Official Journal

of the European Communities

ISSN 0378–6986

C 61

Volume 44

24 February 2001

English edition

Information and Notices

Notice No | Contents | Page

I *Information*

Court of Justice

COURT OF JUSTICE

2001/C 61/01 Judgment of the Court (First Chamber) of 28 November 2000 in Case C-88/99 (reference for a preliminary ruling from the Tribunal de Grande Instance de Béthune): Roquette Frères SA v Direction des Services Fiscaux du Pas-de-Calais (Recovery of sums paid but not due — National procedural rules — Capital duty levied in respect of a merger) 1

2001/C 61/02 Case C-437/00: Reference for a preliminary ruling by the Landesarbeitsgericht München by order of that court of 11 February 2000 in the case of Giulia Pugliese against Finmeccanica s.p.a., Alenia Aerospazio division 1

2001/C 61/03 Case C-438/00: Reference for a preliminary ruling from the Oberlandesgericht Hamm by order of that court of 15 November 2000 in the case of Deutscher Handballbund e.V. v Maros Kolpak 2

2001/C 61/04 Case C-451/00: Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per il Lazio, Chamber 2b, by judgment of that court of 28 June and 6 July 2000, in the case of Azienda Agricola Giuseppe Cantarello against Azienda di Stato per gli interventi nel mercato agricolo A.I.M.A. and the Ministry for Agricultural Policy 2

2001/C 61/05 Case C-453/00: Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by decision of that court of 1 November 2000 in the case of Kühne & Heitz N.V. against Produktschap voor Pluimvee en Meren 2

2001/C 61/06 Case C-454/00: Reference for a preliminary ruling by the Corte d'Appello di Milano by order of that court of 25 October 2000 in the case of VIS Farmaceutici — Istituto Scientifico delle Venezie SpA against Duphar International Research BV, and Consorzio Produttori Principi Attivi Generici — CPA, intervener 3

2001/C 61/07 Case C-463/00: Action brought on 21 December 2000 by the Commission of the European Communities against the Kingdom of Spain 3

(Continued overleaf)

Notice No	Contents (Continued)	Page
2001/C 61/08	Case C-466/00: Reference for a preliminary ruling by the Immigration Appellate Authority (United Kingdom), by order of that court of 19 December 2000, in the case of Arben Kaba against Secretary of State for the Home Department	4
2001/C 61/09	Case C-467/00 P: Appeal brought on 27 December 2000 by Staff Committee of the European Central Bank, established in Frankfurt am Main, Germany, Johannes Priesemann, member of staff of the ECB, residing in Frankfurt am Main, Germany, Marc van de Velde, member of staff of the ECB, residing in Usingen-Kransberg, Germany and Maria Concetta Cerafogli, member of staff of the ECB, residing in Frankfurt am Main, Germany against the order made on 24 October 2000 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-27/00 between Staff Committee of the European Central Bank, Johannes Priesemann, Marc van de Velde and Maria Concetta Cerafogli and European Central Bank	5
2001/C 61/10	Case C-472/00 P: Appeal brought on 29 December 2000 by the Commission of the European Communities against the judgment delivered on 24 October 2000 by the Third Chamber, Extended Composition, of the Court of First Instance of the European Communities in case T-178/98 between Fresh Marine Company A/S and the Commission of the European Communities	5
2001/C 61/11	Case C-473/00: Reference for a preliminary ruling by the Tribunal d'Instance, Vienne, by judgment of that court of 15 December 2000, rectified by a judgment of 26 January 2001, in the case of Codifis SA against Jean Louis Fredout	6
2001/C 61/12	Case C-1/01 P: Appeal brought on 3 January 2001 by Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA against the judgment delivered on 26 October 2000 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-154/98 between Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA and the Commission of the European Communities	6
2001/C 61/13	Case C-4/01: Reference for a preliminary ruling by the Employment Tribunal, West Croydon (United Kingdom), by order of that court of 5 January 2001, in the case of Ms S.G. Martin, Mr R.K.A. Daby and Mr B.J. Willis against South Bank University ...	7
2001/C 61/14	Case C-5/01: Action brought on 8 January 2001 by the Kingdom of Belgium against the Commission of the European Communities	8
2001/C 61/15	Case C-6/01: Reference for a preliminary ruling by the 15.ª Vara Civel da Comarca de Lisboa, 2ª Secção, by order of that court of 25 May 2000 in the case of ANOMAR — Associação Nacional de Operadores de Máquinas Recreativas and Others against Portuguese State	9
2001/C 61/16	Case C-8/01: Reference for a preliminary ruling by the Østre Landsret by decision of 20 December 2000 in the case of Assurandør-Societet, acting on behalf of Taksatorring, v Skatteministeriet	10
2001/C 61/17	Cases C-9, 10, 11 and 12/01: Reference for a preliminary ruling by the Hof van Beroep te Gent by judgment of that court of 3 January 2001 in the cases of S. Monnier against Govan Sports N.V., E. Van Ankeren against Govan Sports N.V., Govan Sports N.V. against P. Jacobs, and Govan Sports N. V. against D. D'Hondt	10
2001/C 61/18	Case C-20/01: Action brought on 16 January 2001 by the Commission of the European Communities against the Federal Republic of Germany	11
2001/C 61/19	Case C-26/01: Action brought on 23 January 2001 by the Commission of the European Communities against the French Republic	11
2001/C 61/20	Case C-27/01: Action brought on 23 January 2001 by the Commission of the European Communities against the Grand Duchy of Luxembourg	11
2001/C 61/21	Case C-28/01: Action brought on 23 January 2001 by the Commission of the European Communities against the Federal Republic of Germany	12

EN

(Continued on inside back cover)

Notice No	Contents (Continued)	Page
2001/C 61/22	Case C-29/01: Action brought on 24 January 2001 by the Commission of the European Communities against the Kingdom of Spain	12
2001/C 61/23	Removal from the register of Case C-505/99	13
2001/C 61/24	Removal from the register of Case C-67/00	13
2001/C 61/25	Removal from the register of Case C-68/00	13
2001/C 61/26	Removal from the register of Case C-70/00	13
	COURT OF FIRST INSTANCE	
2001/C 61/27	Case T-349/00: Action brought on 16 November 2000 by Giorgio Lebedef against the Commission of the European Communities	14
2001/C 61/28	Case T-352/00: Action brought on 20 November 2000 by Andrew M. Rosemarine against the Office for Harmonisation in the Internal Market	14
2001/C 61/29	Case T-357/00: Action brought on 27 November 2000 by Justina Martínez Alarcón against the Commission of the European Communities	15
2001/C 61/30	Case T-361/00: Action brought on 27 November 2000 by Antonio Cherenti against the Commission of the European Communities	15
2001/C 61/31	Case T-363/00: Action brought on 27 November 2000 by Luigia Dricot against the Commission of the European Communities	16
2001/C 61/32	Case T-364/00: Action brought on 27 November 2000 by Sophie Van Weyenbergh against the Commission of the European Communities	16
2001/C 61/33	Case T-366/00: Action brought on 30 November 2000 by Scott S.A. against the Commission of the European Communities	16
2001/C 61/34	Case T-368/00: Action brought on 30 November 2000 by General Motors Nederland B.V. and Opel Nederland B.V. against the Commission of the European Communities	17
2001/C 61/35	Case T-369/00: Action brought on 4 December 2000 by the Département du Loiret against the Commission of the European Communities	18
2001/C 61/36	Case T-373/00: Action brought on 12 December 2000 by Carmine Salvatore Tralli against the European Central Bank	19
2001/C 61/37	Case T-374/00: Action brought on 11 December 2000 by Verband der freien Rohrwerke e.V., Eisen- und Metallwerke Ferndorf GmbH and Rudolf Flender GmbH & Co. KG against the Commission of the European Communities	19
2001/C 61/38	Case T-376/00: Action brought on 19 December 2000 by Carmelo Morello against the Commission of the European Communities	20
2001/C 61/39	Case T-382/00: Action brought on 22 December 2000 by Monsanto Company against the Council of the European Union	20
2001/C 61/40	Case T-383/00: Action brought on 22 December 2000 by Beamglow Ltd., against the Council of the European Union, the European Parliament and the Commission of the European Communities	21
2001/C 61/41	Case T-385/00: Action brought on 27 December 2000 by Jean-Paul Seiller against the European Investment Bank	22
2001/C 61/42	Case T-386/00: Action brought on 28 December 2000 by Margarida Gonçalves against the European Parliament	22
2001/C 61/43	Case T-387/00: Action brought on 28 December 2000 by Comitato organizzatore del convegno internazionale 'Effetti degli inquinamenti atmosferici sul clima e sulla vegetazione' against Commission of the European Communities	23

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(First Chamber)

of 28 November 2000

in Case C-88/99 (reference for a preliminary ruling from the Tribunal de Grande Instance de Béthune): Roquette Frères SA v Direction des Services Fiscaux du Pas-de-Calais [1]

(Recovery of sums paid but not due — National procedural rules — Capital duty levied in respect of a merger)

(2001/C 61/01)

(Language of the case: French)

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

In Case C-88/99: reference to the Court under Article1 177 of the EC Treaty (now Article 234 EC) from the Tribunal de Grande Instance de Béthune, (France) for a preliminary ruling in the proceedings pending before that court between Roquette Frères SA and Direction des Services Fiscaux du Pas-de-Calais — to ascertain whether Community law prohibits national tax legislation which provides that an action for recovery of a sum paid but not due, based on a judicial decision declaring a rule of law incompatible with a higher-ranking rule, may relate only to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility — the Court (First Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 28 November 2000, in which it has ruled:

Community law does not preclude legislation of a Member State laying down that, in tax matters, an action for recovery of a sum paid but not due based on a finding by a national or Community court that a national rule is not compatible with a superior rule of national law or with a Community rule of law may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.

---

[1] OJ C 136 of 15.5.1999.

Reference for a preliminary ruling by the Landesarbeitsgericht München by order of that court of 11 February 2000 in the case of Giulia Pugliese against Finmeccanica s.p.a., Alenia Aerospazio division

(Case C-437/00)

(2001/C 61/02)

Reference has been made to the Court of Justice of the European Communities by order of the Landesarbeitsgericht München (Higher Labour Court, Munich) of 11 February 2000, received at the Court Registry on 27 November 2000, for a preliminary ruling in the case of Giulia Pugliese v Finmeccanica s.p.a., Alenia Aerospazio division on the following questions concerning the interpretation of the EC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 ('the Brussels Convention'; OJ 1990 C 189, p. 2):

1. In a dispute between an Italian national and a company established under Italian law having its registered office in Italy arising from a contract of employment concluded between them which designates Turin as the place of work, is Munich the place where the employee habitually carries out his work under the second half-sentence of Article 5(1) of the Brussels Convention where, from the outset, the contract of employment is temporarily placed on non-active status at the request of the employee and, during that period, the employee carries out work, with the consent of the Italian employer, but on the basis of a separate contract of employment, for a company established under German law at its registered office in Munich, for the duration of which the Italian employer assumes the obligation to provide accommodation in Munich or to bear the costs of such accommodation and to bear the costs of two journeys home each year from Munich to the employee's native country?

2. If the first question is answered in the negative, may the employee, in a legal dispute with her Italian employer arising from the contract of employment, rely, with reference to the payment of rental costs and travel costs for the two journeys home each year, on the argument that the court having jurisdiction is that for the place of performance of the obligation in question, pursuant to the first half-sentence of Article 5(1) of the Brussels Convention?

Reference for a preliminary ruling from the Oberlandesgericht Hamm by order of that court of 15 November 2000 in the case of Deutscher Handballbund e.V. v Maros Kolpak

(Case C-438/00)

(2001/C 61/03)

Reference has been made to the Court of Justice of the European Communities by an order of the Oberlandesgericht (Higher Regional Court) Hamm, Germany, of 15 November 2000, which was received at the Court Registry on 28 November 2000, for a preliminary ruling in the case of Deutscher Handballbund e.V. v Maros Kolpak on the following question:

Is it contrary to Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part — Final Act — if a sports association applies to a professional sportsman of Slovak nationality a rule it has adopted under which clubs may play in championship and cup matches only a limited number of players who come from third countries not belonging to the European Communities?

Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per il Lazio, Chamber 2b, by judgment of that court of 28 June and 6 July 2000, in the case of Azienda Agricola Giuseppe Cantarello against Azienda di Stato per gli interventi nel mercato agricolo A.I.M.A. and the Ministry for Agricultural Policy

(Case C-451/00)

(2001/C 61/04)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunale Amministrativo Regionale per il Lazio, Chamber 2b, of 28 June and 6 July 2000, received at the Court Registry on 8 December 2000, for a the preliminary ruling in the case of Azienda Agricola Giuseppe Cantarello against Azienda di Stato per gli interventi nel mereato agricolo A.I.M.A. and the Ministry for Agricultural Policy on the following questions:

(1) May the provisions contained in Articles 1 and 4 of Council Regulation (EEC) No 3950/92 [1] of 28 December 1992 and Articles 3 and 4 of Commission Regulation (EEC) No 534/93 [2] of 9 March 1993 be interpreted as meaning that it is possible, in the case of Community law proceedings and the subsequent compliance of the Member State to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?

If not,

(2) Are those provisions of Community law valid, in the light of Article 33 (ex 39) of the Treaty, in so far as they do not provide for derogation from the periods prescribed for allocation and adjustments in the abovementioned case of Community law proceedings?

---

[1] OJ L 405 of 31.12.1992, p. 1.
[2] Commission Regulation (EEC) No 536/93 of 9 March 1993 is meant (OJ L 57 of 10.3.1993, p. 12).

Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by decision of that court of 1 November 2000 in the case of Kühne & Heitz N.V. against Produktschap voor Pluimvee en Meren

(Case C-453/00)

(2001/C 61/05)

Reference has been made to the Court of Justice of the European Communities by a decision of the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) of 1 November 2000, which was received at the Court Registry on 11 December 2000, for a preliminary ruling in the case of Kühne Heitz N.V. v Produktschap voor Pluimvee en Eieren on the following question:

Under Community law, in particular under the principle of Community solidarity contained in Article 10 EC, and in the circumstances described in the grounds of this decision [1], is an administrative body required to reopen a decision which has become final in order to ensure the full operation of Community law, as it is to be interpreted in the light of a subsequent preliminary ruling?

---

[1] In this case the appellant exhausted the legal remedies available to (although the College did not seek a preliminary ruling under (the present) Article 234 at the time) and the College gave an interpretation of European law on a specific point which proved subsequently to differ from the Court's interpretation in a later judgment.

Reference for a preliminary ruling by the Corte d'Appello di Milano by order of that court of 25 October 2000 in the case of VIS Farmaceutici — Istituto Scientifico delle Venezie SpA against Duphar International Research BV, and Consorzio Produttori Principi Attivi Generici — CPA, intervener

(Case C-454/00)

(2001/C 61/06)

Reference has been made to the Court of Justice of the European Communities by order of the Corte d'Appello di Milano (Court of Appeal, Milan) of 25 October 2000, which was received at the Court Registry on 13 December 2000, for a preliminary ruling in the case of VIS Farmaceutici — Istituto Scientifico delle Venezie SpA, having its registered office in Padua, Italy, against Duphar International Research BV, having its registered office in the Netherlands, and Consorzio Produttori Principi Attivi Generici — CPA, intervener, on the following question:

Must Article 4 of Regulation No 1768/92 [1] be interpreted as meaning that the scope of protection of the supplementary certificate extends only to manufacture of the raw material from which is prepared the product which constitutes the medicinal product covered by the marketing authorisation?

---

[1] Council Regulation (EEC) No 1768/of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ L 182, 2.7.1992, p. 1).

Action brought on 21 December 2000 by the Commission of the European Communities against the Kingdom of Spain

(Case C-463/00)

(2001/C 61/07)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 21 December 2000 by the Commission of the European Communities, represented by Maria Patakia and Manuel Desantes, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. Declare that Article 2 and Article 3(1) and (2), together with Article 1, of Law 5/1995 [1], and the implementing decrees enacted under Article 4 thereof (Royal Decrees No 3/1996 of 15 January 1996 concerning Repsol, No 8/1997 of 10 January 1997 concerning Telefónica de España, No 40/1998 of 16 January 1998 concerning Argentaria, No 562/1998 of 2 April 1998 concerning Tabacalera and No 929/1998 of 14 May 1998 concerning Endesa), in so far as they implement a system of prior administrative authorisation

   — which is not justified by overriding public interest requirements,

   — without laying down objective criteria which are consistent and have been made public, and

   — without complying with the principle of proportionality,

   are incompatible with Article 43 EC (ex Article 52) and Article 56 EC (ex Article 73b).

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

Pleas in law and main arguments

The abovementioned provisions of Law 5/1995 and its implementing decrees enable the Spanish authorities to subject to prior administrative authorisation certain decisions (liquidation, hiving off, merger, change of the company's object, sale of assets and sale of more than 10 % of the shares) (Article 3) taken by certain categories of companies in which the State's shareholding is in excess of 25 % of the share capital and thereby results in it effectively controlling the company (Article 1), provided that such decisions lead either to the State's shareholding being reduced by at least 10 % of the capital so that its holding is less than 50 %, or to its shareholding being reduced by at least 15 % of the capital by any means (Article 2). Those facts have not at any time been disputed by the Spanish Government.

The Commission submits that:

— the possibility of making certain operations subject to prior administrative authorisation, in the circumstances described in the articles cited, constitutes a restriction on the free movement of capital and the freedom of establishment, which are provided for in Article 56 EC (ex Article 73b) and Article 43 EC (ex Article 52);

— the system of administrative authorisation laid down by Law 5/1995 can in no way be justified by overriding reasons of public interest and clearly involves the exercise of discretion. That discretionary power is a key factor conducive to a negative assessment as regards the requirement of proportionality and to the conclusion that what is involved is a system allowing indirect discrimination.

(1) Law 5/1995 of 23 March 1995 on the rules applying to the sale of public shareholdings in certain companies (Boletín Oficial del Estado No 72 of 25 March 1995).

Reference for a preliminary ruling by the Immigration Appellate Authority (United Kingdom), by order of that court of 19 December 2000, in the case of Arben Kaba against Secretary of State for the Home Department

(Case C-466/00)

(2001/C 61/08)

Reference has been made to the Court of Justice of the European Communities by an order of the Immigration Appellate Authority (United Kingdom) of 19 December 2000, which was received at the Court Registry on 27 December 2000, for a preliminary ruling in the case of Arben Kaba against Secretary of State for the Home Department, on the following questions:

Question 1

1. What mechanisms are there for the referring court or the parties to the proceedings (before the referring court and the ECJ) to ensure that the totality of the proceedings comply with the obligations under Article 6 ECHR and therefore to ensure that no liability for breach of Article 6 ECHR arises either under the domestic human rights statute or before the Court of Human Rights? and

2. Was the procedure followed in this case in compliance with the requirements of Article 6 ECHR and, if not, how does this affect the validity of the first judgment (1)?

Question 2

1. The Immigration Adjudicator having found that the Appellant, and the spouse of a person present and settled in the United Kingdom were (or would be) afforded different treatment in that

   a) the Appellant, having entered the United Kingdom as the spouse of an EU citizen exercising free movement rights, was required to have been in the United Kingdom for four years before he could apply for indefinite leave to remain, whereas

   b) the spouse of a person who was present and settled in the United Kingdom (whether a British national or as a person who had been granted indefinite leave to remain) would qualify after one year for indefinite leave to remain.

2. No evidence (or argument) concerning justification of the differential treatment between the applicant and such a spouse of a person present and settled having been presented to the referring court either at the hearing leading up to the Order for Reference of 25 September 1998, in the written or oral observations made by the Respondent before the European Court of Justice or the hearing leading up to the present Order for Reference, despite the request by the Adjudicator for full argument, the Immigration Adjudicator asks

   1. Whatever the answer to the first question set out above, is the Court's judgment of 11 April 2000 in this case (Case-356/98) to be interpreted as stating that, in these circumstances, there was discrimination contrary to Article 39 EC and/or Article 7(2) of Regulations 1612/68 (2)?

   2. After re-assessment of the facts, is there discrimination contrary to Article 39 EC and/or Article 7(2) of Regulations 1612/68?

(1) Judgment of the Court of 11 April 2000 in Case C-356/98, Arben Kaba against Secretary of State for the Home Department (ECR p. I-2623).

(2) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2 [SE SER1 68(H) p. 475]).

Appeal brought on 27 December 2000 by Staff Committee of the European Central Bank, established in Frankfurt am Main, Germany, Johannes Priesemann, member of staff of the ECB, residing in Frankfurt am Main, Germany, Marc van de Velde, member of staff of the ECB, residing in Usingen-Kransberg, Germany and Maria Concetta Cerafogli, member of staff of the ECB, residing in Frankfurt am Main, Germany against the order made on 24 October 2000 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-27/00 [1] between Staff Committee of the European Central Bank, Johannes Priesemann, Marc van de Velde and Maria Concetta Cerafogli and European Central Bank

(Case C-467/00 P)

(2001/C 61/09)

An appeal against the order made on 24 October 2000 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-27/00 between Staff Committee of the European Central Bank, Johannes Priesemann, Marc van de Velde and Maria Concetta Cerafogli and European Central Bank, was brought before the Court of Justice of the European Communities on 27 December 2000 by Staff Committee of the European Central Bank, Johannes Priesemann, Marc van de Velde and Maria Concetta Cerafogli, represented by N. Pflüger, R. Steiner and S. Mittländer, Rechtsanwalte, Frankfurt am Main, with an address for service in Luxembourg at the office of A. Schiltz, Association Luxembourgeoise des Employés de Banque et d'Assurance, 29 Avenue Monterey.

The Appellants claim that:

1) the order be annulled and the claims brought in the first instance be accepted as founded,

   and if this claim cannot be accepted, demand that

   the order be annulled in so far as the Court of First Instance dismissed the action as inadmissible and the case be referred back to the Court of First Instance of the European Communities

2) the Respondent be ordered to pay the costs of the appeal and the action at the Court of First Instance of the European Communities.

Pleas in law and main arguments

The admissibility and timeliness of the action has to be judged on the basis of Article 236 EC in conjunction with Article 36.2 of the Statute. Article 36.2 of the Statute, in turn, refers to the conditions of employment. Hence, the application and interpretation of Article 42 of the Conditions of Employment of the ECB has to be the basis of the ruling. The Appellants hold the view that the Court of First Instance overlooked three aspects of law in this respect: first, Article 42 of the Conditions of Employment of the ECB provides for access to the Court of Justice in the case of disputes over collective rights. Second, in the pursuit of collective rights the Conditions of Employment of the ECB do not foresee a time-limit within which an action should be brought. Thirdly, the Conditions of Employment of the ECB do not require internal procedures to be exhausted prior to the bringing of an action. Lastly, this legal situation is, in the view of the Appellants, usual for a private law relationship of the type established by the Conditions of Employment of the ECB. There is no need to construct further limitations for actions in the form of time-limits or internal procedures.

---

[1] OJ C 135, 13.5.2000, p. 13.

Appeal brought on 29 December 2000 by the Commission of the European Communities against the judgment delivered on 24 October 2000 by the Third Chamber, Extended Composition, of the Court of First Instance of the European Communities in case T-178/98 [1] between Fresh Marine Company A/S and the Commission of the European Communities

(Case C-472/00 P)

(2001/C 61/10)

An appeal against the judgment delivered on 24 October 2000 by the Third Chamber, Extended Composition, of the Court of First Instance of the European Communities in case T-178/98 between Fresh Marine A/S and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 29 December 2000 by the Commission of the European Communities, represented by Viktor Kreuschitz, Legal Adviser, and Sinéad Meany, a national civil servant on secondment to the Legal Service of the Commission, acting as agents, assisted by Nicholas Khan, Barrister, of the Bar of England and Wales, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, a member of the Legal Service, Centre Wagner.

The Appellant claims that the Court should:

1. set aside the judgment, dismiss the Application, and order the Respondent to pay the costs, or alternatively,

2. set aside the judgment and refer the case back to the Court of First Instance.

Pleas in law and main arguments

It is submitted that the judgment appealed is vitiated by a number of errors of law and should be set aside and the Application dismissed. It is submitted that the Court of First Instance erred in law in the following respects:

— In holding that the damage arose from the allegedly unlawful conduct of the Commission when it examined the October 1997 report.

— In holding that the jurisprudence characterising anti-dumping measures as legislative acts involving choices of economic policy concerned cases 'radically different' from the present case, and in thereby holding that a mere infringement of Community law would suffice to give rise to liability under Article 288 EC.

— In holding that the October 1997 report prima facie suggested that the Respondent had complied with its undertaking and in holding therefore that;

  a) the Commission's reaction in amending the report was disproportionate, and

  b) the Commission had committed an error which would not have been made had it exercised ordinary care and diligence.

— In holding that the Respondent had shown reasonable diligence in mitigating the extent of the damage it had claimed to have suffered.

— In holding that the Commission unjustifiably delayed in adopting the necessary measures to restore the Respondent's undertaking and consequently holding that the Commission should bear full responsibility for the Respondent's loss of profit as from the end of January 1998.

---

(1) OJ C 160, 5.6.1999, p. 21.

Reference for a preliminary ruling by the Tribunal d'Instance, Vienne, by judgment of that court of 15 December 2000, rectified by a judgment of 26 January 2001, in the case of Codifis SA against Jean Louis Fredout

(Case C-473/00)

(2001/C 61/11)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal d'Instance (District Court), Vienne, of 15 December 2000, received at the Court Registry on 27 December 2000, and rectified by a judgment of 26 January 2001, for a preliminary ruling in the case of Codifis SA v Jean Louis Fredout on the following question:

Given that the protection under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (1) implies that a national court, applying provisions of national law previous or subsequent to that directive, is to interpret them so far as possible in the light of the wording and purpose of the latter;

Does that requirement of the system of consumer protection laid down by the directive that interpretation is to be in conformity require a national court, when hearing an action for payment brought by a seller or supplier against a consumer with whom he has contracted, to set aside an exceptional procedural rule, such as that in Article L 311-37 of the Consumer Code, in so far as it prohibits the national court, either on the application of the consumer or of its own motion, from annulling any unfair clause which vitiates the contract where the latter was made more than two years before the commencement of proceedings and in so far as it thereby permits the seller or supplier to rely in law on those clauses and to base its action upon them?

---

(1) OJ L 95, 21.4.1993, p. 29.

Appeal brought on 3 January 2001 by Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA against the judgment delivered on 26 October 2000 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-154/98 between Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA and the Commission of the European Communities

(Case C-1/01 P)

(2001/C 61/12)

An appeal against the judgment delivered on 26 October 2000 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-154/98 between Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 3 January 2001 by Asia Motor France SA, Jean-Michel Cesbron and Monin Automobiles SA, represented by J-C. Fourgoux of the Brussels and Paris Bars, with an address for service in Luxembourg at the Chambers of P. Schiltz, 4 Rue Béatrix de Bourbon.

The appellants claim that the Court should:

— set aside the judgment of the Court of First Instance of 26 October 2000 (1);

— annul the Commission's decision of 14 July 1998, and

— order the Commission to pay the costs.

Pleas in law and main arguments

— Infringement of fundamental rights: after dismissing the plea alleging breach of the requirement of a reasonable period [within which the administrative procedure must be completed], necessary to ensure fair legal process, which constitutes a fundamental right, the Court of First Instance admitted that it was entitled to consider of its own motion the question of infringement of essential procedural requirements and of the procedural guarantees conferred by Community law, but decided not to do so.

— Manifest error of fact and law, distortion, contradiction, insufficient statement of reasons and infringement of Article 176 of the EC Treaty: the Court of First Instance quite simply obliterated the findings in its two earlier judgments [2] and even accepted, theoretically, the explanation offered by the Commission at the hearing that, by referring in their letter of 1 July 1987 to a 'quid pro quo' consisting in their refusal to authorise other makes of Japanese car, the French authorities simply 'meant to make the policy they [were implementing] more palatable', a policy that finds no basis in any regulation or law authorising the exertion of irresistible pressure accompanied by threats. That was a mere expedient. It was a distortion of a clear text, already correctly analysed in the previous judgments, to find, in vague terms, to the contrary, that the Commission's 'explanation' could 'reasonably be accepted'. It would not appear to matter that, for this manifest misappraisal of the legal import of the facts, the Court of First Instance had to distort the meaning of terms whose sense is had to misconstrue, such as 'arrangement', 'quid pro quo', undertaking, 'reassessment of the system or commercial choice'.

---

[1] In Case T-154/98, OJ C 358 of 21 November 1998, p. 22.
[2] The judgments in Cases T-7/92 [1993] ECR II-669, and T-387/94 [1996] ECR II-961.

Reference for a preliminary ruling by the Employment Tribunal, West Croydon (United Kingdom), by order of that court of 5 January 2001, in the case of Ms S.G. Martin, Mr R.K.A. Daby and Mr B.J. Willis against South Bank University

(Case C-4/01)

(2001/C 61/13)

Reference has been made to the Court of Justice of the European Communities by an order of the Employment Tribunal, West Croydon (United Kingdom) of 5 January 2001, which was received at the Court Registry on 8 January 2001, for a preliminary ruling in the case of Ms S.G. Martin, Mr R.K.A. Daby and Mr B.J. Willis against South Bank University, on the following questions:

1. Do rights which are contingent upon either dismissal or premature retirement by agreement with the employer fall within the definition of 'rights and obligations' within the meaning of Article 3.1 of the Directive [1]?

2. Is the employees' entitlement to the payment of early superannuation benefits and lump sum compensation on redundancy/in the interests of the efficiency of the service/on organisational change, a right to an old age, invalidity or survivors' benefit within the meaning of Article 3.3 of the Directive?

3. If and to the extent that the answer to question 2 is 'no', is there an obligation on the transferor arising from the contract of employment, the employment relationship or the collective agreement within the meaning of Article 3.1 and/or 3.2 which transfers by reason of the transfer of the undertaking and renders the transferee liable to pay the benefits to the employee upon dismissal?

4. If the answers to questions 2 and 3 are 'no' and 'yes' respectively, may the employee, nonetheless, agree to forego his/her entitlement to early, payment of pension and retirement lump sum and/or the annual allowance and lump sum compensation in circumstances where the transferee's pension scheme does not entitle him or her to the same benefits and the same circumstances or at all, and he/she

   (i) becomes a member of the transferee's pension scheme; makes contributions to it and/or has contributions made to it on his/her behalf by the transferee employer;

   (ii) becomes a member of the transferee's pension scheme, makes contributions to it and has contributions made to it on his/her behalf by the transferee employer and successfully applies to transfer his/her accrued benefits from the transferor's pension scheme into the transferee's pension scheme?

5. If so, what are the criteria by which the national court should decide whether, in such circumstances, the employee has agreed?

6. Are Articles 3.1 and/or 3.2 of the Directive to be interpreted as precluding the transferee from offering transferred employees the option of taking early retirement on the basis of early retirement benefits that are less beneficial than those to which they are entitled as a consequence of the effect of the Directive?

7. Is the answer to the foregoing question affected if, when offering transferred employees the option of taking early retirement on terms less beneficial than those to which they are entitled under the Directive, the transferee states that no early retirement benefits will be available in future?

8. Where the parties have agreed that the employee will take premature retirement on the terms offered by the employer, what criteria should the national court apply in determining whether the transfer of the undertaking is the reason for that agreement in accordance with the principle enunciated by the Court in Foreningen af Arbeidsledre-v-Daddy's Dance Hall, Case 324/86 ([2])?

9. If the effect of Article 3 of the Directive is to preclude the transferee from offering transferred employees the option of taking early retirement on the basis of early retirement benefits that are less beneficial than those to which they are entitled under the effect of the Directive, what are the consequences for employees who accept early retirement on the basis offered to them by the employer?

([1]) Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61, 05.03.1977, p. 26).

([2]) ECR 1988 p. 739.

Action brought on 8 January 2001 by the Kingdom of Belgium against the Commission of the European Communities

(Case C-5/01)

(2001/C 61/14)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 8 January 2001 by the Kingdom of Belgium, represented by A. Snoecx, acting as Agent, assisted by J.M. De Backer, G. Vandersanden and L. Levi, lawyers, with an address for service in Luxembourg.

The Kingdom of Belgium claims that the Court should:

— annul the Commission's decision of 15 November 2000 (No C 76/1999) entitled 'State aid granted by Belgium in favour of the steel undertaking Cockerill Sambre S.A.';

— order the Commission to pay the costs.

Pleas in law and main arguments

— Distortion of the notion of aid as referred to in Article 4(c) CS and in the steel aids code — manifest error of assessment: Cockerill Sambre has not derived any benefit from the intervention of the Federal and Walloon authorities in the implementation of the plan for the reduction of working time, since not only was the company under no legal obligation to pay remuneration for the 34 hours worked at the level payable for 37 hours but, in addition, the collective working agreement of 17 April 1998 contained no commitment on the part of the company to maintain the. remuneration of those workers affected by the reduction in working time.

  Consequently, the transitional increment which the Region of Wallonia has undertaken to pay does not constitute operating costs of the company. That transitional increment is not intended to constitute remuneration for work done by the workers affected by the reduction in working time but to compensate for the financial efforts which they have themselves proposed to make with a view to the creation of 150 jobs for young workers.

  The reduction in social contributions agreed to by the Federal authorities confers no economic advantage on Cockerill Sambre. The overall number of hours worked within the company has not been altered in response to the plan for the reduction in working time accompanied by the compensatory engagement of 150 young workers. The same number of hours are worked for the company, at the same cost to the company.

— Failure to take account of the notion of a beneficiary: the interventions by the public authorities constitute aid in favour of the Cockerill Sambre workers affected by the scaling-down, and not aid in favour of Cockerill Sambre. The fact that aid is granted to workers in their capacity as employees of a specific undertaking does not, as such, preclude it from being categorised as aid to individuals.

— Non-compliance with the procedure laid down by the steel aids code - Lack of competence: the fact that the three-month time-limit prescribed by Article 6(5) has not been complied with means that the Commission is not competent to decide whether a measure constitutes aid incompatible with the steel aids code.

— Failure to fulfil the obligation to provide a statement of reasons.

— (In the alternative) Infringement of Article 95 CS: the intervention measures are not intended artificially to maintain jobs in an undertaking which has no commercial or financial viability; instead, they are designed to attain a social objective which is, moreover, championed by the European Community, namely progress towards the achievement of full employment by means of the redistribution of work. In those circumstances, the Commission has committed a manifest and obvious error of assessment by refusing, on an exceptional basis, to authorise the measures in issue under Article 95 CS.

Reference for a preliminary ruling by the 15.ª Vara Cível da Comarca de Lisboa, 2ª Secção, by order of that court of 25 May 2000 in the case of ANOMAR — Associação Nacional de Operadores de Máquinas Recreativas and Others against Portuguese State

(Case C-6/01)

(2001/C 61/15)

Reference has been made to the Court of Justice of the European Communities by order of the 15.ª Vara Cível da Comarca de Lisboa, 2ª Secção (Second Chamber of the 15th District of the Lisbon Civil Courts) of 25 May 2000, which was received at the Court Registry on 8 January 2001, for a preliminary ruling in the case of ANOMAR Associação Nacional de Operadores de Máquinas Recreativas and Others against Portuguese State on the following questions:

1. Do games of chance constitute an 'economic activity' within the meaning of Article 2 of the EC Treaty?

2. Do games of chance constitute an activity relating to 'goods' which is covered, as such, by Article 30 of the EC Treaty?

3. Are activities relating to the manufacture, importation and distribution of gaming machines separate from the operation of such machines and, therefore, is the principle of the free movement of goods laid down by Articles 30 and 34 of the EC Treaty applicable to such activities?

4. Are the operation of and engagement in games of chance excluded from the scope of Article 37 of the EC Treaty, in view of the fact that that provision does not cover monopolies in the provision of services?

5. Does the operation of gaming machines constitute a 'provision of services' and, as such, is it covered by Article 59 et seq. of the EC Treaty?

6. Does a body of legal rules (such as is established in Articles 3(1) and 4(1) of Decree-Law No 422 of 2 December 1989) under which the operation of and engagement in games of chance (defined by Article 1 of that instrument as 'those whose result is uncertain since it depends exclusively or fundamentally on chance') — which include (under Article 4(1)(f) and (g) of Decree-Law No 422/89) games played on machines which pay out prizes directly in tokens or money and games on machines which, while not paying out directly prizes in tokens or money, involve matters proper to games of chance or have as their result the awarding of points depending exclusively on chance is authorised only in casinos in permanent or temporary gaming areas created by decree-law, constitute a barrier to the freedom to provide services, in the sense contemplated in Article 59 of the EC Treaty?

7. On the basis that the restrictive rules described at 6 above do constitute a barrier to freedom to provide services, in the sense contemplated in Article 59 of the EC Treaty, are they, given that they are applicable without distinction to Portuguese nationals and undertakings and to nationals and undertakings of other Member States and are, moreover, based on overriding public-interest considerations (consumer protection, crime prevention, protection of public morality, restriction of demand for gambling and the financing of public-interest activities), in those circumstances compatible with Community law?

8. Is the activity of operation of games of chance subject to the principles of freedom of access to and pursuit of any economic activity whatever and, therefore, does the possible existence of legislation in other Member States which lays down less restrictive conditions for the operation of gaming machines sufficient to vitiate, of itself, the validity of the Portuguese rules described at 6 above?

9. Do the restrictions laid down in the Portuguese legislation on the activity of operation of games of chance comply with the principle of proportionality?

10. Do the Portuguese rules making authorisation subject to legal (conclusion of an administrative contract with the State following a tendering procedure: Article 9 of the abovementioned Decree-Law No 422/89) and logistical (operation and engagement in games of chance restricted to gaming areas: Article 3 of that instrument) conditions constitute a requirement which is appropriate and necessary to the objectives that are being pursued?

11. Does the use by the Portuguese legislation (Articles 1, 4(1)(g) and 169 of the abovementioned Decree-Law No 422/89 and Article 16(1)(a) of Decree-Law No 316/95 of 28 November 1995) of the word 'fundamentally', in conjunction with the word 'exclusively', in order to define games of chance and to draw a legal distinction between 'gaming machines' and 'amusement machines', call in question the precision of the concept according to the usual legal interpretation?

12. Do the imprecise legal concepts to which the Portuguese legislation resorts in defining 'games of chance' (Articles 1 and 162 of Decree-Law No 422/89, cited above) and 'amusement machines' (Article 16 of Decree-Law No 316/95, cited above) call for interpretation, for the purpose of classifying the various types of amusement machines, which also falls within the margin of discretion which the national authorities enjoy?

13. Even if it were considered that the Portuguese legislation at issue does not lay down objective criteria to distinguish between gaming machines and amusement machines, does the conferring on the Inspecção-Geral de Jogos (Inspectorate-General for Gaming and Betting) of a discretionary power to classify in matters of gaming infringe any principle or rule of Community law?

Reference for a preliminary ruling by the Østre Landsret by decision of 20 December 2000 in the case of Assurandør-Societet, acting on behalf of Taksatorring, v Skatteministeriet

(Case C-8/01)

(2001/C 61/16)

Reference has been made to the Court of Justice of the European Communities by decision of 20 December 2000 by the Østre Landsret (Eastern Regional Court), which was received at the Court Registry on 10 January 2001, for a preliminary ruling in the case of Assurandør-Societet, acting on behalf of Taksatorring, v Skatteministeriet on the following questions:

Question 1

Must the provisions of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes Common system of value added tax: uniform basis of assessment [1], and in particular the provision in Article 13B(a) thereof, be interpreted as meaning that assessment services which an undertaking provides for its members are to be regarded as being covered by the term 'insurance transaction', within the meaning of that provision, or by the term 'related services performed by insurance brokers and insurance agents'?

Question 2

Must Article 13A(1)(f) of the Sixth VAT Directive be interpreted as meaning that exemption from VAT must be granted for services of the type which an undertaking — which otherwise meets the conditions set out in that provision for VAT exemption — provides for its members, in the case where it cannot be demonstrated that the exemption will produce actual or imminent distortion of competition but where there is merely a possibility that this might happen?

Question 3

Does the issue of how remote the possibility of a distortion of competition may be assumed to be, or whether the possibility seems unrealistic, have any bearing on the answer to Question 2?

Question 4

Would it be incompatible with Article 13A(1)(f) of the Sixth VAT Directive to proceed on the basis that under national law it is possible to make a tax exemption that is notified pursuant to that provision limited in time in cases where there is doubt as to whether the exemption might at a later stage distort competition?

Question 5

Does the fact that assessment services are, so far as the largest insurance companies are concerned, provided by assessors employed by those insurance companies themselves and are thus exempt from VAT have any bearing on the answers to Questions 1 and 2?

---

[1] OJ 1977 L 145, p. 1.

Reference for a preliminary ruling by the Hof van Beroep te Gent by judgment of that court of 3 January 2001 in the cases of S. Monnier against Govan Sports N.V., E. Van Ankeren against Govan Sports N.V., Govan Sports N.V. against P. Jacobs, and Govan Sports N. V. against D. D'Hondt

(Cases C-9, 10, 11 and 12/01)

(2001/C 61/17)

Reference has been made to the Court of Justice of the European Communities by judgments of 3 January 2001 of the Hof van Beroep te Gent (Court of Appeal, Ghent), received at the Court Registry on 10 January 2001, for a preliminary ruling in the cases of S. Monnier against Govan Sports N. V. (C-9/01), E. Van Ankeren against Govan Sports N. V. (C-10/01), Govan Sports N. V. against P. Jacobs (C-11/01) and Govan Sports N. V. against D. D'Hondt (C-12/01) on the following question:

Do the provisions of the Treaty concerning the free provision of services preclude a statutory prohibition on providing employment procurement services for paid sportspersons (whether or not they are professionals) and/or does the holding of a monopoly on the provision of such services for such sportspersons by the Vlaamse Dienst voor Arbeidsbemiddeling (Flemish Employment Procurement Service) constitute an abuse of a dominant position? Do the provisions of the Royal Decree of 28 November 1975 thus infringe the provisions of Community law, and in particular Articles 86 and 90(1) of the EC Treaty, in so far as that Royal Decree confers the exclusive right to procure employment for paid (professional or non-professional) sportspersons on a public employment agency, in so far as that statutory provision also renders the actual pursuit of such activities by private employment agencies impossible by maintaining in force a statutory provision under which such activities are prohibited and non-observance of that provision renders the agreements concerned void, and in so far as the procurement activities concerned may extend to the nationals or to the territory of other Member States?

Action brought on 16 January 2001 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-20/01)

(2001/C 61/18)

An action against the Federal Republic of Germany was brought before the Court of Justice on 16 January 2001 by the Commission of the European Communities, represented by Josef Christian Schieferer, of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service of the Commission of the European Communities, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to invite tenders for the award of the contract for the treatment of waste water in the Municipality of Bockhorn and to arrange for notice of the results of the procedure for the award of the contract to be published in the S Series of the Official Journal of the European Communities, the Federal Republic of Germany has failed to comply with its obligations under Article 8 in conjunction with Article 15(2) and Article 16(1) of Council Directive 92/50/EEC [1] of 18 June 1992 relating to the coordination of procedures for the award of public service contracts;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

The German Government concedes that a Community-wide invitation to tender for the award of the contract for the treatment of waste water in the Municipality of Bockhorn should have been issued in accordance with the provisions of Directive 92/50/EEC; notwithstanding that concession, however, and despite the fact that an instruction was issued by the Government of the *Land* requiring subordinate authorities to ensure in a suitable manner that the contracting authorities within that *Land* complied to the letter with the rules prescribed by Community law for the award of contracts, the fact remains that a definite infringement of the Treaty has been committed. Moreover, the Municipality of Bockhorn has committed a further infringement of EC law by maintaining the waste-water contract and continuing to apply that contract in the same way as before. Since the conduct contrary to the directive is thus subsisting, it is undeniable that the defendant has failed to take, within the time-limit laid down in the reasoned opinion, all the national measures required in order to comply with the directive.

[1] OJ 1992 L 209, p. 1.

Action brought on 23 January 2001 by the Commission of the European Communities against the French Republic

(Case C-26/01)

(2001/C 61/19)

An action against the French Republic was brought before the Court of Justice on 23 January 2001 by the Commission of the European Communities, represented by G. Berscheid, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to bring into force within the prescribed time-limit the laws, regulations and administrative measures necessary in order to comply with Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants [1], the French Republic has failed to comply with its obligations under Article 19 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The mandatory nature of the provisions of Articles 10 and 249 EC is such as to oblige Member States to adopt the measures necessary in order to transpose directives which are addressed to them into their national legal order prior to the expiry of the time-limit prescribed for so doing. The time-limit fixed in Article 19 of the directive expired on 1 July 1999.

[1] OJ L 226 of 13.8.1998, p. 16.

Action brought on 23 January 2001 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-27/01)

(2001/C 61/20)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice on 23 January 2001 by the Commission of the European Communities, represented by G. Berscheid, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to bring into force within the prescribed time-limit the laws, regulations and administrative measures necessary in order to comply with Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants [1], the Grand Duchy of Luxembourg has failed to comply with its obligations under Article 19 of that directive;

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

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case C-26/01.

---

[1] OJ L 226 of 13.8.1998, p. 16.

Action brought on 23 January 2001 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-28/01)

(2001/C 61/21)

An action against the Federal Republic of Germany was brought before the Court of Justice on 23 January 2001 by the Commission of the European Communities, represented by Josef Christian Schieferer, of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service of the Commission of the European Communities, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by virtue of the fact that the City of Braunschweig awarded a contract for refuse disposal by negotiated procedure without prior publication of a contract notice, notwithstanding that the criteria laid down in Article 11(3) of Directive 92/50/EE [1] for an award by negotiated procedure without a Community-wide invitation to tender were not fulfilled, the Federal Republic of Germany has failed to comply with its obligations in respect of the award of public service contracts under Article 8 and Article 11(3)(c) of that directive;

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

Pleas in law and main arguments

Although, under Article 3(k) of the (former version of the) EC Treaty, the activities of the Community include a policy in the sphere of the environment, an environmental policy forms part of the task of establishing a common market, as described in Article 2 of the (former version of the) EC Treaty, only in so far as the achievement of the tasks in question is designed to promote 'growth respecting the environment'. It follows from this that, in the implementation of Community policies, reasonable regard must be had to environmental aspects, but it does not follow that environmental considerations must be given precedence over the implementation of the other policies specified. For the purposes of the present case, this means that, in the context of the award of a public service contract, lengthy transportation routes, or the avoidance of such routes, may not constitute a factor the effect of which is totally to preclude from the outset, by reference to an environmental argument, the issuing of an invitation to tender for the provision of the services in question and thereby to create an obstacle to trade in services within the Community. Consequently, the City of Braunschweig was not entitled, by having recourse to an environmental argument, illegally to evade the duty imposed by Community law to issue a Community-wide invitation to tender for a contract for refuse disposal.

It is irrelevant that the German Government has conceded that there has been an infringement of the Community rules governing the award of public contracts and that the German authorities concerned have been instructed to comply with the provisions of EC law governing the award of public contracts, since, by maintaining the contract and continuing to apply it, the City of Braunschweig is persisting in its infringement of Community law.

---

[1] OJ 1992 L 209, p. 1.

Action brought on 24 January 2001 by the Commission of the European Communities against the Kingdom of Spain

(Case C-29/01)

(2001/C 61/22)

An action against the Kingdom of Spain was brought before the Court of Justice on 24 January 2001 by the Commission of the European Communities, represented by Gregorio Valero Jordana, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control [1] or, in any event, to inform the Commission thereof, the Kingdom of Spain has failed to comply with its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those in Case C-26/01; the time-limit for transposition expired on 30 October 1999.

[1] OJ L 257 of 10.10.1996, p. 26.

Removal from the register of Case C-505/99 [1]

(2001/C 61/23)

By order of 6 September 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-505/99: Commission of the European Communities v Kingdom of Belgium.

[1] OJ C 79 of 18.3.2000.

Removal from the register of Case C-67/00 [1]

(2001/C 61/24)

By order of 13 September 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-67/00: Commission of the European Communities v Ireland.

[1] OJ C 149 of 27.5.2000.

Removal from the register of Case C-68/00 [1]

(2001/C 61/25)

By order of 13 September 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-68/00: Commission of the European Communities v Ireland.

[1] OJ C 135 of 13.5.2000.

Removal from the register of Case C-70/00 [1]

(2001/C 61/26)

By order of 13 September 2000 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-70/00: Commission of the European Communities v Ireland.

[1] OJ C 122 of 29.4.2000.

COURT OF FIRST INSTANCE

Action brought on 16 November 2000 by Giorgio Lebedef against the Commission of the European Communities

(Case T-349/00)

(2001/C 61/27)

(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 16 November 2000 by Giorgio Lebedef, residing at Senningerberg (Luxembourg), represented by Gilles Bouneou, of the Luxembourg Bar.

The applicant claims that the Court should:

— annul the 'Operational Rules on the consultation levels, the consultation body and related procedures' agreed between the majority of the trade unions/staff associations ('the OSPs') and the administration of the Commission on 19.1.2000;

— alternatively, annul the composition of the consultation body as provided for by those rules in so far as it excludes the trade union 'Action & Défense' from such consultations;

— annul the Commission's decision of 17.2.2000 refusing to grant the applicant leave to attend, on a mission basis, the meeting of the 'Ad hoc working group on staff reports and proposals for the promotion of staff on secondment and staff elected or designated to fulfil certain functions' or to engage on the same basis in any other activity in the context of staff representation.

Pleas in law and main arguments

The applicant, a Commission official, seeks annulment of the operational rules in issue on the ground that they exclude from the consultation body the trade union known as 'Action & Défense', of which he is a one of the leaders. He also seeks annulment of an individual decision taken against him, refusing to grant him leave to engage in his trade-union activities on a mission basis on the ground that such missions must be restricted exclusively to the OSPs represented on the consultation body.

In support of his application, the applicant pleads:

— infringement of the framework agreement concluded between the Commission and the OSPs in 1974, on account of the absence of any objective examination of the representativity of the OSPs and a manifest error in the comparative assessment of that representativity;

— breach of the principle of equal treatment and non-discrimination;

— breach of the principle of the protection of legitimate interests;

— infringement of the rights of the defence;

— breach of the principle prohibiting arbitrary methods, of the obligation to provide a statement of reasons and of the duty to have regard for the welfare and interests of officials;

— abuse of powers and improper exercise of authority.

Action brought on 20 November 2000 by Andrew M. Rosemarine against the Office for Harmonisation in the Internal Market

(Case T-352/00)

(2001/C 61/28)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 20 November 2000 by Andrew M. Rosemarine, represented by James Davis, of the Aire Centre, London.

The applicant claims that the Court should order the OHIM to:

— compensate for:

  — the sum of the value of the job

  — the loss of enjoyment of having a job in Alicante

  — the inconvenience of these appeals to the OHIM and the Court;

— and to pay for all costs.

Pleas in law and main arguments

The applicant explains that the Office for Harmonisation in the Internal Market (OHIM) published an advertisement for a job as a lawyer-linguist. Before going to the trouble of sending in a full application pack for the job, he wrote to check that his age would not be held against him. In answer to his letter, the OHIM sent him the application forms, stressed the importance of relevant 'qualifications and experience', and raised no objection to his age. Nevertheless, in August 2000 he was rejected on the grounds that he was a year older than the OHIM wished.

In these circumstances, the applicant claims compensation on the basis of the illegality of the OHIM's decision on the grounds of discrimination in the OHIM's employment procedure (ageism) and breach of vested rights and legitimate expectations.

Action brought on 27 November 2000 by Justina Martínez Alarcón against the Commission of the European Communities

(Case T-357/00)

(2001/C 61/29)

(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 27 November 2000 by Justina Martínez Alarcón, residing in Brussels, represented by Carlos Mourato, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decisions dated 28 January 2000 and 24 February 2000 of the selection board in competition COM/TB/99, deciding not to admit the applicant to that competition, and the implicit decision of the appointing authority dated 28 August 2000 giving a negative response to the complaint submitted by the applicant;

— alternatively, order the defendant to pay to the applicant the sum of BEF 3 160 000, subject to alteration during the course of the proceedings, by way of compensation for material and non-material damage;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a grade C Commission official, is contesting the Commission's decision refusing to admit her to the tests in competition COM/TB/99 for the constitution of a reserve list of administrative assistants, senior administrative assistants and principal administrative assistants (grades B5/B4, B3/B2 and B1), on the ground that she did not possess the professional experience required in category B.

The applicant complains that the Commission unlawfully refused to take account of the professional experience gained by her in a category C job at a level corresponding to the duties to be performed.

Although the competition notice may have provided that the candidates were to have acquired the professional experience relating to category B, that condition and the contested decision taken on the basis of the notice are equally vitiated by illegality.

Action brought on 27 November 2000 by Antonio Cherenti against the Commission of the European Communities

(Case T-361/00)

(2001/C 61/30)

(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 27 November 2000 by Antonio Cherenti, residing at Thuin (Belgium), represented by Carlos Mourato, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision dated 28 January 2000 of the selection board in competition COM/TB/99, deciding not to admit the applicant to that competition, and the implicit decision of the appointing authority dated 7 September 2000 giving a negative response to the complaint submitted by the applicant;

— alternatively, order the defendant to pay to the applicant the sum of BEF 7 350 000, subject to alteration during the course of the proceedings, by way of compensation for material and non-material damage;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and arguments are similar to those put forward in Case T-357/00 Martínez Alarcón v Commission.

Action brought on 27 November 2000 by Luigia Dricot against the Commission of the European Communities

(Case T-363/00)

(2001/C 61/31)

(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 27 November 2000 by Luigia Dricot, residing at Overijse (Belgium), represented by Carlos Mourato, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decisions dated 28 January 2000 and 24 February 2000 of the selection board in competition COM/TB/99, deciding not to admit the applicant to that competition, and the implicit decision of the appointing authority dated 28 August 2000 giving a negative response to the complaint submitted by the applicant;

— alternatively, order the defendant to pay to the applicant the sum of BEF 500 000, subject to alteration during the course of the proceedings, by way of compensation for material and non-material damage;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and arguments are similar to those put forward in Case T-357/00 Martínez Alarcón v Commission.

Action brought on 27 November 2000 by Sophie Van Weyenbergh against the Commission of the European Communities

(Case T-364/00)

(2001/C 61/32)

(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 27 November 2000 by Sophie Van Weyenbergh, residing at Tervuren (Belgium), represented by Carlos Mourato, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision dated 28 January 2000 of the selection board in competition COM/TB/99, deciding not to admit the applicant to that competition, and the implicit decision of the appointing authority dated 9 October 2000 giving a negative response to the complaint submitted by the applicant;

— alternatively, order the defendant to pay to the applicant the sum of BEF 2 941 667, subject to alteration during the course of the proceedings, by way of compensation for material and non-material damage;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and arguments are similar to those put forward in Case T-357/00 Martínez Alarcón v Commission.

Action brought on 30 November 2000 by Scott S.A. against the Commission of the European Communities

(Case T-366/00)

(2001/C 61/33)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 November 2000 by Scott S.A., a company registered in France, represented by Jeremy Lever QC and George Peretz, Barristers and Robin Griffith, Solicitor of Clifford Chance, London.

The applicant claims that the Court should:

— annul the contested decision, alternatively Article 2 thereof; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The current application arises out of the Commission Decision of 12 July 2000 (C(2000)2183) addressed to the French Republic concerning two aids said to have been granted to the applicant by the French Public Authorities. The two aids in question consist of:

— That the local authorities arranged for the transfer to the applicant of a certain and, namely 49 hectares of 68 hectares site in the industrial zone of La Saussaye, and a factory on that site at a preferential price.

— That the applicant benefited from a preferential tariff in respect of effluent treatment charges (redevances d'assainissement) levied by the City of Orléans.

In support of their conclusions, the applicant submits:

— That insofar as Article 2 of the contested decision orders the French Republic to recover the aid in question, it infringes Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999, laying down detailed rules for the application of Article 93 [now 88] of the EEC Treaty [1], which provides for a 10 year limitation period in respect of the Commission's power to recover aid.

— That the administrative procedure infringed essential procedural requirements and the applicant's rights of defence and that the recovery order requires the French Republic to act in breach of the European Convention of Human Rights. In this connection, Scott relies in particular on the fact that there was never any fair trial of the issues on which its liability to 'repay' the alleged aid was determined, let alone any fair trial in which the applicant could participate and in which the rights of defence were respected. On the contrary, the Commission treated the administrative procedure as being essentially a procedure between itself and the French Republic.

— That the contested decision results in unequal treatment of equal situations, in relation to cases that *in pari materia* with that of Scott.

— That the contested decision violates the principle of the legitimate expectation, inasmuch as for many years prior to 1997, the Commission would have known about the existence and contents of French Law pursuant to which the aid in question has been granted.

— That the Commission committed manifest error of calculation.

---

[1] OJ L 83, of 27.3.1999, p. 1.

Action brought on 30 November 2000 by General Motors Nederland B.V. and Opel Nederland B.V. against the Commission of the European Communities

(Case T-368/00)

(2001/C 61/34)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 November 2000 by General Motors Nederland B.V. and Opel Nederland B.V., companies registered in the Netherlands, represented by Dirk Vandermeersch, Robbert Snelders and Steven Allcock of Cleary, Gottlieb, Steen & Hamilton, Brussels.

The applicant claims that the Court should:

— annul Commission Decision No. C(2000) 2707 of 20 September 2000 (Case COMP/36.653 — Opel), addressed to General Motors Nederland B.V. and Opel Nederland B.V.; alternatively

— to cancel or reduce the fine imposed;

— to order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The contested decision imposes a fine of 43 million euros on the applicants for an alleged infringement of Article 81(1) EC. The Commission concludes that Opel Nederland B.V. entered into agreements with Opel dealers in the Netherlands aimed at restricting or prohibiting export sales of Opel vehicles to end-users and Opel dealers located in other Member States.

The applicants oppose the unduly broad scope of the Commission's findings and the excessive level of the fine and put forward, in particular, the following arguments:

— Contrary to the Commission's findings Opel Nederland did not apply a general strategy vis-à-vis its dealers to hinder or restrict all exports of new cars but conducted a lawful policy to dissuade irregular sales to unauthorized resellers in order to protect the integrity of its selective distribution system.

— The applicants do not contest that Opel Nederland took a decision to limit product allocation based on certain sales targets. However, this unilateral decision cannot be characterised as an agreement with its dealers to restrict exports in violation of Article 81 EC. This decision was never implemented nor was it ever communicated to the dealers. In any event, it left dealers free to engage in lawful export sales of their allegedly allocated volumes.

— The Commission erred in finding that Opel Nederland's bonus policy infringed 81 EC. There were no findings that the dealers expressly or impliedly agreed to restrict their exports sales in reaction to the bonus policy. Moreover, the normal dealer margin was sufficient to make export sales profitable. In any event, the bonus policy could not be considered restrictive of exports since supplies were never limited.

— There was no agreement to discontinue exports with all the dealers of the Opel distribution network in the Netherlands. The alleged commitments to restrict exports concern a very small number of dealers and a short period of time and did not appreciably restrict inter- or intra-brand competition.

As to the level of the fine, the applicants consider that it is disproportionate and fails to reflect the short duration of the alleged infringement and the limited number of dealers involved, the lack of intent of Opel Nederland, the clear evidence of large-scale violations of the Opel selective distribution system by some dealers, the limited impact on intra-Community trade and, finally, the immediate and effective corrective action taken by Opel Nederland at its own initiative.

Action brought on 4 December 2000 by the Département du Loiret against the Commission of the European Communities

(Case T-369/00)

(2001/C 61/35)

(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 4 December 2000 by the Département du Loiret, of Orléans (France), represented by Alexandre Carnelutti, of the Paris Bar.

The applicant claims that the Court should:

— annul the decision of the Commission of 12 July 2000 in so far as it declares illegal, and orders the repayment of, State aid amounting to FRF 48.7 million (100 million in terms of its current value) granted in the form of a preferential price for the purchase of land;

— order the Commission to pay the costs.

Pleas in law and principal arguments

The present action seeks annulment of the same Commission decision as that forming the subject-matter of Case T-366/00 Scott Paper v Commission [1]. The applicant is one of the two entities which granted the aid in issue.

In support of its claims, the above-mentioned Département asserts, first of all, that the Commission has applied an excessively narrow construction to the notion of a private investor, inasmuch as it fails to take account of the nature of the local authority, of its investment parameters and of the economic considerations underlying its decision to sell a parcel of developed industrial land. It states in that regard that, in seeking a suitable candidate to set up a business on its territory, a local authority necessarily includes, amongst the economic criteria on which its analysis is based, the specific fiscal revenue which it will receive, such as that arising from the business taxes and property taxes resulting from the business set up.

The applicant also complains that the Commission has included in the total costs expenditure which has manifestly not been incurred in the interests of Scott Paper S.A. The specific sum in question amounts to FRF 2 372 000, relating to preliminary studies.

Lastly, it maintains that the calculation method used by the Commission is wrong.

---

[1] Not yet published in the Official Journal of the European Communities.

Action brought on 12 December 2000 by Carmine Salvatore Tralli against the European Central Bank

(Case T-373/00)

(2001/C 61/36)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 12 December 2000 by Carmine Salvatore Tralli, of Nidderau (Germany), represented by Norbert Pflüger, Regina Steiner and Silvia Mittländer, Rechtsanwälte, Frankfurt am Main (Germany).

The applicant claims that the Court should:

(1) annul the notice terminating his employment on 31.12.2000;

(2) annul the extension of the probationary period;

(3) declare that the employment relationship existing between the parties has not been brought to an end by the notice of termination;

(4) declare that the unilateral extension of the probationary period is ineffective in law;

(5) declare that the employment relationship existing between the parties has continued to exist, without being terminated, after 31.12.2000;

(6) order the European Central Bank to continue, beyond 31.12.2000, to provide the applicant with employment as a security guard in accordance with the contractual conditions of employment;

(7) order the European Central Bank to pay to the applicant, beyond 31.12.2000, the basic remuneration amounting to EUR 32 304 p.a., together with the allowances and other items of remuneration provided for in the conditions of employment.

In a series of ancillary claims for relief, the applicant seeks a declaration that the employment relationship and the legal consequences flowing therefrom should continue in existence at least until the expiry of the notice period applying in respect of the termination of employment relationships in the ECB which are of an unlimited duration.

Finally, the applicant claims that the Court should: order the European Central Bank to pay the costs.

Pleas in law and main arguments

The applicant is an employee of the European Central Bank. He seeks annulment of the termination of his employment together with a declaration that the employment relationship continues to exist and has not been terminated. In that connection, the applicant is contesting a unilateral extension by the ECB of the probationary period, the duration of which was originally agreed as three month. On the basis of his personal rights, he seeks the continuation of his employment on the agreed contractual terms. In addition, he seeks an order requiring the ECB to continue to pay the contractually agreed remuneration beyond 31.12.2000, and pleads in that connection default on the part of the ECB in accepting performance of the contract.

Action brought on 11 December 2000 by Verband der freien Rohrwerke e.V., Eisen- und Metallwerke Ferndorf GmbH and Rudolf Flender GmbH & Co. KG against the Commission of the European Communities

(Case T-374/00)

(2001/C 61/37)

(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 11 December 2000 by Verband der freien Rohrwerke e.V., of Düsseldorf (Germany), Eisen- und Metallwerke Ferndorf GmbH, of Kreuztal-Ferndorf (Germany), and Rudolf Flender GmbH & Co. KG, of Siegen (Germany), represented by Hans Hellmann, Rechtsanwalt, Cologne (Germany).

The applicants claim that the Court should:

— annul the defendant's decisions of 5 September and 14 September 2000 in merger control case No COMP/M.2045 (ECSC 1336) Salzgitter/Mannesmannröhren-Werke;

— order the defendant to pay the costs.

Pleas in law and main arguments

According to the particulars provided by it, the first applicant is an association representing the interests of a number of small and medium-sized undertakings producing welded steel pipes from hot-rolled wide strips or quarto plates. The other applicants are members of the first applicant.

By the contested decisions, the Commission declared a proposed concentration between Salzgitter AG and Mannesmannröhren-Werke AG to be compatible with the common market pursuant to Regulation (EEC) No 4064/89 and authorised the proposed concentration pursuant to Article 66(2) CS.

The applicants are contesting the decisions on the basis of the fourth paragraph of Article 230 EC and the second paragraph of Article 33 CS. They consider that the contested measures are of direct and individual concern to them.

The applicants complain, in their criticism of the Commission, that the contested decisions omit any examination of the facts and law with regard to individual product markets which are directly affected by the concentration, despite the fact that the proposed concentration radically alters the structural conditions of competition on those markets. In addition, the Commission has unlawfully omitted to examine from a factual and legal standpoint the effects of the concentration which result from the fact that the concentration has led to interlinking between Salzgitter AG and third parties. That interlinking is liable significantly to prejudice the effectiveness of competition on the markets concerned.

Action brought on 19 December 2000 by Carmelo Morello against the Commission of the European Communities

(Case T-376/00)

(2001/C 61/38)

(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 19 December 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 person 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 the post in question;

— 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 applicant in the present case contests the refusal by the appointing authority to appoint him to the post of head of the unit responsible for 'Motor vehicles and other means of transport'.

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

— infringement of Article 25 of the Staff Regulations and of the obligation to provide a statement of reasons;

— infringement of Article 45 of the Staff Regulations, of the rules governing the promotion procedure and of the principle of equal treatment;

— a manifest error of assessment in the present case;

— misuse of power and infringement of Article 7 of the Staff Regulations.

Action brought on 22 December 2000 by Monsanto Company against the Council of the European Union

(Case T-382/00)

(2001/C 61/39)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 22 December 2000 by Monsanto Company, a company established under the laws of Delaware (USA), represented by Clive Stanbrook Q.C. and Wilko van Weert, of Stanbrook & Hooper, Brussels.

The applicant claims that the Court should:

— annul the Council Decision of 28 September 2000 amounting to a refusal to adopt a Maximum Residue Limit under Regulation No 2377/90, with regard to recombinant bovine somatotrophin;

— order that the costs of the proceedings be borne by the Council.

Pleas in law and main arguments

The applicant is a life sciences company, in the business of developing products to meet the growing global need for food. It has developed a veterinary medicinal product called sometribove. This product is classified as a recombinant bovine somatotrophin ('BST') and when administered to dairy cows has the effect of increasing their milk production. Before veterinary products, such as sometribove, can be put on the Community market, a maximum residue limit ('MRL') must be established, in conformity with Article 7 of Council Regulation No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ([1]).

On 14 January 1997, the Commission decided to reject the request for the inclusion of sometribove (bovine somatropine) in Annex II to Council Regulation (EEC) No 2377/90, in spite of the fact that the Committee for Veterinary Medicinal Products ('CVMP') had come to the conclusion that it was not necessary for the protection of public health to establish MRL for BST and had recommended the inclusion of this product in the list of substances not subject to MRL in Annex II. This decision was annulled by the Court of First Instance.

As the result of the judgment, the Commission decided to send the file back to the CVMP for a new opinion on BST. In July 1999, the CVMP re-evaluated BST taking into account all the latest available scientific information and confirmed its previous opinion that residues of BST are safe and that BST should therefore be included in Annex II. On 13 July 2000, the Commission submitted to the Council its final proposition for inclusion of BST in Annex II. On 28 September 2000, the Council decided not to adopt the Commission's proposal. It is this decision that is challenged by the applicant in the present case.

The applicant contends that the contested decision should be annulled for the following reasons:

1. Infringement of Article 3 of Regulation No. 2377/90. The applicant maintains that:

   (a) the Council could not reject the Commission's proposal in the absence of any new information or any reassessment of existing information on the bases of which the opinion of the CVMP might be called into question;

   (b) the Council wilfully disregarded the findings of the CVMP.

2. Breach of principle of proportionality in light of the special circumstances of the case, namely:

   (a) that there is no scientific evidence of a risk to human health;

   (b) that milk or milk products are imported from third countries where BST is administered to cows; and

   (c) any public-health objective has already been more than adequately assured through the adoption of a ban on the marketing of BST.

3. Wrongful or disproportionate application of the precautionary principle.

([1]) OJ 1990 L 224, p. 1.

Action brought on 22 December 2000 by Beamglow Ltd., against the Council of the European Union, the European Parliament and the Commission of the European Communities

(Case T-383/00)

(2001/C 61/40)

(Language of the case: English)

An action against the Council of the European Union, the European Parliament and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 December 2000 by Beamglow Ltd., a company incorporated under the laws of the United Kingdom, represented by Denis Waelbroeck, of Liedekerke Siméon Wessing Houthoff, Brussels (Belgium).

The applicant claims that the Court should:

— order the European Community, as represented here by the Council of the European Union, the European Parliament and the Commission of the European Communities, as jointly and severally liable, to repair the damage suffered by the applicant as a result of the unlawful behaviour of the European Community and to set the amount of compensation at GBP 2 042 000 for the period up to December 2000 plus GBP 79 000 per month from that date to the date of judgment or any other amount reflecting the actual damage suffered by the applicant as established by it in the course of the proceedings;

— order that interest at the annual rate of 8 % or any other appropriate rate to be determined by the Court be paid on the amount payable as from the date of judgment;

— order the European Community, as represented here by the Council of the European Union, the European Parliament and the Commission of the European Communities, to bear the costs of the proceedings.

Pleas in law and main arguments

The applicant in the present case is a small well-established firm in the business of high quality printing on folding carton packaging for products such as cosmetics and fragances. The market in question is to a great extent focused on the United States both in terms of logistics and market share.

The applicant states that, as a result of the retaliatory measures taken by the United States, and allowed by The Dispute Settlement Body, because of the adoption by the European Community of a scheme for importation of bananas that is to be considered as contrary to the GATT and GATS, the United States market has been entirely closed off, so that heavy investments in capital adapted specifically to the needs of this market have been rendered worthless. As a question of fact, the sanctions in question have been applied to the applicant's products now for over 18 months, taking the form of 100 % *ad valorem* duties.

The applicant submits that the Community's maintenance in place of an unlawful banana regime has caused it serious damage which the Community has a duty to make good under Article 288(2) C. In support of this claim the applicant submits that the damage being caused to it is the direct result of the Community's unlawful failure to comply with its international obligations.

Action brought on 27 December 2000 by Jean-Paul Seiller against the European Investment Bank

(Case T-385/00)

(2001/C 61/41)

(Language of the case: French)

An action against the European Investment Bank was brought before the Court of First Instance of the European Communities on 27 December 2000 by Jean-Paul Seiller, resident in Luxembourg, represented by Dominique Chouanier, of the Paris Bar, and Lex Thielen, of the Luxembourg Bar.

The applicant claims that the Court should:

— rule that the European Investment Bank is required to reimburse to Mr Seiller the sum of LUF 4 779 652 in respect of his pension rights;

— rule that that sum is to bear compound interest from 1 May 1993 at the annual rate fixed by the President of the European Investment Bank;

— order the European Investment Bank to pay all the costs.

Pleas in law and main arguments

The applicant in the present case, having worked for the EIB, submitted his resignation in April 1993, requesting that he should not have to work his notice period. Thereafter, the defendant and the applicant signed an agreement by which the EIB was to pay to Mr Seiller a certain sum 'in full and final settlement, on a lump-sum basis, of all accounts due and in satisfaction of all rights and claims, whether contractual or extra-contractual, which you have or may have against the Bank or any other Community body as at today's date'.

The applicant maintains that the consent expressed by him in that agreement is vitiated by the fact that, at the time when it was signed, he did not have available to him all the information necessary in order for him to be fully apprised. Thus, the sum paid to him did not include the amount corresponding to the reimbursement of his pension rights.

The applicant therefore seeks to challenge the sum expressed to be in full and final settlement under the agreement signed in April 1993.

Action brought on 28 December 2000 by Margarida Gonçalves against the European Parliament

(Case T-386/00)

(2001/C 61/42)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 28 December 2000 by Margarida Gonçalves, residing in Brussels, represented by Louis Tinti, of the Luxembourg Bar.

The applicant claims that the Court should:

— annul the decision of the selection board rejecting the application of the applicant in internal competition B/172 opened by the notice published in Summary No 31/99;

— annul the decision establishing the list of suitable candidates and all decisions taken by the defendant on the basis of such decisions;

— order the Parliament to pay the costs.

Pleas in law and main arguments

The applicant in the present case contests the refusal of the selection board in internal competition B 7/172 to admit her to the tests in that competition, the criteria for admission to which she claims to fulfil.

In support of her application, she pleads:

— infringement of Article 25 of the Staff Regulations;

— infringement of Article 5 of Annex III to those Regulations, resulting from a manifest error of assessment;

— breach of the duty to have regard for the welfare and interests of officials and of the principle of sound administration.

Action brought on 28 December 2000 by Comitato organizzatore del convegno internazionale 'Effetti degli inquinamenti atmosferici sul clima e sulla vegetazione' against Commission of the European Communities

(Case T-387/00)

(2001/C 61/43)

(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 28 December 2000 by the Comitato organizzatore del convegno internazionale "Effetti degli inquinamenti atmosferici sul clima e sulla vegetazione" (Organising Committee for the International Conference on 'The Effects of Atmospheric Pollutants on Climate and Vegetation'), represented by Paolo Grassi e Giuseppe Russo, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the contested measure;

— in the alternative, annul the contested measure and order the defendant Commission to exclude from the agreed financing only the item of expenditure evidenced by the invoice from Linguistlink Ltd. No 67/91 for LIT 11 900 000 and declare the debt discharged in respect of the other lawful expenditure;

— order the defendant Commission to pay all the costs of the proceedings pursuant of Article 87 of the Rules of Procedure.

Pleas in law and main arguments

The present application has been made against the measure adopted by Directorate General XIX Budget, issued on 10 October 2000 under number BUDG/G2/CBI-D(2000)96003569 requesting repayment and the debit note in relation to contract B4/91/3046/11396 of 20 December 1991, for financing for the applicant Committee. The purpose of that financing contract was to enable the organisation of a conference of international studies entitled 'Effects of atmospheric pollutants on climate and vegetation'.

The applicant states in that regard that:

— The conference followed the normal course in Taormina from 26 to 29 September 1991.

— The cost estimate was calculated at LIT 718 462 500, including VAT.

— Immediately after the conference, all the documentation relating to it was destroyed by a fire at the offices of the company which organised the conference. On account of events beyond its control the Organising Committee was unable to recover the original statements and so had to undertake a complex reconstruction of them.

— Following an initial claim for payment, in response to which the applicant sent documents which, in its view, were more than sufficient to prove and account for the expenditure incurred, the Commission remained silent for fully two years, giving rise to a legitimate expectation on the part of the Committee that the documentation had been accepted and that all actions for recovery had been abandoned.

— Instead, and to its great surprise, the Directorate General concerned repeats its request for repayment, again without providing reasons, according to the applicant, and with no reference to an actual measure annulling the financing.

In support of its claims, the applicant alleges:

— breach of essential procedural requirements, inasmuch as the requests for repayment lack any statement of reasons and no indication is given of any evidence or measure on the basis of which the debit note was issued. Nor has the defendant given reasons for not accepting the probative value of the documents sent by the applicant.

— breach of essential procedural requirements, for failing to take into account the fire, an act of God, which prevented the documents provided for in the financing contract from being sent, and for breach of the audi alteram partem rule.

— misuse of powers in respect of failure to acknowledge expenditure on translation, for which there was documentation.