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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(First Chamber)

of 17 October 2000

in Case C-114/99 (reference for a preliminary ruling from the Cour Administrative d'Appel de Nancy): Roquette Frères SA v Office national interprofessionnel des céréales (ONIC) [1]

(Agriculture — Common organisation of the markets — Export refunds — Cereals — Conditions for payment — Processing as a product likely to be re-imported into the Community)

(2000/C 372/01)

(Language of the case: French)

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

In Case C-114/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Cour Administrative d'Appel de Nancy (Administrative Court of Appeal, Nancy), France, for a preliminary ruling in the proceedings pending before that court between Roquette Frères SA and Office national interprofessionnel des céréales (ONIC) — on the interpretation of Article 5(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) — the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 October 2000, in which it has ruled:

Article 5(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products is to be interpreted as meaning that payment of an export refund cannot be made conditional on production of additional evidence of such a kind as to show that a product which, in the non-member country of import, has undergone processing regarded as substantial in that it has been used in an irreversible manner in the manufacture of another product, which is itself likely to be re-exported into the Community, has actually been placed on the market in that country in the unaltered state.

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[1] OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 19 October 2000

in Joined Cases C-15/98 and C-105/99: Italian Republic and Sardegna Lines — Servizi Marittimi della Sardegna SpA v Commission of the European Communities [1]

(State aid — Aid from the Region of Sardinia to shipping companies in Sardinia — Adverse effect on competition and trade between Member States — Statement of reasons)

(2000/C 372/02)

(Language of the case: Italian)

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

In Joined Cases C-15/98 and C-105/99: Italian Republic (Agents: Professor U. Leanza, and P.G. Ferri) (C-15/98) and

Sardegna Lines — Servizi Marittimi della Sardegna SpA established in Cagliari, Italy, represented by F. Caruso, U. Iaccarino, B. Carnevale and C. Caruso, of the Naples Bar, with an address for service in Brussels at the Chambers of F. Caruso, 2A Rue Van Moer (C-105/99) v Commission of the European Communities (Agents: D. Triantafyllou and S. Dragone) — application for annulment, in Cases C-15/98 and C-105/99, of Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia (OJ 1998 L 20, p. 30) and, in Case C-15/98, of the letter of 14 November 1997 by which the Commission notified the Italian Republic of its decision to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) regarding aid to the shipping sector (loans/leases at concessionary conditions for the acquisition, conversion and repair of vessels): amendment of aid scheme under C 23/96 (ex NN 181/95) (OJ 1997 C 386, p. 6) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur) and F. Macken, Judges; N. Fennelly, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 19 October 2000, in which it:

1. *Dismisses as inadmissible the Italian Republic's application in respect of the letter of 14 November 1997 by which the Commission notified the Italian Republic of its decision to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) regarding aid to the shipping sector (loans/leases at concessionary conditions for the acquisition, conversion and repair of vessels): amendment of aid scheme under C 23/96 (ex NN 181/95);*

2. *Annuls Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia;*

3. *In Case C-15/98, orders the Italian Republic and the Commission of the European Communities to bear their own costs;*

4. *In Case C-105/99, orders the Commission of the European Communities to pay the costs.*

(1) OJ C 94 of 28.3.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 19 October 2000

in Case C-216/98: Commission of the European Communities v Hellenic Republic (1)

(Failure of a State to fulfil obligations — Directive 95/59/EC — Article 9 — Minimum price — Manufactured tobacco)

(2000/C 372/03)

(Language of the case: Greek)

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

In Case C-216/98: Commission of the European Communities (Agents: M. Condou-Durande and E. Traversa) v Hellenic Republic (Agents: P. Mylonopoulos, and N. Dafniou) — application for a declaration that, by adopting and maintaining in force legislative provisions which require minimum retail selling prices for manufactured tobacco to be determined by ministerial decree, the Hellenic Republic has failed to fulfil its obligations under Article 9 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) — the Court (Sixth Chamber), composed of: J.-P. Puissochet, acting as President of the Sixth Chamber, R. Schintgen and F. Macken (Rapporteur), Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 19 October 2000, in which it:

1. *Declares that, by adopting and maintaining in force legislative provisions which require minimum retail selling prices for manufactured tobacco to be determined by ministerial decree, the Hellenic Republic has failed to fulfil its obligations under Article 9 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco;*

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

(1) OJ C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 October 2000

in Case C-339/98 (reference for a preliminary ruling from the Finanzgericht Düsseldorf): Peacock AG v Hauptzollamt Paderborn (1)

(Common customs tariff — Tariff headings — Tariff classification of network cards — Classification in the Combined Nomenclature)

(2000/C 372/04)

(Language of the case: German)

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

In Case C-339/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf), Germany, for a preliminary ruling in the proceedings pending before that court between Peacock AG and Hauptzollamt Paderborn — on the interpretation of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1), Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1), Commission Regulation (EEC) No 2587/91 of 26 July 1991 (OJ 1991 L 259, p. 1), Commission Regulation (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1) and Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1), — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur), J.-P. Puissochet, P. Jann and L. Sevón, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 19 October 2000, in which it has ruled:

Note 5 (B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989, Commission Regulation (EEC) No 2472/90 of 31 July 1990, Commission Regulation (EEC) No 2587/91 of 26 July 1991, Commission Regulation (EEC) No 2505/92 of 14 July 1992, Commission Regulation (EEC) No 2551/93 of 10 August 1993 and Commission Regulation (EC) No 3115/94 of 20 December 1994, does not preclude the classification of network cards designed to be installed in automatic data processing machines under heading No 8471 of the Combined Nomenclature. Between July 1990 and May 1995 those cards were therefore to be classified under heading No 8471 as units of machines of that type.

(1) OJ C 358 of 21.11.1998.

Action brought on 29 September 2000 by the Commission of the European Communities against the Italian Republic

(Case C-363/00)

(2000/C 372/05)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 29 September 2000 by the Commission of the European Communities, represented by Enrico Traversa, Legal adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

(a) Declare that by not making available to the Commission the sum of LIT 1 484 956 000 000 by way of own resources within the period laid down by Articles 9 and 10 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementingt Decision 94/728/EC, Euratom on the system of the Communities' own resources (1), and refusing to pay interest for delay on that amount owed pursuant to Article 11 of the same regulation, the Italian Republic is in breach of its obligations under Articles 9, 10 and 11 of that regulation;

(b) Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission argues that, by crediting to the Commission's account only LIT 1 486 594 526 rather than LIT 1 486 442 594 526 on 30 May 1996, and not crediting the remainder due until 27 June 1996, the Italian Republic unduly delayed making available Community own resources, in breach of the regulation.

Commission staff therefore considered it necessary to apply Article 11 of Regulation No 1552/89, (2) providing for payment of interest where a Member State is late in crediting own resources to the account opened for that purpose in the name of the Commission with the body designated by each Member State.

The Commission cannot accept from Member States rectifications with retroactive value such as that made by the Italian Ministry of the Treasury on 27 June 1996, given that credits of sums with retroactive value make no sense in a system of non-interest bearing accounts such as the 'own resources' account in the name of the Commission, and to allow accounting rectifications with retroactive effect would deprive the obligation to pay interest for delay of any practical effectiveness whatsoever.

(1) OJ L 130, 31.5.2000, p. 1.
(2) OJ L 155, 7.6.1989, p. 1.

Reference for a preliminary ruling by the Vergabekontrollsenat des Landes Wien (Austria) by order of 14 September 2000 in the case of Adolf Truley GmbH v Bestattung Wien GmbH

(Case C-373/00)

(2000/C 372/06)

Reference has been made to the Court of Justice of the European Communities by order of 14 September 2000 by the Vergabekontrollsenat des Landes Wien, which was received at the Court Registry on 11 October 2000, for a preliminary ruling in the case of Adolf Truley GmbH v Bestattung Wien GmbH on the following questions:

1. Must the term 'needs in the general interest' in Article 1(b) of Council Directive 93/36/EEC(1) of 14 June 1993 coordinating procedures for the award of public supply contracts be interpreted as meaning that

   (a) the definition of needs in the general interest must be derived from the national legal system of the Member State?

   (b) the fact that a regional or local authority's obligation is subsidiary is in itself sufficient for the existence of a need in the general interest to be assumed?

2. In interpreting the requirement 'meeting needs ... not having an industrial or commercial character' laid down in Directive 93/36/EEC, is (a) the existence of significant competition an imperative condition or (b) are the factual or legal circumstances the determinant factors in that respect?

3. Is the requirement laid down in Article 1(b) of Directive 93/96/EEC that the management of the body governed by public law must be subject to supervision by the State or a regional or local authority also fulfilled by a mere review as provided for through the Kontrollamt (Monitoring Office) of the City of Vienna?

(1) OJ 1993 L 199, p. 1.

Action brought on 11 October 2000 by the Commission of the European Communities against the Italian Republic

(Case C-375/00)

(2000/C 372/07)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 11 October 2000 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, and Roberto Amorosi, judge on secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to draw up a systematic and complete plan of action at national level, including a timetable for the improvement of surface water, the territorial plan for Lombardy still being missing, so that the Commission has not been able to carry out a thorough examination of said national plans, the Italian Republic has failed to comply with Article 4(2) of Council Directive 75/440/EEC(1) of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States.

— Order the Italian Republic defendant to pay the costs.

Pleas in law and main arguments

The Commission claims that, although, so far as concerns certain types of water, there have been separate improvement plans at regional level, such plans do not cover all the water referred to in Directive 75/440/EEC, so that the Commission takes the view that the Italian Republic has not drawn up the systematic plan as required under Article 4(2) of the directive.

The legislation adopted by the Italian authorities on 18 May 1989 merely regulates the activities of bodies and organisations with the purpose of drawing up, adopting and putting into operation plans for water catchment areas for improving surface waters as well as drawing up, adopting and putting into operation intervention programmes with the same objective. However, it does not directly adopt any specific plan. Accordingly, it is no more than a proposal for the implementation of the obligations under Article 4(2) of the directive rather than actual implementation thereof.

(1) OJ 1975 L 194, p. 26.

Action brought on 18 October 2000 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-383/00)

(2000/C 372/08)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 18 October 2000 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing within the time-limit prescribed to take all necessary measures in order to comply with Council Directive 96/82/EC (1) of 9 December 1996 on the control of major-accident hazards involving dangerous substances, and in particular Article 11 thereof, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty;

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

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those in Case C-335/00 (2); the time-limit for transposition expired on 3 February 1999, but the Federal Länder of Mecklenburg-Vorpommern, Lower Saxony, Rhineland-Palatinate, Saxony, Sachsen-Anhalt and Schleswig-Holstein have not to date taken the necessary measures under Article 11 of the directive concerning the drawing-up of emergency plans.

(1) OJ C 10 of 14.1.1997, p. 13.
(2) OJ C 316 of 4.11.2000, p. 16.

Reference for a preliminary ruling by the Niedersächsischen Oberverwaltungsgericht by order of 28 August 2000 in the case of Heinrich Bredemeier against Landwirtschaftskammer, Hanover, joined parties: Wilhelm Wieggrebe and Irmtraut Bredemeier

(Case C-384/00)

(2000/C 372/09)

Reference has been made to the Court of Justice of the European Communities by order of 28 August 2000 by the Niedersächsischen Oberverwaltungsgericht (Higher Administrative Court for Lower Saxony), which was received at the Court Registry on 20 October 2000, for a preliminary ruling in the case of Heinrich Bredemeier against Landwirtschaftskammer, Hanover: joined parties Wilhelm Wieggrebe and Irmtraut Bredemeier on the following question:

Is an agricultural holding received through 'similar means' within the meaning of Article 3a of Council Regulation (EEC) No 857/84 (1) of 31 March 1984 (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 1639/91 (2) of 13 June 1991 (OJ 1991 L 150, p. 35), where, following expiry of the non-marketing undertaking entered into by the producer under Regulation (EEC) No 1078/77, (3) the holding is leased by him to the husband of the designated heir before 29 June 1989 on conditions more favourable than normal market conditions?

(1) OJ L 90, p. 13.
(2) OJ L 150, p. 35.
(3) OJ L 131, p. 1.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of 18 October 2000 in the case of F. W. L. de Groot v Inspecteur van de Belastingdienst Particulieren/Ondernemingen te Haarlem

(Case C-385/00)

(2000/C 372/10)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 18 October 2000, received at the Court Registry on 20 October 2000, in the case of F. W. L. de Groot v Inspecteur van de Belastingdienst Particulieren/Ondernemingen te Haarlem (Tax Inspector for Individuals and Undertakings, Haarlem) on the following questions:

1. Do Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and Article 7 of Regulation (EEC) No 1612/68 [1] of the Council preclude a system for the avoidance of double taxation under which a resident of a Member State, who in a given year (also) derives income in another Member State from an employment exercised there, on which he is taxed in that other Member State without account being taken of that employee's personal and family circumstances, loses in his State of residence a proportional part of the advantage of his tax-free allowance and personal tax concessions?

2. If Question 1 is answered in the affirmative, do specific requirements then arise from Community law with regard to the manner in which the personal and family circumstances of the employee concerned must be taken into account in his State of residence?

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[1] OJ English Special Edition 1968 (II), p. 475.

Reference for a preliminary ruling from the Bundesfinanzhof by order of that court of 9 August 2000 in the case of Finanzamt Hannover-Nord v Norddeutsche Gesellschaft zur Beratung und Durchführung von Entsorgungsaufgaben bei Kernkraftwerken mbH

(Case C-392/00)

(2000/C 372/11)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundesfinanzhof (Federal Finance Court), Germany, of 9 August 2000, which was received at the Court Registry on 25 October 2000, for a preliminary ruling in the case of Finanzamt Hannover-Nord v Norddeutsche Gesellschaft zur Beratung und Durchführung von Entsorgungsaufgaben bei Kernkraftwerken mbH on the following question:

Is it compatible with Article 4 of Council Directive 69/335/EEC concerning indirect taxes on the raising of capital [1] to subject to capital duty the grant of an interest-free loan by a shareholder to his company, if at the time of granting the loan there existed a profit and loss transfer agreement between the company and the shareholder?

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[1] OJ, English Special Edition 1969 (II), p. 412.

Reference for a preliminary ruling by the Tribunale de Trento — Sezione Civile by order of that court of 20 October 2000 in the case of Distillerie F.lli Cipriani SpA against Ministero delle Finanze

(Case C-395/00)

(2000/C 372/12)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Trento — Sezione Civile (District Court, Trento — Civil Section) of 20 October 2000, received at the Court Registry on 26 October 2000, for a preliminary ruling in the case of Distillerie. F.lli Cipriani SpA against Ministero delle Finanze (Ministry of Finance) on the following questions:

1. Where products destined for export via one or more Member States are moved under the suspension arrangement defined in Article 4(c) of Council Directive 92/12/EEC of 25 February 1992 [1] but fail to reach their destination, and it is impossible to ascertain where the irregularity occurred or where the offence took place, is Article 20(3) of that directive to be interpreted as meaning that the Member State of departure may collect the excise duties only if the party that has guaranteed payment has been promptly put in a position to ascertain that there has been no discharge from the suspension arrangement, in such a way as to enable that party to provide, within the four-month period following the date of dispatch of the products, satisfactory evidence of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed?

2. In the event that Question 1 is answered in the affirmative, does the same interpretation also hold good, in the same circumstances, where the Member State of departure is also the Member State where the offence was committed or where the irregularity occurred, or, in such a case, does the presumption set out in Article 20(2) of Directive 92/12/EEC apply? If that presumption applies, may evidence be furnished of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed, and is such evidence subject to the time-limit laid down in Article 20(3)?

3. In the event that Question 1 is answered in the negative, is Article 20(3) of Directive 92/12/EEC to be interpreted, in the same circumstances, as meaning that a party that has guaranteed payment of excise duty and has not been promptly put in a position to ascertain that there has been no discharge from the suspension arrangement is entitled to furnish evidence of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed even after the expiry of the four-month period following the date of dispatch of the products?

(1) OJ L 76, 23.3.1992, p. 1.

Reference for a preliminary ruling by the 8a Vara Cível da Comarca do Porto, 3a Secção, by order of that court of 31 October 2000 in the case of Club-Tour, Viagens e Turismo, SA, against Alberto Carlos Lobo Gonçalves Garrido; intervener: Club Med Viagens Lda

(Case C-400/00)

(2000/C 372/13)

Reference has been made to the Court of Justice of the European Communities by order of the 8a Vara Cível da Comarca do Porto, 3a Secção (8th Civil District of the Oporto Local Court, Third Chamber), of 31 October 2000, which was received at the Court Registry on 3 November 2000, for a preliminary ruling in the case of Club-Tour, Viagens e Turismo, SA, against Alberto Carlos Lobo Gonçalves Garrido; intervener: Club Med Viagens Lda on the following questions:

1. Does a package organised by the agency, at the request and on the initiative of the consumer or a strictly defined group of consumers in accordance with their wishes, including transport and accommodation through a tourism undertaking, at an inclusive price, for a period of more than twenty-four hours or including overnight accommodation, fall within the scope of the concept of 'package travel' as defined in Article 2(1) (1)?

2. May the expression 'pre-arranged' which appears in the directive be interpreted as referring to the moment when the contract is entered into between the agency and the customer?

(1) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

Reference for a preliminary ruling by the Employment Tribunal, Stratford (United Kingdom), by order of that court of 10 October 2000, in the case of Mrs F. Harding against Skandia Asset Management Ltd

(Case C-402/00)

(2000/C 372/14)

Reference has been made to the Court of Justice of the European Communities by an order of the Employment Tribunal, Stratford (United Kingdom) of 10 October 2000, which was received at the Court Registry on 31 October 2000, for a preliminary ruling in the case of Mrs F. Harding against Skandia Asset Management Ltd, on the following question:

Is Article 141 of the EC Treaty directly applicable so that it can be relied upon by an applicant in national proceedings to disapply such territorial limitation as is contained in section 1(6) of the Equal Pay Act 1970 to enable her to compare her pay with that of men employed by an employer associated with her employer at an establishment in another member State who are performing equal work or work of equal value?

Reference for a preliminary ruling by the Fourth Chamber of the Consiglio di Stato, sitting in its judicial capacity, by order of that court of 14 July 2000 in the case of Coopsette Scrl, on the one hand, and ANAS and Impresa Mambrini Costruzioni srl, on the other

(Case C-405/00)

(2000/C 372/15)

Reference has been made to the Court of Justice of the European Communities by order of 14 July 2000 of the Fourth Chamber of the Consiglio di Stato (Council of State), sitting in its judicial capacity, received at the Court Registry on 6 November 2000, for a preliminary ruling in the case of Coopsette Scrl, on the one hand, and ANAS and Impresa Mambrini Costruzioni srl, on the other, on the following questions:

1. In calls for tenders for public works contracts, do clauses excluding undertakings which have not submitted with their tenders explanations concerning components of the price indicated, amounting to at least 75 % of the figure specified in the tender conditions, represent an obstacle to the application of Article 30(4) of Directive 93/37 [1]?

2. Does the establishment of a mechanism for determining automatically the threshold indicative of irregularity, below which the validity of tenders falls to be verified, on the basis of an ad hoc criterion and an arithmetical mean, so that undertakings are unable to ascertain the threshold in advance, represent an obstacle to the application of Article 30(4) of Directive 93/37?

3. Does the fact that the exchange of views is to take place at an earlier stage, without the undertaking which has allegedly submitted an irregular tender being assured of an opportunity to state its reasons, after the opening of the envelopes and before the adoption of the measure excluding it, represent an obstacle to the application of Article 30(4) of Directive 93/37?

4. Does a provision under which the contracting authority may take account of explanations relating solely to the economy of the construction method or the technical solutions adopted or the exceptionally favourable conditions available to the tenderer represent an obstacle to the application of Article 30(4) of Directive 93/37?

5. Does the exclusion of explanations relating to items for which minimum values can be inferred from official lists represent an obstacle to the application of Article 30(4) of Directive 93/37?

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[1] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).

Action brought on 8 November 2000 by the Commission of the European Communities against the Hellenic Republic

(Case C-406/00)

(2000/C 372/16)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 8 November 2000 by the Commission of the European Communities, represented by Maria Kondou-Durande, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de]a Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The Commission claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 98/100/EC [1] of 21 December 1998 amending Directive 92/76/EEC [2] recognising protected zones exposed to particular plant health risks in the Community, the Hellenic Republic has failed to fulfil its obligations under the Treaty and that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In accordance with the third paragraph of Article 249 of the Treaty establishing the European Community, directives are binding, as to the result to be achieved, upon each Member State to which they are addressed.

Under the first paragraph of Article 10 of the Treaty, Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

It is not disputed by the Hellenic Republic that it must adopt measures to comply with the abovementioned directive.

The Commission records that until now the Hellenic Republic has not adopted the appropriate measures to incorporate that directive fully into Greek law.

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[1] OJ L 351, 29.12.1998, p. 35.
[2] OJ L 305, 21.10.1992, p. 12.

Removal from the register of Case C-272/98 [1]

(2000/C 372/17)

By order of 12 July 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-272/98: (reference for a preliminary ruling from Juzgado de Primera Instancia (Court of First Instance) No 35 Barcelona): Artel SA v Francisca Arencom Salazar.

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[1] OJ C 278 of 5.9.1998.

Removal from the register of Case C-418/99 [1]

(2000/C 372/18)

By order of 12 July 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-418/99: Commission of the European Communities v Italian Republic.

[1] OJ C 20 of 22.1.2000.

Removal from the register of Case C-419/99 [1]

(2000/C 372/19)

By order of 12 July 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-419/99: Commission of the European Communities v Italian Republic.

[1] OJ C 20 of 22.1.2000.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 October 2000

in Case T-27/99: Humbert Drabbe v Commission of the European Communities [1]

(Officials — Pensions — Acquired rights — Rights acquired before taking up post with the Commission — Transfer to the Community scheme — Submission of application — Time-limits)

(2000/C 372/20)

(Language of the case: Dutch)

In Case T-27/99: Humbert Drabbe, an official of the Commission of the European Communities, residing in Overijse (Belgium), represented by G. van der Wal, lawyer with the right of audience before the Hoge Raad der Nederlanden, and L. Y. J. M. Parret, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. May, 31, Grand-rue, against Commission of the European Communities (Agents: F. Duvieusart-Clotuche and C. Van der Hauwaert) — application for the annulment of the decision of the Commission of 19 October 1998, notified to Humbert Drabbe on 23 October 1998, rejecting his complaint against the defendant's decision to transfer his pension rights acquired in the Netherlands to the Community pension scheme — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; G. Herzig, administrator, for the Registrar, gave a judgment on 17 October 2000, the operative part of which is as follows:

1. *The application is dismissed.*

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

(1) OJ C 71 of 13.3.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 October 2000

in Case T-123/99: JT's Corporation Ltd v Commission of the European Communities [1]

(Transparency — Access to documents — Decision 94/90/ECSC, EC, Euratom — Scope of the exception based on protection of the public interest — Inspection and investigation tasks — Authorship rule — Statement of reasons)

(2000/C 372/21)

(Language of the case: English)

In Case T-123/99: JT's Corporation Ltd, established in Bromley (United Kingdom), represented by M. Cornwell-Kelly, Solicitor, with an address for service in Luxembourg at the Chambers of Wilson Associates, 3 Boulevard Royal, against Commission of the European Communities (Agents: U. Wölker and X. Lewis) — application for the annulment of the Commission's decision of 11 March 1999 refusing the applicant access to certain documents — the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges; B. Pastor, Principal Administrator, for the Registrar, has given a judgment on 12 October 2000, in which it:

1. *Annuls the Commission decision of 11 March 1999 in so far as it refuses the applicant access to the mission reports of the European Union from 1993 to 1996 concerning Bangladesh, including their annexes, and to the correspondence sent by the Commission to the Government of Bangladesh concerning the annulment of the certificates of origin under the generalised system of preferences;*

2. *Dismisses the remainder of the action;*

3. *Orders the applicant to bear one half of its own costs;*

4. *Orders the Commission to bear its own costs, and to pay one half of the costs incurred by the applicant.*

(1) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 October 2000

in Case T-202/99: Léon Rappe v Commission of the European Communities [1]

(Officials — Promotion — Staff report — Delay in its drafting)

(2000/C 372/22)

(Language of the case: French)

In Case T-202/99: Léon Rappe, an official of the Commission of the European Communities, residing in Orp-Jauche (Belgium), represented by J.-N. Louis, G.-F. Parmentier and V. Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire SARL, 13 Avenue du Bois, against Commission of the European Communities (Agents: F. Duvieusart-Clotuche and B. Wägenbaur) — application, first, for annulment of the Commission's decision not to promote the applicant to grade A 6 in the course of the 1998 promotion procedure and, second, for damages — the Court of First Instance (Third Chamber), composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 5 October 2000, the operative part of which is as follows:

1. *The Commission's decision not to promote the applicant to grade A 6 in the course of the 1998 promotion procedure is annulled;*

2. *The remainder of the application is dismissed;*

3. *The Commission shall bear the costs.*

[1] OJ C 314 of 30.10.99.

Action brought on 18 September 2000 by Verde Sport SpA and Others against Commission of the European Communities

(Cases T-274/00 and T-296/00)

(2000/C 372/23)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 September 2000 by Verde Sport SpA and Others, represented by Alfredo Bianchini, of the Venice Bar.

The applicants claim that the Court should:

— annul Commission Decision 2000/394/EEC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul the abovementioned decision in so far as it requires recovery of the relief granted;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied upon in Cases T-234/00 Fondazione Opera S. Maria della Carità v Commission and T-235/00 Codess Sociale and Others [1].

[1] Not yet published.

Action brought on 22 September 2000 by Manuel Francisco Caballero Montoya against Commission of the European Communities

(Case T-303/00)

(2000/C 372/24)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 September 2000 by Manuel Francisco Caballero Montoya, residing in Brussels represented by Juan Ramón Iturriagagoitia.

The applicant claims that the Court should:

— annul the decision adopted on 13 December 1999 by the Commission's Pensions Unit, in accordance with the earlier requests of 23 August 1999, 22 September 1999 and 3 December 1999;

— review of the applicant's file, in view of the transfer of her pension rights, by the Transfer of Pension Rights Section of the Commission Pensions Unit following receipt of the interest arising from enforcement of a judgment, transferred by the Spanish social security;

— order any calculation necessary in respect of the abovementioned transfer;

— order the Commission to compensate the applicant pursuant to the general implementing provisions (GIP) by paying interest at a rate of 3.5 % per annum, calculated on the basis of the capital sum required to ensure the number of years of pensionable service with which she is to be credited under the Staff Regulations in respect of the periods to which such interest relates;

— order the repayment to the applicant of any amount overpaid as a result of the difference between the transferable capital sum together with interest of all kinds and the capital sum required to ensure payment together with interest payable to the Commission; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against the decision allegedly contained in a memorandum sent to the applicant dated 13 December 1999, adopted in the context of credit for pensionable service reckoned pursuant to the general provisions implementing Article 11(2) of the Staff Regulations, with regard to the years during which contributions had been paid to the Spanish social security scheme, and, in particular, calculation of the interest arising from the amount overpaid on transferring pension rights.

In support of his arguments, the applicant alleges:

— infringement of Article 11(2) of Annex VIII of the the Staff Regulations of Officials of the European Communities and its implementing provisions, so far as concerns Article 77 et seq thereof.

— breach of the principles of subsidiarity, non-discrimination and protection of legitimate expectations.

— misuse of powers by the defendant.

Action brought on 9 October 2000 by Viking-Umwelttechnik Ges.m.b.H. against the Office for Harmonisation in the Internal Market (Trade marks and Designs)

(Case T-316/00)

(2000/C 372/25)

(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 9 October 2000 by Viking-Umwelttechnik Ges.m.b.H. Kufstein (Austria), represented by Stefan Völker of Gleiss Lutz Hootz Hirsch Rechtsanwälte, Stuttgart (Germany).

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 28 July 2000 in Case R 558/1999-1 relating to the application for registration as a Community trade mark No 459 149;

— order the Office for Harmonisation to pay the applicant's costs.

Pleas in law and main arguments

Mark:	Colour mark claiming green (Pantone 369c) and grey (Pantone 428u) — Application No 459 149
Goods or services:	Goods in Class 7 (include garden choppers, mowers, hedge cutters, rotary machines, ploughs,high pressure cleaning apparatus)
Decision contested before the Board of Appeal:	Refusal by the examiner to register
Pleas in law:	— misapplication of Article 7(1)(b) of Regulation (EEC) No 40/94 — misapplication of Article 7(1)(c) of Regulation (EEC) No 40/94

Action brought on 12 October 2000 by Chantal Borremans and 17 others against Commission of the European Communities

(Case T-319/00)

(2000/C 372/26)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 October 2000 by Chantal Borremans and 17 others, residing in Belgium, represented by Albert Evrard and Anne Colson, of the Brussels Bar.

The applicants claim that the Court should:

— annul the decision to offer the applicants contracts as members of the temporary staff in permanent posts with effect from 1 January 2000 (Article 2(b) of the Conditions of Employment of other servants of the European Communities);

— call on the Commission to take an appropriate decision which would give fair compensation to the officials affected by the disadvantage arising from the annulled decision;

— order the Commission to pay 1 euro subject to increase or reduction during the course of proceedings by way of compensation for the material damage suffered by the applicants with the exception of Mr Arnalsteen, who assesses his damage at 1 000 000;

— order the Commission to pay 1 euro subject to increase or reduction during the course of proceedings by way of compensation for the non-material damage suffered by all the applicants, subject to an order for it to pay 1 000 000 BEF to Ms Borremans and Mr Arnalsteen;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicants are former agents of the European Association for Cooperation (EAC). The object of that association governed by Belgian law was the carrying out of various activities in the area of development policy on behalf of the Commission. Following the cessation of activities of the EAC at the end of 1998, the applicants were integrated into the Commission's staff.

By the present action, the applicants challenge the Commission's decision to offer them contracts as members of the temporary staff for a duration of two years, renewable for one year, under Article 2(b) of the of the Conditions of Employment of other servants of the European Communities.

The applicants complain that the Commission discriminated against them by comparison with other agents of the EAC who were established in 1982 and 1987. Moreover, they claim that the Commission had raised their legitimate expectations that they would form permanent part of the Communities' staff. By refusing to take account of the applicants' legitimate aspirations, the Commission breached the principle of the protection of legitimate expectations.

Action brought on 18 October 2000 by Elke Sada against the Commission of the European Communities

(Case T-325/00)

(2000/C 372/27)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 October 2000 by Elke Sada, residing at Besozzo/VA, Italy, represented by Dr Hans-Josef Rüber, Rechtsanwalt, Cologne, Germany.

The applicant claims that the Court should:

— declare that the defendant is required to pay to the applicant a monthly unemployment allowance under Article 28a of the Conditions of Employment of other servants of the European Communities,

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

Pleas in law and main arguments

The applicant was a member of the temporary staff at the Joint Research Centre, Ispra. She rejected an offer to renew her five-year term of employment for a further five years.

By the present action, she is objecting to the Commission decision not to grant her any unemployment allowance or other social security benefits under Article 28a of the Conditions of Employment of other servants.

Contrary to the defendant's contention, she is indeed to be regarded as unemployed for the purpose of Article 28a. Her rejection of the renewal of the term of employment is not comparable to resignation. On the contrary, her fixed-term employment came to an end in the usual way, which substantiates the claim for an unemployment allowance.

Action brought on 20 October 2000 by ICAT Food SpA against the Commission of the European Communities

(Case T-327/00)

(2000/C 372/28)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 October 2000 by ICAT Food SpA, represented by Roberto Delfino, of the Genoa Bar, Massimo Merola, of the Rome Bar, Flora Santaniello, of the Lecce Bar, Daniele P. Domenicucci, of the Pescara Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 Rue Albert I

The applicant claims that the Court should:

— annul Commission Decision C(2000)1612 of 19 June 2000 rejecting the request not to proceed with the post-clearance recovery, under Article 220(2)(b) of the Community Customs Code, of import duties in respect of three consignments of tuna from Turkey covered by IM4 documents No 548/P of 8 September 1995, No 866/E of 9 January 1996, and No 2656/H of 24 January 1996;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The present case concerns the challenge by the Community authorities of the ATR 1 certificates issued by Turkey in respect of the release into free circulation, by customs at Genoa, of three consignments of tinned tuna purchased from the Turkish undertaking Kervitas. The Community authorities argued that most of the raw material used in the manufacture of the exported products was not of exclusively Turkish origin and that the undertakings involved had not physically separated the raw material of Turkish origin from the rest.

In support of its claims, the applicant alleges infringement of Article 220(2)(b) of the Community Customs Code, breach of the principle of proportionality and of the obligation to provide a statement of reasons as provided for in Article 253 of the EC Treaty.

So far as concerns Article 220 of the abovementioned Code, the applicant claims that, assuming that the post-clearance recovery of the duties was well-founded (which is at the very least doubtful) and that the Turkish authorities had committed an error when issuing the certificate of origin, such an error should be characterised as an 'inward-processing error'.

The authorities in question in fact endorsed the validity of the ATR 1 certificates issued, proving that they were not misled by declarations made by the exporting companies. The main argument put forward by the Commission that in the present case there was no 'inward-processing' error on the part of the authorities thus fails.

The question as to whether the other two conditions laid down in Article 222 were fulfilled was contested by the Commission only indirectly.

So far as concerns the alleged error of interpretation of the rule against intermingling, the applicant claims that the Commission's certainty that mingling of Turkish and Community goods was prohibited caused the Community inspectors to fail to calculate the proportion of raw material originating in third countries and to verify to what extent, if any, it exceeded the tolerance level (10 %) provided for by the Decision of the EEC-Turkey Association Council.

Action brought on 24 October 2000 by Mario Costacurta against the Commission of the European Communities

(Case T-328/00)

(2000/C 372/29)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 October 2000 by Mario Costacurta, residing in Luxembourg, represented by Marc Petit, of the Luxembourg Bar.

The applicant claims that the Court should:

— annul the implied rejection of the Commission of the European Communities of his request of 6 June 2000;

— order that the applicant be re-assigned to a third country with effect from 1 September 2000, pursuant to Article 3 of Annex X to the Staff Regulations;

— order the Commission of the European Communities to pay all the costs of the proceedings;

— reserve to the applicant all other rights, dues, pleas and actions, in particular with regard to compensation for damage.

Pleas in law and main arguments

The applicant, who is assigned to the Office for Official Publications of the European Communities, is contesting the decision rejecting his request to be assigned to a third country pursuant to Article 3 of Annex X to the Staff Regulations of officials.

The pleas in law and main arguments are largely identical with those relied upon in Case T-202/00.

Action brought on 25 October 2000 by Bonn Fleisch Ex- und Import GmbH against the Commission of the European Communities

(Case T-329/00)

(2000/C 372/30)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 October 2000 by Bonn Fleisch Ex- und Import GmbH, established in Troisdorf, Germany, represented by Dietrich Ehle, Rechtsanwalt, Cologne.

The applicant claims that the Court should:

— annul Commission Decision K(2000) 2207 endg. of 25 July 2000 (REM 49/99);

— order the Commission to pay the costs.

Pleas in law and main arguments

The action is brought against the Commission's decision of 25 July 2000, in which the latter refused the application by the Federal Republic of Germany to grant the applicant remission of import duties for the importation of beef on the basis of Article 13 of Regulation (EEC) No 1430/79 [1]. The Commission maintains in the contested decision that the extracts submitted by the applicant at the time of import clearance were forgeries, and that licence forgeries fall within the business risk of the applicant. Neither the Spanish authorities which issued the licences nor the Commission had acted improperly, so the normal business risk to be borne by importers of goods benefiting from customs advantages was not exceeded.

The applicant accuses the Commission of infringing its right to a hearing, because on its inspection of the files it was not presented with all the relevant supporting documents. Moreover, because of the improper conduct of the Spanish authorities and the Commission, particularly in the area of quota administration, special circumstances existed within the meaning of Article 13 of the Regulation. It also maintains that there is no proof or any convincing evidence of alleged forgery, and that the Commission has explained the facts in a defective and incomplete manner.

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[1] Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1).

Action brought on 26 October 2000 by Stefano Cocchi and Evi Hainz against Commission of the European Communities

(Case T-330/00)

(2000/C 372/31)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 October 2000 by Stefano Cocchi and Evi Hainz, residing in Italy, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar.

The applicants claim that the Court should:

— annul the decisions of the Authority Empowered to Conclude Contracts (AECC) of 16 March 2000 and of 22 February 2000 not to accept the applicants' candidature for the posts advertised in vacancy notices COM/R/5530/00 of 24 February 2000 and COM/R/5500/00 of 24 January 2000, or, in the alternative, to annul those vacancy notices;

— annul the appointments made by the AECC, of unknown date, in the context of the recruitment procedures put in motion by those two vacancy notices;

— order the defendant to pay one euro by way of damages for the damage suffered as a result of that decision, such sum being set ex aequo et bono and provisionally;

— order the defendant to pay the whole of the costs.

Pleas in law and main arguments

The applicants are former temporary agents working for the Commission at the Joint Research Centre (JRC) at Ispra, Italy.

By the contested decisions, the Commission informed the applicants that their applications for the two vacant posts had not been taken into consideration.

The applicants criticise the Commission for having given priority to applications from officials, which were examined and compared on their own, without those of temporary agents, including the candidatures of the applicants, being examined at the same time. By failing to consider the comparative merits of all the candidatures, the Commission infringed Articles 4, 7, 27, 29 and 45 of the Staff Regulations and Article 12 of the Conditions of Employment of other servants and breached the principle of non-discrimination.

Moreover, the applicants claim that the contested decisions are devoid of any formal statement of reasons. Furthermore, they were not taken in the interest of the service and are not compatible with the new policy of the Commission vis-à-vis research staff. Finally, the applicants take the view that the contested decisions are acts of mismanagement and are contrary to the duty of the administration to have regard for the welfare of officials.

Action brought on 26 October 2000 by Laurence Bories and 4 others against Commission of the European Communities

(Case T-331/00)

(2000/C 372/32)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 October 2000 by Laurence Bories and Philippe Chemin, Laura Copes, Emanuele Mondini and Helen Preissler, residing in Italy, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar.

The applicants claim that the Court should:

— annul the decisions of the Authority Empowered to Conclude Contracts (AECC) of 16 March 2000, 3 February 2000, 17 March 2000, 17 January 2000 and 16 March 2000 not to accept the applicants' candidature for the posts advertised in vacancy notices COM/R/5526/00 of 24 February 2000, COM/R/5889/99 of 21 December 1999, COM/R/5520/00 of 24 February 2000, COM/R/5863/99 of 26 November 1999 and COM/R/5521/00 of 24 February 2000, or, in the alternative, to annul those vacancy notices and, in so far as necessary, annul the decision of the AECC of 25 July 2000 rejecting the applicants' complaints;

— order the defendant to pay one euro by way of damages for the damage suffered as a result of that decision, such sum being set ex aequo et bono and provisionally;

— order the defendant to pay the whole of the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-330/00 Cocchi and Heinz v Commission.

Action brought on 3 November 2000 by Rougemarine SARL against Commission of the European Communities

(Case T-333/00)

(2000/C 372/33)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 November 2000 by Rougemarine SARL, whose registered office is at Paris, represented by Thierry Levy, of the Paris Bar.

The applicant claims that the Court should:

— annul in its entirety the decision of the Commission of the European Communities of 5 September 2000;

— annul Council Decision 95/563/EC of 10 July 1995;

— order the Commission to pay FRF 1 604 735 241 (EUR 24 463 867) by way of damages for the harm suffered by Rougemarine as a result of such discrimination;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in the present case is an audiovisual production undertaking belonging to the RCS in Paris whose managing director and majority shareholder is a Tunisian national.

The action seeks the annulment of the decision of the Commission of 5 September 2000 which refused the applicant the financial support which it had requested in the context of the MEDIA II programme, the objective of which is, among others, to encourage the development and distribution of European audiovisual works pursuant to Council Decision 95/563/EC of 10 July 1995 on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II — Development and distribution) (1996-2000). [1]

In support of its claims, the applicant undertaking states, first, that the contested decision, which is based on the fourth paragraph of Article 3 of Council Decision 95/563/EC, cited above, is unlawful, in that it discriminates between European audiovisual production undertakings on the basis of the nationality of its managing directors, which is contrary to Article 12 of the EC Treaty. In fact, according to the fourth paragraph of Article 3, the businesses benefitting from the programme must be in the possession and continue to be in the possession, whether directly, or by majority participation, of the Member States and/or of nationals from Member States. That provision is also contrary to the principle of equality, as laid down in the case-law of the Court of Justice. The applicant considers, in that respect, that the differentiation criterion used is not objectively justified.

Additionally, the applicant undertaking requests, on the basis of Article 241 of the Treaty, that Council Decision 95/563/EC be declared unlawful.

[1] OJ 1995 L 321, p. 25.

Action brought on 7 November 2000 by Carmelo Morello against the Commission of the European Communities

(Case T-338/00)

(2000/C 372/34)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 November 2000 by Carmelo Morello, residing in Brussels, represented by Jacques Sambon and Pierre Paul Van Gehuchten, of the Brussels Bar.

The applicant claims that the Court should:

— annul the Commission's decision appointing another official to post COM/113/99 IV/F/2 'Motor vehicles and other means of transport', corresponding to a grade A5/A4 post of Head of Unit;

— annul the Commission's decision rejecting the application of the applicant for that post;

— award the sum of 120 000 euro, subject to increase or decrease during the course of the proceedings, by way of compensation for the non-material damage suffered by the applicant as a result of the irregular or incomplete information gathered by the defendant in relation to the applicant's personal file and the state of uncertainty and worry in which he has been placed with regard to his future career;

— award the sum of 25 000 euro, subject to increase or decrease during the course of the proceedings, by way of compensation for the material damage suffered by the applicant as a result of his having been rejected as a candidate for the post to be filled and of his having thus lost an opportunity of promotion;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Cases T-135/00 and T-136/00 Morello v Commission [1].

[1] OJ C 211, 22.7.2000, pp. 23 and 24.

Removal from the Register of Case T-121/98 [1]

(2000/C 372/35)

(Language of the case: German)

By order of 29 September 2000, the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-121/98, Taurus Beteiligungs-GmbH & Co. KG v Commission of the European Communities.

[1] OJ C 312 of 10.10.1998.

Removal from the Register of Case T-204/98 R [1]

(2000/C 372/36)

(Language of the case: English)

By order of 11 October 2000, the President of the Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-204/98 R, British Sugar plc v Commission of the European Communities.

[1] OJ C 48 of 20.2.1999.

Removal from the Register of Case T-232/99 [1]

(2000/C 372/37)

(Language of the case: English)

By order of 6 September 2000, the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-232/99, Margaret McKenzie-Campbell v Commission of the European Communities.

[1] OJ C 20 of 22.1.2000.

Removal from the Register of Case T-39/00 [1]

(2000/C 372/38)

(Language of the case: German)

By order of 27 September 2000, the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-39/00, PlantaVet Vertrieb biologischer Tierarzneimittel GmbH v the European Agency for the Evaluation of Medicinal Products.

[1] OJ C 135 of 13.5.2000.