Evelyn Korn, 21 Rue de Nassau, against Commission of the European Communities (Agent: D. Triantafyllou) and European Centre for the Development of Vocational Training (CEDEFOP) (Agents: H. Kallipolitis and B. Wägenbaur) application for annulment of the defendants' implied decisions refusing to inform the applicant in writing of the publication in the Official Journal of the European Communities of the award of the contract following the notice of CEDEFOP's invitation to tender APO/97/005 (OJ No S 139 of 19. 7. 1997, p. 44) — the Court (Second Chamber), composed of J. Pirrung, President, and A. Potocki and A.W.H. Meij, Judges; H. Jung, Registrar, has made an order on 10 February 2000 in which it:

1. *Dismisses the application as manifestly inadmissible;*

2. *Orders the applicant to bear his own costs and those incurred by the Commission and CEDEFOP.*

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[1] OJ No C 71 of 13.3.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 16 December 1999

in Case T-153/99, Luciano Simonella v Commission of the European Communities [1]

(Officials — Non-promotion — Action for annulment and damages — Manifestly inadmissible)

(2000/C 102/54)

(Language of the case: French)

In Case T-153/99, Luciano Simonella, official of the Commission of the European Communities, residing in Howald (Grand Duchy of Luxembourg), represented by Rosario Grasso, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 35 Rue Notre Dame, against Commission of the European Communities (Agents: Christine Berardis-Kayser and Alberto Dal Ferro) — application, first, for annulment of the decision implicitly rejecting the applicant's complaint lodged on 25 November 1998 and, second, for compensation for the material and non-material damage suffered — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, and A. Potocki and A.W.H. Meij, Judges; H. Jung, Registrar, has made an order on 16 December 1999, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*

2. *The parties shall bear their own costs.*

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[1] OJ C 246 of 28.8.1999.

Action brought on 15 November 1999 by Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB) and Others against the Council of the European Union

(Case T-268/99)

(2000/C 102/55)

(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 15 November 1999 by the Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB) and the Syndicat Européen des Transformateurs et Distributeurs de Produits de l'Agriculture Biologique (SETRAB), both established in Paris, and by SARL Est Distribution Biogram, established at Château-Salins (France), represented by Catriona Hatton and Dirk Leermakers, of the Brussels Bar, with an address for service in Luxembourg at the latter's Chambers, 5 Place du Théâtre.

The applicants claim that the Court should:

— declare that the derogation provided for in Article 1(7) of Council Regulation No 1804/99 is severable in nature, and annul that derogation;

— order the Council to pay all the costs.

Pleas in law and main arguments

The applicants in the present case are professional bodies recognised by the French Ministry of Agriculture and comprising regional groups of organic farmers, with the object of defending and representing their interests and promoting organic farming.

The application is directed against Council Regulation (EC) No 1804/1999 of 19 July 1999 supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production, inasmuch as it provides for the insertion in Article 5 of Regulation No 2092/91 of a derogation permitting the continued use, until 1 July 2006, of trade marks referring to the organic production method in order to designate products which are not produced by that method, provided that a clear indication is given of the fact that the products are not produced according to the organic production method as prescribed by that regulation.

In support of their claims, the applicants plead, first of all, infringement of the Community rules on competition, in that the derogation in issue will have the immediate effect of placing undertakings producing organic foodstuffs at a disadvantage, by enabling undertakings which are not in any way engaged in organic farming to use trade marks referring to the organic production method.

Moreover, the confusion created in the mind of the consumer by the new Article 5 of Regulation No 2092/91 also violates the principle of consumer protection, as defined in Article 3(t) of the Treaty. In the applicants' view, a reasonably well-informed consumer is likely to treat products bearing an indication which refers to the organic production method as comparable to products which have in fact been produced by that method. Consequently, such trade marks, when applied to products which have not in any way been produced by organic methods, will inevitably give rise to confusion in the minds of consumers.

The applicants further plead:

— breach of an essential procedural requirement, in that the Council failed to consult the Parliament with regard to the derogation at issue in the present proceedings;

— infringement of Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and of Directive 84/450/EEC of 10 September 1984 relating to misleading advertising;

— violation of the principles of legal certainty, protection of legitimate expectations, proportionality, non-discrimination and subsidiarity.

Action brought on 10 December 1999 by Kuwait Petroleum (Nederland) B.V. against the Commission of the European Communities

(Case T-354/99)

(2000/C 102/56)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 December 1999 by Kuwait Petroleum (Nederland) B.V., of Rotterdam (Netherlands), represented by P.S.R.F. Mathijsen, of the Brussels Bar.

The applicant claims that the Court should:

(a) annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-242/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 22 December 1999 by Telefon & Buch VerlagsgmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-357/99)

(2000/C 102/57)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 22 December 1999 by Telefon & Buch VerlagsgmbH, of Perchtoldsdorf (Republic of Austria), represented by Hans Georg Zeiner and Brigitte Heaman-Dunn, Rechtsanwälte, of Messrs Zeiner & Zeiner, Vienna, with an address for service in Luxembourg at the Chambers of Marc Feider, of Messrs Beghin, Feider, Allen & Overy, 56-58 Rue Charles Martel.

The applicant claims that the Court should:

— amend the decision adopted on 21 October 1999 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in appeal No R 352/1999-3, in such a way that there are no obstacles under Article 7(1)(b) and (c) of the Community Trade Mark Regulation to registration of the Community trade mark UNIVERSALTELEFONBUCH (application No 455881);

— alternatively, annul the decision adopted on 21 October 1999 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in appeal No R 352/1999-3

— order the defendant to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	verbal mark 'UNIVERSALTELEFONBUCH' — application No 455881
Goods or service concerned:	Goods and services in Classes 9 (including recorded storage media), 16 (including printing products), 41 (including publishing services) and 42 (including editing services)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner

Grounds of claim:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Incorrect application of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 22 December 1999 by Telefon & Buch VerlagsgmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-358/99)

(2000/C 102/58)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 22 December 1999 by Telefon & Buch VerlagsgmbH, of Perchtoldsdorf (Republic of Austria), represented by Hans Georg Zeiner and Brigitte Heaman-Dunn, Rechtsanwälte, of Messrs Zeiner & Zeiner, Vienna, with an address for service in Luxembourg at the Chambers of Marc Feider, of Messrs Beghin, Feider, Allen & Overy, 56-58 Rue Charles Martel.

The applicant claims that the Court should:

— amend the decision adopted on 21 October 1999 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in appeal No R 351/1999-3, in such a way that there are no obstacles under Article 7(1)(b) and (c) of the Community Trade Mark Regulation to registration of the Community trade mark UNIVERSALKOMMUNIKATIONSVERZEICHNIS (application No 455873);

— alternatively, annul the decision adopted on 21 October 1999 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in appeal No R 351/1999-3;

— order the defendant to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	verbal mark 'UNIVERSALKOMMUNIKATIONSVERZEICHNIS' — application No 455873
Goods or service concerned:	Goods and services in Classes 9 (including recorded storage media), 16 (including printing products), 41 (including publishing services) and 42 (including editing services)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Grounds of claim:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Incorrect application of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 24 December 1999 by Community Concepts AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-360/99)

(2000/C 102/59)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 December 1999 by Community Concepts AG, of Munich (Federal Republic of Germany) (formerly: Touchdown Gesellschaft für erfolgsorientiertes Marketing mbH), represented by Friederike Bahr, Rechtsanwältin, of BBLP Beiten Burkhardt Mittl & Wegener, Munich, with an address for service in Luxembourg at the Chambers of Messrs Decker, Braun & Wagner, 16 Avenue Marie-Thérèse.

The applicant claims that the Court should:

— partially annul the decision adopted on 15 October 1999 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in case No R 204/1999-3;

— order the defendant to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	The verbal mark 'investorworld' — application No 924670
Goods or service concerned:	Goods and services in Class 36 (including insurance and finance)

Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Grounds of claim:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Incorrect application of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 21 January 2000 by Willi Rothley and 70 other Members of the European Parliament against the European Parliament

(Case T-17/00)

(2000/C 102/60)

(Language of the case: German)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on Willi Rothley and 70 other Members of the European Parliament, represented by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, of Gaedertz Rechtsanwälte, 35 Avenue de Tervuren, Brussels.

The applicants claim that the Court should:

— annul the European Parliament's decision of 18 November 1999 amending the Rules of Procedure pursuant to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations conducted by the European Anti-Fraud Office (OLAF);

— order the defendant to pay the costs.

Pleas in law and main arguments

In adopting the contested decision, the European Parliament has fulfilled its obligation under the Interinstitutional Agreement. According to that agreement, each of the Community institutions signatories thereto is required to bring into force, by means of the adoption of an internal decision, the implementing rules necessary in order to ensure the smooth operation of the internal investigations carried out by the OLAF. The action for annulment is directed, in particular, against the obligations imposed on the applicants by the decision, requiring them to provide information, to offer cooperation and to exercise tolerance in connection with the OLAF's investigatory powers within the domain of the internal affairs of the Parliament. The applicants claim that those obligations represent an impermissible restriction on their status as Members of Parliament, particularly as regards the free exercise of their mandate and their immunity.

In support of their application, the applicants put forward, in essence, the following pleas:

— Breach of essential procedural requirements:

The procedure conducted prior to the adoption of the contested decision was vitiated by substantive procedural defects, since the Parliament's Rules of Procedure were infringed in several instances.

— Violation of the free exercise of the parliamentary mandate:

The powers of investigation and seizure granted by the contested decision implicitly extend to cover the performance by Members of their duties, without any criteria for such measures having been laid down with the requisite normative clarity and certainty. In addition, the investigatory powers of the OLAF are disproportionate, since they may be exercised simply on the grounds of mere irregularities.

The obligation, contained in Article 2(1) of the decision, to provide information in relation to any relevant misconduct, even of a non-criminal nature, means that the personnel of the Parliament and staff working for Members are required constantly to monitor the performance by Members of their duties. This will encourage 'snooping' and informing, thereby prejudicing the general ability of the Parliament to function.

— Infringement of parliamentary immunity:

Article 10 of the Protocol on the Privileges and Immunities of the European Communities affords Members of the Parliament comprehensive immunity from criminal prosecution of any kind. Subparagraph (b) of Article 10, which, in contrast to subparagraph (a), does not refer to national rights of immunity, creates a status of immunity specific to the Communities which also affords Members of the Parliament protection against the investigatory activities of the OLAF.

— Infringement of the parliamentary right of inquiry:

The investigatory powers of the OLAF laid down in the contested decision and in the corresponding rules of conduct imposed on Members infringe the parliamentary right of inquiry provided for in the first paragraph of Article 193 EC, which the Parliament exercises, in particular, by setting up temporary committees of inquiry. The work of those committees could be substantially hindered if it were not possible for a committee of inquiry and its members to observe their duty of confidentiality when dealing with the OLAF. In addition, this affects the institutional equilibrium between Community institutions. The Parliament should not be subject to the supervisory power of the executive, of which the OLAF notionally forms part.

— Nullity of the decision setting up the OLAF and of Regulation No 1073/1999:

The applicants raise the objection, pursuant to Article 241 EC, that the legal acts on which the contested decision is based are null and void. Both the Commission Decision of 28 April 1999 establishing the OLAF [1] and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [2] are invalid.

The Commission based the decision establishing the OLAF on Article 162 of the EC Treaty (now Article 218 EC), hence on a provision designed to regulate the internal organisational power, namely the Rules of Procedure. However, it is not possible on that basis to set up a body which is in reality legally separate from the organisational power of the Commission.

Moreover, in adopting its decision establishing the OLAF, the Commission unlawfully relinquished part of the supervisory powers conferred on it by Article 211 EC. In addition, it delegated to the OLAF powers which it does not possess.

Finally, the regulation based on the decision is likewise founded on an insufficient legal basis, since Article 280 EC merely concerns the combatting of fraud within the Member States. It does not therefore cover the Community institutions. In addition, the OLAF's investigatory powers go beyond any powers that could conceivably be needed in order to investigate criminal offences committed within the Parliament.

[1] OJ 1999 L 136, p. 20.
[2] OJ 1999 L 136, p. 1.

Partial Removal from the register in Joined Cases T-530/93 and Others [1]

(2000/C 102/61)

(Language of the case: Dutch)

By order of 24 January 2000, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the register of M.A.M. Nijenhuis and J.I.M. and W. Spikker from the list of applicants in Case T-533/93 — Joined Cases T-530/93 and Others, R. Bathoorn and Others v Council of the European Union and Commission of the European Communities.

[1] OJ C 334 of 9.12.1993, C 27 of 28.1.1994, C 43 of 12.2.1994, C 59 of 26.2.1994, C 90 of 26.3.1994, C 103 of 11.4.1994, C 120 of 30.4.1994, C 132 of 14.5.1994, C 233 of 20.8.1994 and C 370 of 24.12.1994.

Removal from the register of Case T-219/94 [1]

(2000/C 102/62)

(Language of the case: German)

By order of 27 January 2000, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-219/94, Hans-Henrich Fürstenwerth v Commission of the European Communities.

[1] OJ C 218 of 6.8.1994.

Removal from the register of Case T-206/95 [1]

(2000/C 102/63)

(Language of the case: German)

By order of 27 January 2000 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-206/95: Josef Gierse v Council of the European Union and Commission of the European Communities.

[1] OJ C 351 of 30.12.1995.

Removal from the register of Case T-15/98 [1]

(2000/C 102/64)

(Language of the case: French)

By order of 19 January 2000, 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-15/98, Centre d'Action Culturelle du Sart-Tilman a.s.b.l. v Commission of the European Communities.

[1] OJ C 94 of 28.3.1998.

Removal from the register of Case T-161/99 [1]

(2000/C 102/65)

(Language of the case: Italian)

By order of 1 February 2000, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-161/99: Navigazione libera del Golfo S.p.A. (N.L.G.) v Commission of the European Communities.

[1] OJ C 281 of 2.10.1999.

Removal from the register of Case T-181/99 [1]

(2000/C 102/66)

(Language of the case: Italian)

By order of 1 February 2000, 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-181/99: Centro di Ricerca e Documentazione Febbraio 74 v Commission of the European Communities.

[1] OJ C 281 of 2.10.1999.