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(Information)

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-363/99 (Reference for a preliminary ruling from the Gerechtshof te's-Gravenhage): Koninklijke KPN Nederland NV v Benelux-Merkenbureau [1]

(Approximation of laws — Trade marks — Directive 89/104/EEC — Article 3(1) — Grounds for refusal to register — Taking account of all the relevant facts and circumstances — Prohibition on registering a mark in respect of certain goods or services if they do not possess a particular characteristic — Word made up of components each of which describes characteristics of the goods or services concerned)

(2004/C 85/01)

(Language of the case: Dutch)

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

In Case C-363/99: Reference to the Court under Article 234 EC by the Gerechtshof te 's-Gravenhage (Netherlands) for a preliminary ruling in the proceedings pending before that court between Koninklijke KPN Nederland NV and Benelux-Merkenbureau, on the interpretation of Articles 2 and 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J. N. Cunha Rodrigues, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 12 February 2004, in which it has ruled:

1. *Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that a trade mark registration authority must have regard, in addition to the mark as filed, to all the relevant facts and circumstances.*

   It must have regard to all the relevant facts and circumstances before adopting a final decision on an application to register a trade mark. A court asked to review a decision on an application to register a trade mark must also have regard to all the relevant facts and circumstances, subject to the limits on the exercise of its powers as defined by the relevant national legislation.

2. *The fact that a trade mark has been registered in a Member State in respect of certain goods or services has no bearing on the examination by the trade mark registration authority of another Member State of an application for registration of a similar mark in respect of goods or services similar to those in respect of which the first mark was registered.*

3. *Article 3(1)(c) of Directive 89/104 precludes registration of a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services in respect of which registration is sought, and that is the case even when there are more usual signs or indications for designating the same characteristics and regardless of the number of competitors who may have an interest in using the signs or indications of which the mark consists.*

Where the applicable national law provides that the exclusive right conferred by registration, by a competent authority in an area in which a number of officially recognised languages coexist, of a word mark expressed in one of those languages extends automatically to its translation in the other languages, the authority must ascertain as regards each of those translations whether the mark actually consists exclusively of signs or indications which may serve, in trade, to designate characteristics of those goods or services.

4. *Article 3(1) of Directive 89/104 must be interpreted as meaning that a mark which is descriptive of the characteristics of certain goods or services but not of those of other goods or services for the purposes of Article 3(1)(c) of Directive 89/104 cannot be regarded as necessarily having distinctive character in relation to those other goods or services for the purposes of subparagraph (b) of the provision.*

It is of no relevance that a mark is descriptive of the characteristics of certain goods or services under Article 3(1)(c) of Directive 89/104 when it comes to assessing whether the same mark has distinctive character in relation to other goods or services for the purposes of Article 3(1)(b) of the Directive.

5. *Article 3(1)(c) of Directive 89/104 must be interpreted as meaning that a mark consisting of a word composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of the characteristics of those goods or services for the purposes of that provision, unless there is a perceptible difference between the word and the mere sum of its parts: that assumes either that because of the unusual nature of the combination in relation to the goods or services the word creates an impression which is sufficiently far removed from that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts, or that the word has become part of everyday language and has acquired its own meaning, with the result that it is now independent of its components. In the latter case, it is necessary to ascertain whether a word which has acquired its own meaning is not itself descriptive for the purposes of the same provision.*

For the purposes of determining whether Article 3(1)(c) of Directive 89/104 applies to such a mark, it is irrelevant whether or not there are synonyms capable of designating the same characteristics of the goods or services mentioned in the application for registration or that the characteristics of the goods or services which may be the subject of the description are commercially essential or merely ancillary.

6. *Directive 89/104 prevents a trade mark registration authority from registering a mark for certain goods or services on condition that they do not possess a particular characteristic.*

7. *The practice of a trade mark registration authority which concentrates solely on refusing to register >manifestly inadmissible marks is incompatible with Article 3 of Directive 89/104.*

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(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 February 2004

in Case C-24/00: Commission of the European Communities v French Republic (1)

(Failure of a Member State to fulfil obligations — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — National legislation exhaustively listing the nutrients which may be added to foodstuffs — Measure having equivalent effect — Justification — Public health — Consumer protection — Proportionality)

(2004/C 85/02)

(Language of the case: French)

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

In Case C-24/00, Commission of the European Communities (Agents: R. B. Wainwright and O. Couvert-Castéra) with an address for service in Luxembourg, v French Republic (Agents: initially R. Abraham and R. Loosli-Surrans, and, subsequently, J.-F. Dobelle andR. Loosli-Surrans) with an address for service in Luxembourg: Application for a declaration that:

— by failing to adopt legislation ensuring the free movement of foodstuffs for daily consumption and foodstuffs intended for particular nutritional uses, which are lawfully manufactured and/or marketed in other Member States but contain additives (such as vitamins, minerals and other ingredients) not provided for under French legislation;

— by failing to provide for a simplified procedure for having a substance included on the national list of authorised additives, which is necessary if the above foodstuffs are to be marketed in France;

— by hindering the marketing in France of the above foodstuffs without establishing that their marketing poses a risk to public health,

the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC), the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.N. Cunha Rodrigues, R. Schintgen and F. Macken (Rapporteur), Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 February 2004, in which it:

1. *Declares that, by failing to provide for a simplified procedure for having included on the national list of authorised nutrients those added to foodstuffs for daily consumption and foodstuffs intended for particular nutritional uses which are lawfully manufactured and/or marketed in other Member States,*

   and

   by hindering the marketing in France of certain foodstuffs, such as food supplements and dietary products containing the substances L-tartrate and L-carnitine, and confectionery and drinks to which certain nutrients have been added, without establishing that the marketing of such foodstuffs entails a real risk for public health,

   the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);

2. *Dismisses the remainder of the application; Orders the Commission of the European Communities and the French Republic to pay their own costs.*

([1]) OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-265/00 (Reference for a preliminary ruling from the Cour de justice Benelux): Campina Melkunie BV v Benelux-Merkenbureau ([1])

(Approximation of laws — Trade marks — Directive 89/104/EEC — Article 3(1) — Ground for refusal to register — Neologism composed of elements each of which is descriptive of characteristics of the goods or services concerned)

(2004/C 85/03)

(Language of the case: Dutch)

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

In Case C-265/00: Reference to the Court under Article 234 EC by the Benelux-Gerechtshof for a preliminary ruling in the proceedings pending before that court between Campina Melkunie BV and Benelux-Merkenbureau, on the interpretation of Articles 2 and 3(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J. N. Cunha Rodrigues, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 12 February 2004, in which it has ruled:

Article 3(1)(c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a trade mark consisting of a neologism composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of the characteristics of those goods or services for the purposes of that provision, unless there is a perceptible difference between the neologism and the mere sum of its parts: that assumes that, because of the unusual nature of the combination in relation to the goods or services, the word creates an impression which is sufficiently far removed from that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts.

For the purposes of determining whether the ground for refusal set out in Article 3(1)(c) of Directive 89/104 applies to such a mark, it is irrelevant whether or not there are synonyms capable of designating the same characteristics of the goods or services referred to in the application for registration.

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 February 2004

in Case C-95/01 (Reference for a preliminary ruling from the tribunal de grande instance de Paris): John Greenham v Léonard Abel (1)

(Free movement of goods — Articles 28 EC and 30 EC — Prohibition on marketing foodstuffs to which vitamins and minerals have been added — Justification — Proportionality)

(2004/C 85/04)

(Language of the case: French)

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

In Case C-95/01: Reference to the Court under Article 234 EC by the Tribunal de grande instance de Paris (France) for a preliminary ruling in the criminal proceedings pending before that court against John Greenham and Léonard Abel, on the interpretation of Articles 28 EC and 30 EC, the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken (Rapporteur) and N. Colneric, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 February 2004, in which it has ruled:

Articles 28 EC and 30 EC must be interpreted as meaning that they do not preclude a Member State from prohibiting the marketing without prior authorisation of foodstuffs lawfully manufactured and marketed in another Member State, where nutrients such as vitamins or minerals have been added thereto other than those whose use has been declared lawful in the first Member State, provided that certain conditions are satisfied.

First, the prior authorisation procedure must be readily accessible and capable of being completed within a reasonable time and, if it leads to a refusal, the decision of refusal must be open to challenge before the courts. Secondly, refusal to authorise marketing must be based on a detailed assessment of the risk to public health, based on the most reliable scientific data available and the most recent results of international research.

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(1) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-218/01 (Reference for a preliminary ruling from the Bundespatentgericht (Germany): Henkel KGaA (1)

(Approximation of laws — Trade marks — Directive 89/104/EEC — Article 3(1)(b), (c) and (e) — Grounds for refusal to register — Three-dimensional shape-of-product mark — Distinctive character

(2004/C 85/05)

(Language of the case: German)

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

In Case C-218/01: reference to the Court under Article 234 EC by the Bundespatentgericht (Germany) for a preliminary ruling in the proceedings brought before that court by Henkel KGaA, on the interpretation of Article 3(1)(b), (c) and (e) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court (Sixth Chamber), composed of C. Gulmann, acting for the President of the Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; Advocate General: D. Ruíz-Jarabo Colomer, Registrar: L. Hewlett, Principal Administrator, has given a judgment on 12 February 2004, in which it ruled:

1. *For three-dimensional trade marks consisting of the packaging of goods which are packaged in trade for reasons linked to the very nature of the goods, the packaging thereof must be assimilated to the shape of the goods, so that that packaging may constitute the shape of the goods within the meaning of Article 3(1)(e) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and may, where appropriate, serve to designate characteristics of the packaged goods, including their quality, within the meaning of Article 3(1)(c) of that directive.*

2. *For three-dimensional trade marks consisting of the packaging of goods which are packaged in trade for reasons linked to the very nature of the product, their distinctive character within the meaning of Article 3(1)(b) of Directive 89/104 must be assessed by reference to the perception of the average consumer of such goods, who is reasonably well informed and reasonably observant and circumspect. Such a trade mark must enable such a consumer to distinguish the product concerned from those of other undertakings without conducting an analytical or comparative examination and without paying particular attention.*

3. *The distinctive character of a trade mark within the meaning of Article 3(1)(b) of Directive 89/104 may be assessed solely on the basis of national trade usage, without any need for other administrative investigations to be undertaken in order to determine whether and to what extent identical trade marks have been registered or have been refused registration in other Member States of the European Union.*

   The fact that an identical trade mark has been registered in one Member State for identical goods or services may be taken into consideration by the competent authority of another Member State among all the circumstances which that authority must take into account in assessing the distinctive character of a trade mark, but it is not decisive regarding the latter's decision to grant or refuse registration of a trade mark.

   On the other hand, the fact that a trade mark has been registered in one Member State for certain goods or services can have no bearing on the examination by the competent trade mark registration authority of another Member State of the distinctive character of a similar trade mark for goods or services similar to those for which the first trade mark was registered.

([1]) OJ C 227, 11.8.2001.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 February 2004

in Case C- 330/01 P: Hortiplant SAT v Commission of the European Communities ([1])

(Agriculture — EAGGF — Cancellation and request for repayment of financial assistance — Regulation (EEC) No 4253/88 — Article 24(1) and (2) — Obligation on the Commission to request the Member State concerned to submit observations before cancelling financial assistance)

(2004/C 85/06)

(Language of the case: Spanish)

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

In Case C-330/01 P, Hortiplant SAT established in Amposta (Spain), represented by C. Fernández Vicién and I. Moreno-Tapia Rivas: APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 14 June 2001 in Case T-143/99 Hortiplant v Commission [2001] ECR II-1665, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: L. Visaggio, assisted by J. Guerra Fernández) with an address for service in Luxembourg, the Court (Third Chamber), composed of: J. N. Cunha Rodrigues, acting for the President of the Third Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 12 February 2004, in which it:

1. *Dismisses the appeal;*

2. *Orders Hortiplant to pay the costs.*

([1]) OJ C 303 of 27.10.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 February 2004

in Case C-337/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Hamann International GmbH Spedition + Logistik v Hauptzollamt Hamburg-Stadt [1]

(Community Customs Code — Customs debt on import — Removal of goods from customs supervision)

(2004/C 85/07)

(Language of the case: German)

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

In Case C-337/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Hamann International GmbH Spedition + Logistik and Hauptzollamt Hamburg-Stadt, on the interpretation of Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), the Court (Second Chamber), composed of: V. Skouris, acting for the President of the Second Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 12 February 2004, in which it has ruled:

Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that there is removal from customs supervision for the purposes of that provision when, before the entry into force of Commission Regulation (EC) No 993/2001 of 4 May 2001 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Regulation No 2913/92, non-Community goods which were subject to the customs warehousing procedure and intended for re-export from the customs territory of the Community have been removed and transported from the customs warehouse to the customs office at the point of exit without having been placed under the external transit procedure and the customs authorities have been unable, if only for a short time, to ensure customs supervision of those goods.

([1]) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 5 February 2004

in Case C-380/01 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Gustav Schneider v Bundesminister für Justiz [1]

(Directive 76/207/EEC — Equal treatment for men and women — Promotion — Principle of effective control by the courts — Inadmissibility)

(2004/C 85/08)

(Language of the case: German)

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

In Case C-380/01: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Gustav Schneider and Bundesminister für Justiz, on the interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C. W. A. Timmermans (Rapporteur) and A. Rosas, Judges; S. Alber, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 5 February 2004, in which it has ruled:

The reference for a preliminary ruling submitted by the Verwaltungsgerichtshof by order of 13 September 2001 is inadmissible.

([1]) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 February 2004

in Case C-18/02 (Reference for a preliminary ruling from the Arbejdsret): Danmarks Rederiforening v LO Landsorganisationen i Sverige [1]

(Brussels Convention — Article 5(3) — Jurisdiction in matters relating to tort, delict or quasi-delict — Place where the harmful event occurred — Measure taken by a trade union in a Contracting State against the owner of a ship registered in another Contracting State)

(2004/C 85/09)

(Language of the case: Danish)

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

In Case C-18/02: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Arbejdsret (Denmark) for a preliminary ruling in the proceedings pending before that court between Danmarks Rederiforening, acting on behalf of DFDS Torline A/S, and LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation, on the interpretation of Article 5(3) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1), the Court (Sixth Chamber), composed of: V. Skouris, acting on behalf of the President of the Sixth Chamber, J. N. Cunha Rodrigues (Rapporteur), J.-P. Puissochet, R. Schintgen and F. Macken, Judges; F. G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 February 2004, in which it has ruled:

1. (a) *Article 5(3) of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that a case concerning the legality of industrial action, in respect of which exclusive jurisdiction belongs, in accordance with the law of the Contracting State concerned, to a court other than the court which has jurisdiction to try the claims for compensation for the damage caused by that industrial action, falls within the definition of >tort, delict or quasi-delict.*

   (b) *For the application of Article 5(3) of the Brussels Convention to a situation such as that in the dispute in the main proceedings, it is sufficient that that industrial action is a necessary precondition of sympathy action which may result in harm.*

   (c) *The application of Article 5(3) of the Brussels Convention is not affected by the fact that the implementation of industrial action was suspended by the party giving notice pending a ruling on its legality.*

2. *In circumstances such as those in the main proceedings, Article 5(3) must be interpreted as meaning that the damage resulting from industrial action taken by a trade union in a Contracting State to which a ship registered in another Contracting State sails can be regarded as having occurred in the flag State, with the result that the shipowner can bring an action for damages against that trade union in the flag State.*

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[1] OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 22 January 2004

In Joined Cases C-133/02 and C-134/02 (Reference for a preliminary ruling from the Gerechtshof te Amsterdam): Timmermans Transport & Logistics BV, formerly Timmermans Diessen BV, v Inspecteur der Belastingdienst — Douanedistrict Roosendaal, and Hoogenboom Production Ltd and Inspecteur der Belastingdienst — Douanedistrict Rotterdam [1]

(Classification of goods for customs tariff purposes — Binding tariff information — Conditions for the revocation of an information)

(2004/C 85/10)

(Language of the case: Dutch)

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

In Joined Cases C-133/02 and C-134/02: Reference to the Court under Article 234 EC by the Gerechtshof te Amsterdam (Netherlands) for a preliminary ruling in the proceedings pending before that court between Timmermans Transport & Logistics BV, formerly Timmermans Diessen BV, and Inspecteur der Belastingdienst — Douanedistrict Roosendaal, and between Hoogenboom Production Ltd and Inspecteur der Belastingdienst — Douanedistrict Rotterdam, on the interpretation of Article 9(1) and 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1, and Corrigendum, OJ 1997 L 179, p. 11), the Court (Sixth Chamber), composed of: C. Gulmann (Rapporteur), acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 22 January 2004, in which it has ruled:

Article 9(1) read in conjunction with Article 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that they provide the customs authorities with a legal basis for withdrawing a binding tariff information where those authorities change the interpretation given therein of the legal provisions applicable to the tariff classification of the goods concerned.

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[1] OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-230/02 (Reference for a preliminary ruling from the Bundesvergabeamt): Grossmann Air Service, Bedarfsluftfahrtunternehmen GmbH & Co. KG v Republik Österreich [1]

(Public procurement — Directive 89/665/EEC — Review procedures for the award of public contracts — Articles 1(3) and 2(1)(b) — Persons to whom review procedures must be available — Definition of 'interest in obtaining a public contract')

(2004/C 85/11)

(Language of the case: German)

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

In Case C-230/02: Reference to the Court under Article 234 EC by the Bundesvergabeamt (Austria) for a preliminary ruling in the proceedings pending before that court between Grossmann Air Service, Bedarfsluftfahrtunternehmen GmbH & Co. KG and Republik Österreich, on the interpretation of Articles 1(3) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, C. Gulmann, J. N. Cunha Rodrigues, J.-P. Puissochet and R. Schintgen (Rapporteur), Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 12 February 2004, in which it has ruled:

1. *Articles 1(3) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract was awarded.*

2. *Article 1(3) of Directive 89/665, as amended by Directive 92/50, must be interpreted as precluding a person who has participated in a contract award procedure from being regarded as having lost his interest in obtaining the contract on the ground that, before seeking the review provided for by the Directive, he failed to refer the case to a conciliation committee such as Bundes-Vergabekontrollkommission (Federal Public Procurement Review Commission, established by the Bundesgesetz über die Vergabe von Aufträgen (Bundesvergabegesetz) 1997 (1997 Federal Law on Public Procurement).*

(1) OJ C 219 of 14.9.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-236/02 (Reference for a preliminary ruling from the College van Beroep): J. Slob v Productschap Zuivel (1)

(Milk and milk products — Direct sales — Reference quantity — Overruns — Additional levy on milk — Obligation on producer to keep stock accounts — Contents — Interpretation of Article 7(1)(f) of Regulation (EEC) No 536/93)

(2004/C 85/12)

(Language of the case: Dutch)

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

In Case C-236/02: Reference to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between J. Slob and Productschap Zuivel, on the interpretation of Article 7(1)(f) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), the Court (Sixth Chamber), composed of: C. Gulmann, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, F. Macken and N. Colneric (Rapporteur), Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator Registrar, has given a judgment on 12 February 2004, in which it has ruled:

The first sentence of Article 7(1) and Article 7(1)(f) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products should be interpreted as meaning that the stock accounts which producers are required to keep need state only the quantities, per month and per product, of milk and/or milk products sold.

(1) OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 5 February 2004

in Case C-265/02 (Reference for a preliminary ruling from the Corta suprema di cassazione): Frahuil SA v Assitalia SpA (1)

(Brussels Convention — Special jurisdiction — Article 5(1) — Meaning of 'matters relating to a contract' — Contract of guarantee entered into without the knowledge of the principal debtor — Subrogation of the guarantor to the rights of the creditor — Right of recourse of the guarantor against the principal debtor)

(2004/C 85/13)

(Language of the case: Italian)

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

In Case C-265/02: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the Corte suprema di cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between Frahuil SA and Assitalia SpA, on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, C. W. A. Timmermans and S. von Bahr, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 5 February 2004, in which it has ruled:

Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as follows:

'matters relating to a contract' do not cover the obligation which a guarantor who paid customs duties under a guarantee obtained by the forwarding agent seeks to enforce in legal proceedings by way of subrogation to the rights of the customs authorities and by way of recourse against the owner of the goods, if the latter, who was not a party to the contract of guarantee, did not authorise the conclusion of that contract.

([1]) OJ C 233 of 28.9.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 5 February 2004

in Case C-270/02: Commission of the European Communities v Italian Republic ([1])

(Measures having equivalent effect — Foodstuffs for sportsmen and women lawfully manufactured and marketed in other Member States — Prior marketing authorisation)

(2004/C 85/14)

(Language of the case: Italian)

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

In Case C-270/02, Commission of the European Communities (Agents: C.-F. Durand and R. Amorosi) v Italian Republic (Agent: I. M. Braguglia, assisted by G. Aiello, avvocato dello Stato) with an address for service in Luxembourg: Application for a declaration that, by maintaining in force legislation which subjects the marketing of food products for sportsmen and women lawfully manufactured and marketed in other Member States to a requirement of applying for prior authorisation and of initiating a procedure for that purpose without having shown that it is necessary and proportionate, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC, the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 5 February 2004, in which it:

1. *Declares that, by maintaining in force legislation which subjects the marketing of food products for sportsmen and women lawfully manufactured and marketed in other Member States to a requirement of applying for prior authorisation and of initiating a procedure for that purpose without having shown that it is necessary and proportionate, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC;*

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

([1]) OJ C 219 of 14.9.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 February 2004

in Case C-406/02: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure of a Member State to fulfil its obligations — Failure to communicate reports required under Directives 76/464/EEC, 78/659/EEC and 80/68/EEC — Standardising and rationalising reports on the implementation of certain directives relating to the environment)

(2004/C 85/15)

(Language of the case: French)

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

In Case C-406/02, Commission of the European Communities (Agent: B. Stromsky) with an address for service in Luxembourg, v Kingdom of Belgium (Agent: E. Dominkovitz) with an address for service in Luxembourg: Application for a declaration that, by failing to communicate to it, within the

prescribed period, the reports in respect of the Bruxelles-Capitale Region required under Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 3), Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1) and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43) as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48), the Kingdom of Belgium has failed to fulfil its obligations under the said directives, the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Third Chamber, J. P. Puissochet (Rapporteur) and F. Macken, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 12 February 2004, in which it:

1. *Declares that, by failing to communicate to the Commission, within the prescribed period, the report in respect of the Bruxelles-Capitale Region required under Article 2(1) of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 7 of 11.1.2003.

Appeal brought on 3 July 2003 by B. Zaoui, L. Zaoui and D. Stain, née Zaoui, against the order made on 23 April 2003 by the Court of First Instance of the European Communities (First Chamber) in Case T-73/03 between B. Zaoui and Others and the Commission of the European Communities

(Case C-288/03 P)

(2004/C 85/16)

An appeal against the order made on 23 April 2003 by the Court of First Instance of the European Communities (First Chamber) in Case T-73/03 between B. Zaoui and Others and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 3 July 2003 by B. Zaoui, L. Zaoui and D. Stain, née Zaoui, represented by J. A. Buchinger, advocat.

The appellants claim that the Court should:

— reverse the order of the Court of First Instance of the European Communities made on 23 April 2003;

— declare the respondent liable for the harm suffered by the appellants as a result of the attack on 27 March 2002 at the Park Hotel, Netanya (Israel);

— order the respondent, in respect of the harm suffered by the appellants to pay the following amounts:

  — to Lucien Zaoui, EUR 1 million in compensation for non-material damage;

  — to B. Zaoui, EUR 1.5 million, in compensation for non-material damage;

  — to D. Stain, née Zaoui:

    — EUR 1 million in respect of physical injury;

    — EUR 2 million in respect of non-material damage;

    — an amount to be settled in the course of proceedings for material damage

— order the respondent to pay all the costs.

Pleas in law and main arguments

The unlawful conduct of the Commission, namely the grant of funds to the Palestinian Authority, in total contradiction with the fundamental values of the Community, has directly contributed to the harm suffered by the appellants as a result of the attack carried out by a Palestinian terrorist in Netanya (Israel), for which they now seek compensation.

The application of Article 111 of the Rules of Procedure of the Court of First Instance was manifestly unlawful, since it was by error of law and by distorting the clear sense of the pleas put forward by the appellants that the Court of First Instance held that the existence of a causal link was not established in this case and that the application was manifestly lacking any foundation in law:

— the Court of First Instance dismissed the application brought at first instance by the appellants as manifestly lacking any foundation in law, holding that one of the conditions necessary for the Commission to incur non-contractual liability, within the meaning of the second paragraph of Article 288 EC, was not established in this

case, namely the existence of a causal link between the alleged conduct and the harm pleaded. As the Court of First Instance observed, it is not disputed that there must be a direct link of cause and effect between the wrongful act of the institution concerned and the harm pleaded, a causal link in respect of which applicants bear the burden of proof. In addition, that causal link relates to the decisive cause of the harm. None the less, the Court of First Instance confused decisive cause and exclusive cause. It has never been claimed that the Commission's conduct was the exclusive cause of the attack of 27 March 2002. On the other hand, it was amply demonstrated in the application that the Commission's conduct was a decisive cause. In attempting to show that the alleged conduct was not the exclusive cause of the harm pleaded the Court of First Instance committed a manifest error of law by which it deprived the appellants of a hearing which they could legitimately expect.

— the Court of First Instance distorted the clear sense of the pleas put forward by the appellants in claiming, on the one hand, that the appellants agreed that the attack had not been financed by the funds in question and, on the other, that they had neither proved nor claimed that Palestinian education was exclusively dependent on the funds in question, merely stating that the European Community is the Palestinians' largest provider of funds.

Reference for a preliminary ruling by the Gerechthof Herzogenbusch by order of that Court of 5 November 2003 in the case of M.E.A. van Hilten-van der Heijden against Inspecteur van de Belastingdienst/Particulieren/ Ondernemingen Buitenland te Heerlen

(Case C-513/03)

(2004/C 85/17)

Reference has been made to the Court of Justice of the European Communities by order of the Gerechthof Herzogenbusch of 5 November 2003, received at the Court Registry on 8 December 2003, for a preliminary ruling in the case of M.E.A. van Hilten-van der Heijden against Inspecteur van de Belastingdienst/Particulieren/Ondernemingen Buitneland te Heerlen on the following questions:

1. Does Article 3(1) of the Netherlands Successiewet [1] constitute a permitted restriction within the meaning of Article 57(1) EC?

2. Does Article 3(1) of the Successiewet constitute a prohibited means of arbitrary discrimination or a disguised restriction on the free movement of capital within the meaning of Article 58(3) EC where applicable to a capital movement between a Member State and a non-member country, having regard also to the Declaration on Article 73d of the Treaty establishing the European Community adopted on the occasion of the signature of the 'Final Act and Declarations of the Intergovernmental Conferences on the European Union' of 7 February 1992.

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[1] Law on Succession.

Action brought on 19 December 2003 by the Commission of the European Communities against Ireland

(Case C-532/03)

(2004/C 85/18)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 December 2003 by the Commission of the European Communities, represented by K. Wiedner, acting as agent, assisted by J. E. Flynn QC, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1. declare that, in permitting emergency ambulance services to be provided by Dublin City Council without the Eastern Regional Health Authority undertaking any prior advertising, Ireland has failed to comply with its obligations under the Treaty; and

2. order Ireland to pay the Commission's costs.

Pleas in law and main arguments

The Commission takes the view that, in the circumstances of the case, the maintaining of the arrangement for provision of ambulance services between Dublin City Council and the Eastern Regional Health Authority without undertaking any prior advertising is a breach of the free movement rules of the Treaty (notably Articles 43 and 49) and thereby of the general principles of Community law (notably those of transparency and equality or non-discrimination) which are to be respected in situations to which Community law applies.

Reference for a preliminary ruling by the Oberlandesgericht Innsbruck by order of that Court of 16 December 2003 in the case of 1) Christine Dodl, 2) Petra Oberhollenzer against Tiroler Gebietskrankenkasse

(Case C-543/03)

(2004/C 85/19)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht Innsbruck (Higher Regional Court Innsbruck) of 16 December 2003, received at the Court Registry on 29 December 2003, for a preliminary ruling in the case of 1) Christine Dodl, 2) Petra Oberhollenzer against Tiroler Gebietskrankenkasse on the following questions:

1) Is Article 73 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 [1] on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in conjunction with Article 13 of that regulation, as amended, to be interpreted as extending even to employed persons whose employment relationships are still in existence but do not involve any duty to carry out work or pay remuneration (unpaid leave) or any social security obligations under national law?

2) If the answer to the first question should be in the affirmative:

   Is the State of the place of employment responsible for the benefit payment in such a case even if the employed person and those members of his or her family for whom family benefit such as Austrian 'Kinderbetreuungsgeld' (child-care allowance) might be payable have not lived in the State of the place of employment, particularly during the period of unpaid leave?

[1] English special edition: Series I Chapter 1971(II) P. 0416.

Reference for a preliminary ruling by the Magistrates' Court, Bitonto, by order of that court of 20 December 2003 in the case of Nicolò Tricarico against Assitalia Assicurazioni

(Case C-2/04)

(2004/C 85/20)

Reference has been made to the Court of Justice of the European Communities by order of the Magistrates' Court, Bitonto, of 20 December 2003, received at the Court Registry on 5 January 2004, for a preliminary ruling in the case of Nicolò Tricarico against Assitalia Assicurazioni on the following questions:

1. Do the facts as found in Judgment No 2199 of the Consiglio di Stato (Council of State) of 23 April 2002 and in Judgment No 6139 of the Tribunale Amministrativo Regionale (Regional Administrative Court), Lazio (Rome) of 5 July 2001, which are deemed to be set out here in full, and the decision of the Italian AGCM to which both those judicial decisions refer (concerning a cartel set up by various insurance companies in the area of civil liability for road accidents), constitute infringements of Community law, in particular of Articles 81 EC and 82 EC?

2. Does an infringement of Articles 81 EC and 82 EC imply an obligation on the part of the person committing it to compensate end users, and all those who are third parties not involved in the agreement or the abuse but demonstrate that they have suffered injury, for damage suffered?

3. In assessing the amount of damages, in addition to the restitution of sums charged in breach of Community rules, is the national court required (again as a matter of Community law) to award the injured party a sum by way of punitive damages against those persons responsible for the prohibited agreement or abuse of a dominant position?

4. Does Community law also require the payment of damages for non-material loss?

5. As a matter of Community law, is the national court required of its own motion to order the payment of punitive damages or damages for non-material loss?

6. Is the limitation period of one year for bringing an action for damages for breach of Articles 81 EC and 82 EC under Italian law too short and therefore in conflict with Community law?

7. As a matter of Community law, for the purposes of the limitation period for bringing an action for damages, does time begin to run from the day on which the infringement of Articles 81 EC and 82 EC was committed or the day on which that infringement came to an end?

8. Is there a conflict between Community competition law and/or the fundamental principles of Community law (with reference in particular to Article 6(1) and Article 13 of the European Convention on Human Rights) and a national provision having an effect similar to that in the second paragraph of Article 3 of Italian Law No 287 of 10 October 1990 which requires a consumer or a third party who has suffered damage as a result of an agreement which is unlawful and void under Article 81 EC or an abuse of a dominant position unlawful under Article 82 EC and who seeks to obtain damages to make an application to a court other than the one which has jurisdiction ratione loci, ratione materiae and for the value of the dispute in accordance with the ordinary national rules on jurisdiction, Article 33 of Law No 287/90 involving an increase in the cost and duration of the case which would not occur had the ordinary national rules on jurisdiction ratione loci, ratione materiae and for the value of the dispute applied?

9. Is there a conflict between Community competition law and/or the fundamental principles of Community law (with reference in particular to Article 6(1) and Article 13 of the European Convention on Human Rights) and a national provision which requires a consumer or a third party who has suffered damage as a result of an agreement which is unlawful and void under Article 81 EC or an abuse of a dominant position unlawful under Article 82 EC and who seeks to obtain damages to make an application to a court other than the one which has jurisdiction ratione loci on the basis of the registered office (sede) of the subsidiary of the insurance company with which they entered into a contract or in the court district in which the injured party is resident, having regard also to the difference in legal costs which each approach involves?

10. Does Community law require national courts to disapply national rules in conflict with Community law or rather to interpret them so as to comply with Community law?

Reference for a preliminary ruling by the Bundesvergabeamt (Austria) by order of that Court of 12 January 2004 in the case of Koppensteiner GmbH against Bundesimmobiliengesellschaft m.b.H.

(Case C-15/04)

(2004/C 85/21)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesvergabeamt (Austria) (Federal Procurement Office) of 12 January 2004, received at the Court Registry on 20 January 2004, for a preliminary ruling in the case of Koppensteiner GmbH against Bundesimmobiliengesellschaft m.b.H. on the following questions:

1. Are the provisions of Article 1 in conjunction with Article 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 ([1]) so unconditional and sufficiently precise that, in the event of withdrawal of the invitation to tender after the opening of tenders, an individual is entitled rely on those provisions directly before the national courts and to seek a review of the withdrawal?

2. If Question 1 must be answered in the negative, are Article 1 in conjunction with Article 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 to be interpreted as meaning that Member States are obliged to make a contracting authority's decision, prior to withdrawal of the invitation to tender, that it will withdraw the invitation to tender (withdrawal decision analogous to the award decision) amenable to review in any case, since the applicant is entitled to have that decision set aside if the relevant conditions are met, notwithstanding the possibility, once withdrawal has taken place, of obtaining an award of damages?

([1]) OJ L 395, p. 33.

Action brought on 26 January 2004 by the Commission of the European Communities against the Hellenic Republic

(Case C-22/04)

(2004/C 85/22)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 26 January 2004 by the Commission of the European Communities, represented by Thomas van Rijn and Maria Kondou-Durande, Legal Advisers in its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to ensure that fishing vessels which fly its flag and must be equipped with devices for position monitoring by means of satellite were in fact equipped, according to the type of vessel, on 30 June 1998 or 1 January 2000, the Hellenic Republic has failed to fulfil its obligations under Article 3 of Council Regulation (EEC) No 2847/93 ([1]) of 12 October 1993;

— order the Hellenic Republic to pay the costs.

Pleas in law and arguments

The period for transposition of the regulation into national law expired on 1 January 2000.

([1]) OJ L 261, 20.10.1993, p. 1.

Reference for a preliminary ruling by the Dioikitiko Protodikeio Athens by order of that Court of 30 September 2003 in the case of Sphakianakis AEBE against Hellenic Republic

(Case C-25/04)

(2004/C 85/23)

Reference has been made to the Court of Justice of the European Communities by order of the Dioikitiko Protodikeio Athens (Administrative Court of First Instance) of 30 September 2003, received at the Court Registry on 26 January 2004, for a preliminary ruling in the case of Sphakianakis AEBE against Hellenic Republic on the following questions:

The questions in this case are identical to those in Case C-23/04.

Reference for a preliminary ruling by the Tribunale di Bolzano by order of that Court of 9 January 2004 in the case of Koschitzki Ursel against Istituto Nazionale della Previdenza Sociale (INPS)

(Case C-30/04)

(2004/C 85/24)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Bolzano of 9 January 2004, received at the Court Registry on 28 January 2004, for a preliminary ruling in the case of Koschitzki Ursel against Istituto Nazionale della Previdenza Sociale (INPS) on the following question:

In the light of Article 42 of the EC Treaty (as amended by the Treaties of Amsterdam and of Nice), which requires the adoption of appropriate measures in the field of social security for the implementation of the free movement of workers, can Article 46(2)(b) of Regulation No 1408/71 [1] be interpreted as meaning that the basis of calculation of the Italian pro rata pension must always be the notional pension, supplemented to bring it up to the statutory minimum pension, even if the income limits laid down by Italian law for bringing the pension up to the statutory minimum have been exceeded (Article 6 of Law No 638/83, amended by Article 4 of Legislative Decree No 503/92), or, on the other hand, must Article 46(2)(b) be interpreted as meaning that the basis of calculation of the Italian pro rata pension must be the unaugmented notional pension (non-supplemented theoretical amount) where the pensioner's income exceeds the limits laid down by Italian law for entitlement to the supplement to bring the pension up to the statutory minimum amount?

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[1] English special edition: Series I Chapter 1971(II) P. 0416.

Reference for a preliminary ruling by the Korkein oikeus (Finland) by order of that Court of 30 January 2004 in the case of Syuichi Yonemoto against Virallinen syyttäjä (Public Prosecutor) and Raine Pentti Pöyry

(Case C-40/04)

(2004/C 85/25)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein oikeus (Finland) (Supreme Court) of 30 January 2004, received at the Court Registry on 3 February 2004, for a preliminary ruling in the case of Syuichi Yonemoto against Virallinen syyttäjä (Public Prosecutor) and Raine Pentti Pöyry on the following questions:

(1) What sort of limits does Community law, having regard in particular to Council Directive 98/37/EC [1] and Articles 28 EC and 30 EC, lay down for the obligations which may be imposed in national law on the importer (or other distributor) of a machine bearing the CE marking in relation to the characteristics of the machine which concern safety

— before the onward sale of the machine and

— afterwards?

(2) Clarification is hoped for in particular as to:

(a) the extent to which and the conditions under which the obligations of action or supervision in relation to the safety of the machine imposed on the importer (or other distributor) of a machine bearing the CE marking may be regarded as permitted from the point of view of Community law;

(b) whether and in what way the assessment in relation to Community law of the obligations imposed on the importer (or other distributor) depends on what sort of defects relating to the safety of the machine are concerned;

(c) whether, and if so to what extent, the provisions of § 40 of the Työturvallisuuslaki mentioned in point 10 above conflict with Community law, having regard to the consequences as regards criminal law and the law on compensation, described in points 12 to 15 above, which derive from failure to comply with them.

(1) Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ L 207 of 23.7.1998, p. 1).

Reference for a preliminary ruling by the College van beroep voor het bedrijfsleven by order of that Court of 23 January 2004 in the case of Maatschap J.B. en R.A.M. Elshof against the Minister for Agriculture, Nature and Food Quality

(Case C-42/04)

(2004/C 85/26)

Reference has been made to the Court of Justice of the European Communities by order of the College van beroep voor het bedrijfsleven of 23 January 2004, received at the Court Registry on 3 February 2004, for a preliminary ruling in the case of Maatschap J.B. en R.A.M. Elshof against the Minister for Agriculture, Nature and Food Quality on the following question:

Does the term 'batch' in Article 4(3) of Regulation (EC) No 1046/2001 (1) have the same meaning as the term 'load' in point 1 of Annex II to that regulation or must the term 'batch' be taken to mean all the animals which are delivered for rendering by a holding on one day or pursuant to one decision to purchase?

(1) OJ L 145 of 31 May 2001, p. 31.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 27 November 2003 in the case of Finanzamt Arnsberg against Stadt Sundern

(Case C-43/04)

(2004/C 85/27)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 27 November 2003, received at the Court Registry on 4 February 2004, for a preliminary ruling in the case of Finanzamt Arnsberg against Stadt Sundern on the following questions:

1. May or must the Member States which have incorporated into their domestic law the common flat-rate scheme for farmers provided for in Article 25 of Directive 77/388/EEC (1) ultimately exempt flat-rate farmers from payment of turnover tax?

2. If Question 1 is answered in the affirmative: Is that the case only for supplies of agricultural products and for agricultural services or also for other transactions of a flat-rate farmer, or are the other transactions subject to the general scheme under Directive 77/388/EEC?

   What are the consequences for the grant of a hunting licence by a flat-rate farmer?

(1) OJ L 145, p. 1.

Reference for a preliminary ruling by the Tribunale di Gorizia by order of that Court of 18 December 2003, nos. 1259/2003 and 1260/2003, in the proceedings pending between Azienda Agricola Bogar Roberto & Andrea and AGEA

(Case C-44/04 and C-45/04)

(2004/C 85/28)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Gorizia (Italy) of 18 December 2003, received at the Court Registry on 4 February 2004, for a preliminary ruling in the proceedings pending between Azienda Agricola Bogar Roberto & Andrea and AGEA on the following questions:

Must Article 1 of Regulation (EEC) No 856/84 (1) of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92 (2) of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

(1) OJ L 90 of 1.4.1984, p. 10.
(2) OJ L 405 of 31.12.1992, p. 1.

Action brought on 9 February 2004 by the Commission of the European Communities against the Hellenic Republic

(Case C-51/04)

(2004/C 85/29)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 9 February 2004 by the Commission of the European Communities, represented by Gregorio Valerio Jordana and Minas Konstantinidis, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, or in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2000/69/EC [1] of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air, the Hellenic Republic has failed to fulfil its obligations under Article 10 of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and arguments

The period for transposition of the directive into national law expired on 13 December 2002.

[1] OJ L 313, 13.12.2000, p. 12.

Reference for a preliminary ruling by the Tribunale di Genova by order of that Court of 21 January 2004 in the case of Mr Marrosu and Mr Sardino against Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate

(Case C-53/04)

(2004/C 85/30)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Genova of 21 January 2004, received at the Court Registry on 10 February 2004, for a preliminary ruling in the case of Mr Marrosu and Mr Sardino against Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate on the following question:

Are Article 1 of Directive 1999/70/EC [1] and clauses 1(b) and 5 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and put into effect by that directive to be interpreted as precluding provisions of national law (in force before the directive was implemented) which differentiate between employment contracts signed with the public authorities and contracts with employers in the private sector by excluding the former from the protection afforded by establishing an employment relationship of indefinite duration in the event of an infringement of binding rules on successive fixed-term contracts?

[1] OJ L 175 of 10.7.1999, p. 43.

Action brought on 10 February 2004 by the Commission of the European Communities against the Republic of Finland

(Case C-56/04)

(2004/C 85/31)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 10 February 2004 by the Commission of the European Communities, represented by K. Banks and M. Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that the Republic of Finland has failed to fulfil its obligations under Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [1], since it has not brought into force the laws, regulations and administrative provisions necessary to comply with the directive, or at least has not informed the Commission of them;

2. Order Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 22 December 2002.

[1] OJ 2001 L 167, p. 10.

Action brought on 10 February 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-57/04)

(2004/C 85/32)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 10 February 2004 by the Commission of the European Communities, represented by Ulrich Wölker, Legal Adviser, and Gregorio Valero Jordana, of the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants [1], or, in any event, by failing to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 27 November 2002.

[1] OJ 2001 L 309, p. 22.

Action brought on 12 February 2004 by the Commission of the European Communities against the Italian Republic

(Case C-62/04)

(2004/C 85/33)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 12 February 2004 by the Commission of the European Communities, represented by Chiara Cattabriga, of its Legal Service, acting as Agent.

The applicant claims that the Court should:

— declare that, by not implementing the laws, regulations and administrative provisions necessary to comply with Commission Directive 2002/70/EC [1] of 26 July 2002 establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs, or in any event by failing to forward those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 3 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 28 February 2003.

[1] OJ L 209 of 6.8.2002, p. 15.

Reference for a preliminary ruling by the High Court of Justice (England and Wales) by order of that court dated 21 February 2003, in the case of Centralan Property Ltd against Commissioners of Customs and Excise

(Case C-63/04)

(2004/C 85/34)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England and Wales) dated 21 February 2003, which was received at the Court Registry on 13 February 2004, for a preliminary ruling in the case of Centralan Property Ltd and Commissioners of Customs and Excise on the following question:

Where: During the period of adjustment provided for in article 20(2) of the Sixth VAT Directive [1] a taxable person disposes of a building which is treated as a capital good; and The disposal of the building is effected by way of two supplies, being (i) the grant of a 999 year lease of the building (an exempt transaction under article 13(B)(b) of the Directive) for a premium of £6 million, followed three days later by (ii) the sale of the freehold reversion (a taxable transaction under article 13(B)(g) and article 4(3)(a) of the Directive) for a price of £1,000 plus VAT and which either are or are not preordained in the sense that once the first had been carried out there was no chance that the second would not be, is article 20(3) of the Sixth VAT Directive to be interpreted so that:

(a) the capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be fully taxed;

(b) the capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be fully exempt;

or

(c) the capital good is regarded until the expiry of the period of adjustment as if it had been applied for business activities which are presumed to be partly taxed and partly exempt in the proportion of the respective values of the taxed sale of the freehold reversion and the exempt grant of the 999 year lease?

([1]) Sixth Council Directive 77/388/EEC OF 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment. OJ L 145, 13.6.1977 p. 1-40.

Reference for a preliminary ruling by the Cour de Cassation, première chambre civile, (France) by order of that Court of 20 January 2004 in the case of GIE Réunion européenne, Axa, Winterthur, Le Continent, Assurances mutuelles de France against Zurich Seguros, now Zurich España, and Société Pyrénéenne de Transit d'Automobiles 'Soptrans' SA

(Case C-77/04)

(2004/C 85/35)

Reference has been made to the Court of Justice of the European Communities by order of the Cour de Cassation, première chambre civile (Court of Cassation, first civil chamber) (France) of 20 January 2004, received at the Court Registry on 17 February 2004, for a preliminary ruling in the case of GIE Réunion européenne,Axa, Winterthur, Le Continent, Assurances mutuelles de France against Zurich Seguros, now Zurich España, and Société Pyrénéenne de Transit d'Automobiles 'Soptrans' SA on the following questions:

1. Are actions between insurers on a warranty or guarantee based on multiple insurance or co-insurance rather than on a reinsurance agreement covered by the provisions on matters relating to insurance of Section 3 of Title II of the Brussels Convention of 27 September 1968, as amended by the accession convention of 1978?

2. Is Article 6(2) applicable when determining which court has jurisdiction to entertain an action on a warranty or guarantee or third-party proceedings between insurers and, if so, is such application contingent on there being a connection between the various claims within the meaning of Article 22 of the convention or, at the very least, on evidence that there is sufficient connection between such claims to demonstrate that there has been no avoidance of jurisdiction?

Action brought on 19 February 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-79/04)

(2004/C 85/36)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 19 February 2004 by the Commission of the European Communities, represented by M. Patakia and B. Schima, acting as Agents, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens ([1]), or in any event by failing to forward those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 31 December 2002.

([1]) OJ L 128 of 15.5.2002, p. 45.

Action brought on 20 February 2004 by the Commission of the European Communities against the Portuguese Republic

(Case C-83/04)

(2004/C 85/37)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 20 February 2004 by the Commission of the European Communities, represented by Karen Banks and Gonçalo Braga de Cruz, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by having failed to adopt the laws, regulations and administrative provisions needed in order to comply with Directive 2001/29/EC [1]of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, or, in any event, by having failed to inform the Commission thereof, the Portuguese Republic has failed to fulfil its obligations under Article 13 of that directive;

2. order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 22 December 2002.

[1] OJ L 167 of 22.6.2001, p. 10.

Action brought on 23 February 2004 by the Commission of the European Communities against the French Republic

(Case C-85/04)

(2004/C 85/38)

An action against the French Republic was brought before the Court of Justice of the European Communities on 23 February 2004 by the Commission of the European Communities, represented by E. Traversa and P. Léouffre, acting as Agents, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings [1], and, in any event, by failing to forward those provisions to the Commission, the French Republic has failed to fulfil its obligations under Article 31 of that directive;

2. order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 20 April 2003.

[1] OJ L 110 of 20.4.2001, p. 28.

Action brought on 23 February 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-86/04)

(2004/C 85/39)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 23 February 2004 by the Commission of the European Communities, represented by E. Traversa and P. Léouffre, acting as Agents, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings [1], and, in any event, by failing to forward those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 20 April 2003.

(1) OJ L 110 of 20.4.2001, p. 28.

Action brought on 23 February 2004 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-87/04)

(2004/C 85/40)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 23 February 2004 by the Commission of the European Communities, represented by E. Traversa and P. Léouffre, acting as Agents, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings (1), and, in any event, by failing to forward those provisions to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 20 April 2003.

(1) OJ L 110 of 20.4.2001, p. 28.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 December 2003

in Case T-61/99: Adriatica di Navigazione SpA v Commission of the European Communities [1]

(Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Definition of the relevant market — Statement of reasons — Price-fixing agreement — Proof of participation in the agreement — Proof that a participant distanced himself from the agreement — Principle of non-discrimination — Fines — Criteria for assessment)

(2004/C 85/41)

(Language of the case: Italian)

In case T-61/99: Adriatica di Navigazione SpA, established in Venice (Italy), represented by U. Feraro, M. Siragusa and F. M. Moretti, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: R. Lyal and L. Pignataro) — application for annulment of Commission Decision 1999/271/EC of 9 December 1998 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.466 — Greek Ferries) (OJ 1999 L 109, p. 24) — the Court of First Instance (Fifth Chamber), composed of J. D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; J. Plingers, Administrator, acting for the Registrar, has given a judgment on 11 December 2003, in which it:

1. *Sets the fine imposed on Adriatica di Navigazione SpA at EUR 245 000;*

2. *Dismisses the remainder of the application;*

3. *Orders Adriatica di Navigazione SpA to bear its own costs and to pay three quarters of those incurred by the Commission and orders the Commission to bear one quarter of its own costs.*

[1] OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 January 2004

in Case T-158/99: Thermenhotel Stoiser Franz Gesellschaft mbH & Co. KG and Others v Commission of the European Communities [1]

(State aid — Aid for regional purposes — Validity of lawyer's signature on the application — Standing — Statement of reasons — Compatibility with the common market — Prohibition of discrimination — Right of establishment of the national competitors of the aid recipient — Protection of the environment — Misuse of powers)

(2004/C 85/42)

(Language of the case: German)

In Case T-158/99, Thermenhotel Stoiser Franz Gesellschaft mbH & Co. KG, VierJahreszeiten Hotel-Betriebsgesellschaft mbH & Co. KG, Thermenhotel Kowald, Thermalhotel Leitner GesmbH, established in Loipersdorf (Austria), represented by G. Eisenberger, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: V. Kreuschitz and J. Macdonald Flett), supported by Republic of Austria (Agents: W. Okresek, H. Dossi, C. Pesendorfer and T. Kramler): Application for annulment of Commission Decision SG(99) D/1523 of 3 February 1999 declaring State aid in connection with a hotel project in Loipersdorf (Austria) compatible with the common market, the Court of First Instance (First Chamber, Extended Composition), composed of: B. Vesterdorf, President, J. Azizi, M. Jaeger, H. Legal and M. E. Martins Ribeiro, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it:

1. *Dismisses the application;*

2. *Orders the applicants to pay the Commission's costs;*

3. *Orders the Republic of Austria to bear its own costs.*

[1] OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 December 2003

in Case T-306/00: Conserve Italia Soc. coop. rl v Commission of the European Communities [1]

(Agriculture — EAGGF — Reduction of financial aid — Statement of reasons — Error of assessment — Principle of proportionality)

(2004/C 85/43)

(Language of the case: Italian)

In case T-306/00: Conserve Italia Soc. coop. rl, established in San Lazzaro di Savena (Italy), represented by M. Averani, A. Pisaneschi and S. Zunarelli, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: L. Visaggio and M. Moretto) — application for annulment of Commission Decision C(2000) 1752 of 11 July 2000 reducing aid from the Guidance Section of the EAGGF for Project No 88.41.IT.002.0 entitled 'Technical modernisation of an establishment processing products in the fruit and vegetable sector at Alseno (Piacenza)' — the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, P. Lindh and J. D. Cooke, Judges, J. Plingers, Administrator, acting for the Registrar, has given a judgment on 11 December 2003, in which it:

1. *Annuls Commission Decision C(2000) 1752 of 11 July 2000 reducing aid from the Guidance Section of the EAGGF for Project No 88.41.IT.002.0, entitled 'Technical modernisation of an establishment processing products in the fruit and vegetable sector at Alseno (Piacenza)';*

2. *Orders the Commission to bear its own costs and to pay four fifths of those incurred by the applicant;*

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

[1] OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 January 2004

in Case T-67/01: JCB Service v Commission of the European Communities [1]

(Competition — Article 81 EC — Distribution agreements)

(2004/C 85/44)

(Language of the case: English)

In Case T-67/01, JCB Service, established in Rocester, Staffordshire (United Kingdom), represented by R. Fowler QC, R. Anderson, barrister, L. Carstensen, solicitor, and initially by M. Israel, and, subsequently, by S. Smith, solicitors, with an address for service in Luxembourg, v Commission of the European Communities (Agents: A. Whelan and S. Rating): Application as a principal claim, for annulment of Commission Decision 2002/190/EC of 21 December 2000 relating to a proceeding under Article 81 of the EC Treaty (Case COMP.F.1/35.918 — JCB) (OJ 2002 L 69, p. 1), and, in the alternative, for partial annulment of that decision and corresponding reduction of the fine imposed on JCB Service, the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, J. Azizi and H. Legal, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it:

1. *Annuls Article 1(c), (d) and (e) and Article 3(d) and (e) of Commission Decision 2002/190/EC of 21 December 2000 relating to a proceeding under Article 81 of the EC Treaty (Case COMP.F.1/35.918 — JCB);*

2. *Reduces the amount of the fine imposed on the applicant by Article 4 of Decision 2002/190 to EUR 30 million;*

3. *Declares that there is no need to adjudicate on the claims seeking the production of certain documents on the court file declared non accessible during the administrative procedure;*

4. *Dismisses the remainder of the application;*

5. *Orders the applicant to bear three quarters of its own costs;*

6. *Orders the Commission to bear its own costs and a quarter of the costs incurred by the applicant.*

[1] OJ C 186 of 30.06.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 January 2004

in Case T-109/01: Fleuren Compost BV v Commission of the European Communities [1]

(Actions for annulment — State aid — Aid granted by the Kingdom of the Netherlands to manure-processing undertakings — Scheme approved by the Commission for a fixed period — Aid granted before or after the approved period)

(2004/C 85/45)

(Language of the case: Dutch)

In Case T-109/01, Fleuren Compost BV, established in Middelharnis (Netherlands), represented by J. Stuyck, lawyer, v Commission of the European Communities (Agents: V. di Bucci and H. van Vliet): Application for the annulment of Commission Decision 2001/521/EC of 13 December 2000 on the aid scheme implemented by the Kingdom of the Netherlands for six manure-processing companies (OJ 2001 L 189, p. 13), the Court of First Instance (Second Chamber, Extended Composition), composed of: N. J. Forwood, President, J. Pirrung, P. Mengozzi, A. W. H. Meij and M. Vilaras, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 14 January 2004, in which it:

1. *Dismisses the action;*

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

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[1] OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 January 2004

in Case T-328/01: Tony Robinson v European Parliament [1]

(Temporary servant — Promotion to Grade A 3 — Staff of the Parliamentary Group of the European Socialist Parties)

(2004/C 85/46)

(Language of the case: French)

In Case T-328/01: Tony Robinson, a temporary servant of the European Parliament, residing in Brussels (Belgium), represented by É Boigelot, lawyer, with an address for service in Luxembourg, against European Parliament (Agents: L. Knudsen and D. Moore) — application, first, for annulment of the decision of the secretariat of the Parliamentary Group of the European Socialist Parties, adopted at its meeting on 6 and 7 March 2001, to promote two temporary servants to Grade A 3 and, second, for compensation for the harm sustained by the applicant as a result of that promotion - the Court of First Instance (Fourth Chamber), composed of V. Tiili, President, and P. Mengozzi and M. Vilaras, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 21 January 2004, in which it:

1. *Annuls the decision of the secretariat of the Parliamentary Group of the European Socialist Parties, adopted at its meeting on 6 and 7 March 2001, promoting Ms F. and Mr M. to Grade A 3 with effect from 1 March 2001;*

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

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[1] OJ C 56 of 2.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 January 2004

in Case T-97/02: Prodromos Mavridis v Commission of the European Communities [1]

(Officials — Promotion — Omission from the list of officials promoted to Grade A 5 — Availability of staff reports)

(2004/C 85/47)

(Language of the case: French)

In Case T-97/02: Prodromos Mavridis, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by J.-N. Louis, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, V. Joris and D. Waelbroeck) — application for annulment of the Commission's decision of 6 April 2001 not to enter the applicant on the list of officials promoted to Grade A 5 in the 2001 promotion round, the Court of First Instance, composed of P. Mengozzi, Single Judge; J. Plingers, Administrator, for the Registrar, gave a judgment on 21 January 2004, in which it:

1. *Dismisses the application;*

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

(1) OJ C 131 of 1.6.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 January 2004

in Case T-195/02: Anselmo Briganti v Commission of the European Communities (1)

(Officials — Open competition — Action for annulment — Pre-selection procedure — Conduct of the tests — Retroactive annulment of certain multiple-choice questions — Principle of equal treatment — Principle of legitimate expectations)

(2004/C 85/48)

(Language of the case: Italian)

In Case T-195/02: Anselmo Briganti, residing in Tarente (Italy), represented by G. Sciusco, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and A. Dal Ferro) — application, principally, for annulment of the decision of the selection board in open competition Commission of the European Communities/A/11/01 not to admit the applicant to the tests subsequent to the pre-selection tests, the Court of First Instance, composed of J. D. Cooke, Single Judge; H. Jung, Registrar, gave a judgment on 20 January 2004, in which it:

1. *Dismisses the action;*

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

(1) OJ C 191 of 10.8.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 November 2003

in Case T-85/01: IAMA Consulting S.r.l. v Commission of the European Communities (1)

(Esprit Programme — Actions in the field of research and technological development — Community financing — Eligible expenditure — Arbitration clause — Action for annulment — Admissibility — Counterclaim — Jurisdiction of the Court of First Instance)

(2004/C 85/49)

(Language of the case: Italian)

In Case T-85/01: IAMA Consulting S.r.l., established in Milan, represented by V. Salvatore, lawyer, against Commission of the European Communities (Agents: E. de March and A. Dal Ferro) – application for annulment of the provisions adopted by the Commission on 12 and 21 February 2001 relating to expenditure eligible for Community financing in connection with the REGIS 22337 and REFIAG 23200 Projects, carried out under the European programme for research and development in information technologies (Esprit) — the Court of First Instance, composed, at the time of its deliberation, of V. Tiili, President, and P. Mengozzi, M. Vilaras, J. Pirrung and A. W. H. Meij, Judges; H. Jung, Registrar, made an order on 25 November 2003, the operative part of which is as follows:

(1) *The forms of order sought as a main claim and in the alternative by the applicant are dismissed as inadmissible.*

(2) *The counterclaim by the Commission is referred back to the Court.*

(3) *The applicant is ordered to pay the costs.*

(1) OJ C 186, 30.6.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 18 December 2003

in Case T-215/02: Santiago Gómez-Reino v Commission of the European Communities [1]

(Officials — Investigation carried out by the European Anti-Fraud Office (OLAF) — Duty to assist — Action for annulment and for damages clearly inadmissible and clearly unfounded in law)

(2004/C 85/50)

(Language of the case: French)

In Case T-215/02: Santiago Gómez-Reino, official of the Commission of the European Communities, resident in Brussels (Belgium), represented by M.-A. Lucas, lawyer, against the Commission of the European Communities (Agents: H.-P. Hartvig and J. Currall) — application, first, for annulment of a series of measures relating to investigations carried out by the European Anti-Fraud Office (OLAF) and to requests for assistance under Article 24 of the Staff Regulations of officials of the European Communities and, second, for compensation in respect of the alleged damage — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A. W. H. Meij and N. J. Forwood, Judges; H. Jung, Registrar, made an order on 18 December 2003, the operative part of which is as follows:

1. *The action is dismissed as clearly inadmissible and as clearly unfounded in law.*

2. *The parties shall each bear their own costs, including those incurred in the proceedings for interim relief in Case T-215/02 R and Case C-471/02 P(R).*

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[1] OJ C 247, 12.10.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 28 November 2003

in Case T-264/03 R: Jürgen Schmoldt and Others against the Commission of the European Communities

(Application for interim measures — Admissibility — Urgency)

(2004/C 85/51)

(Language of the case: German)

In Case T-264/03 R: Jürgen Schmoldt, resident in Dallgow-Döberitz (Germany), Kaefer Isoliertechnik GmbH & Co. KG, established in Bremen (Germany), and Hauptverband der Deutschen Bauindustrie eV, established in Berlin (Germany), represented by Professor H.-P. Schneider, against the Commission of the European Communities (Agents: K. Wiedner and A. Böhlke) — application under Article 243 EC for interim measures, seeking extension of the period of coexistence of national standards and European standards EN 13162:2001 to 13171:2001 which is provided for by the Commission Communication of 22 May 2003 published in the framework of the implementation of Council Directive 89/106/EEC (OJ 2003 C 120, p. 17) — the President of the Court of First Instance made an order on 28 November 2003 the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 2 December 2003

in Case T-334/02 Viomikhania Siskevasias Tipopiisis kai Sintirisis Agrotikon Proïonton AE against the Commission of the European Communities [1]

(FEOGA — Improvement of the conditions under which agricultural products are processed and marketed — Request for abolition of Community financial assistance — Inaction on the part of the Commission — Action for failure to act)

(2004/C 85/52)

(Language of the case: Greek)

In Case T-334/02: Viomikhania Siskevasias Tipopiisis kai Sintirisis Agrotikon Proïonton AE, established in Athens (Greece), represented by I. Stamoulis, lawyer, with an address for service in Luxembourg, against the Commission of the European Communities (Agent: M. Kondou-Durande) — application for a declaration under Article 232 EC that the Commission failed to act in that, first, it did not initiate the procedure for failure to fulfil obligations in relation to the Hellenic Republic for a breach of Community law which harmed the applicant's economic interests and, second, it did not abolish ex tunc the financial assistance of the European Agriculture Guidance and Guarantee Fund (EAGGF) which was granted for the purposes of the co-financing of the applicant's investment project as approved by Decision No 324986/505 of the Greek authorities of 17 February 1994 — the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, made an order on 2 December 2003, the operative part of which is as follows:

1. *The action is dismissed as clearly inadmissible.*

2. *The applicant shall bear its own costs and those of the Commission.*

([1]) OJ C 31, 8.2.2003.

Action brought on 1 October 2003 by Les Éditions Albert René S. à r.l. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-336/03)

(2004/C 85/53)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application has been drafted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 1 October 2003 by Les Éditions Albert René S. à r.l., of Paris, represented by J. Pagenberg, avocat. A further party to the proceedings before the Board of Appeal was Orange A/S, of Copenhagen.

The applicant claims that the Court should:

— annul the decision adopted on 14 July 2003 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 559/2002-4;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Orange A/S
The Community trade mark applied for:	the verbal mark 'MOBILIX' for goods and services in Classes 9, 16, 35, 37, 38 and 42 — Application No 671 396
Proprietor of the trade-mark right opposed in the opposition proceedings:	the applicant
Trade-mark right opposed:	the national verbal and Community mark 'OBELIX' for goods and services in, inter alia, Classes 9, 16, 28, 35, 41 and 42
Decision of the Opposition Division:	rejection of the opposition
Decision of the Board of Appeal:	partial rejection of the application in respect of goods and services in Classes 9 and 35. For the rest, dismissal of the appeal lodged by the applicant
Grounds of claim:	— The trade mark opposed is a well-known mark; — The trade mark opposed is also protected against exploitation outside the area of similarity in respect of goods and services; — There is a significant similarity between the marks.

Action brought on 13 January 2004 by Luigi Marcuccio against the Commission of the European Communities

(Case T-9/04)

(2004/C 85/54)

(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 13 January 2004 by Luigi Marcuccio, represented by Alessandro Distanto, avvocato.

The applicant claims that the Court should:

— Annul the decision of the Appointing Authority rejecting his request;

— Declare that on 29 October 2001, the applicant, then in the service of the Angola Delegation, was the victim of an accident at work, which occurred therein;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant takes issue with the defendant's refusal to treat as an accident at work, with the consequential benefits provided for in the Staff Regulations in relation to insurance against risks of occupational accidents and diseases, the

incident in which he was the victim on 29 October 2001, whilst he was carrying out his functions at the Angola Delegation. That incident occurred when his hands came into contact with a whitish powder of an as yet unknown chemical-toxicological nature.

The applicant asserts that that incident affected his psychological and physical well-being, adversely affecting his social life.

In support of those claims, the applicant alleges an absolute failure to state reasons and a breach of the regulations cited above.

Action brought on 10 February 2004 by Ermioni Komninou and 16 others against the Commission of the European Communities

(Case T-42/04)

(2004/C 85/55)

(Language of the Case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 February 2004 by Ermioni Komninou, Grigorios Dokos, Donatos Pappas, Vasilios Pappas, Aristidis Pappas, Eleftheria Pappa, Lamprini Pappa, Irini Pappa, Alexandra Dokou, Leonidas Grepis, Nikolaos Grepis, Fotios Dimitriou, Zois Dimitriou, Petros Polosis, Despina Polosi, Konstantinos Polosis and Thomas Polosis, resident in Parga, in the prefecture of Preveza, Greece, represented by Pericles Stroumpos, lawyer.

The applicants claim that the Court should:

— allow the present application for compensation;

— order the Commission of the European Communities to pay to each applicant the sum of EUR 200 000 with interest prescribed by law at a rate of 8 % from the judgment of the Court of First Instance until payment;

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

Pleas in law and main arguments

In 1995 the applicants submitted a complaint to the European Commission, alleging infringement by the Greek authorities of Directive 85/337 [1] in relation to the planning and construction of a biological sewage treatment plant in Preveza. By decision No C(1998) 2297 of 28 July 1998, the Commission decided to finance that project from the Cohesion Fund. On 20 April 1999 the Commission informed the applicants by letter that no further action would be taken on their complaint. The applicants complained to the European Ombudsman about the Commission's treatment of their complaint to it. The European Ombudsman's decision was issued on 18 July 2002. On 2 July 2003 the applicants lodged a fresh complaint with the Commission alleging new infringements relating to the same case. However, the Commission decided to continue financing the project.

The applicants claim that they should be awarded compensation, pleading non-material damage resulting from the Commission's treatment of their complaints. More specifically, they plead that the Commission withheld information from them and misled them with regard to the progress of the case. That is to say, while initially and after receipt of their first complaint the Commission officials considered that Greece had not complied in the present case with the rules laid down by Directive 85/337, they subsequently changed their view and decided to fund the project, without, however, informing the applicants of that decision. In addition, the applicants allege that the Commission's rejection of their original complaint is based on a statement of reasons that is manifestly contrary to Community law. They further submit that in its handling of their original complaint the Commission did not observe fundamental rules of impartiality, since the case was assigned to an official who subsequently engaged in political activity in Greece. Finally, the applicants plead that the Commission failed to take the necessary measures to remedy the abovementioned forms of maladministration despite the fact that the European Ombudsman found infringements on the part of the Commission and despite the second complaint which the applicants submitted.

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[1] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

Removal from the register of Case T-273/99 [1]

(2004/C 85/56)

(Language of the Case: Dutch)

By order of 18 December 2003 the President of the Second Chamber (Extented Composition) of the Court of First Instance of the European Communities ordered the removal from the register of Case T-273/99: Autoservice J. Van Deursen B.V. v Commission of the European Communities.

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[1] OJ C 47 of 19.2.2000.

Removal from the register of Case T-9/02 [1]

(2004/C 85/57)

(Language of the Case: Dutch)

By order of 6 January 2004 the President of the Second Chamber (Extented Composition) of the Court of First Instance of the European Communities ordered the removal from the register of Case T-9/02: Adidas International B.V. v Commission of the European Communities.

[1] OJ C 68 of 16.3.2002.

Removal from the register of Case T-51/03 [1]

(2004/C 85/58)

(Language of the Case: Danish)

By order of 17 December 2003 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-51/03: Pi-Design AG v Office for the Harmonisation of the Internal Market (Trade Marks and Design) (OHIM).

[1] OJ C 101 of 26.4.2003.

III

(Notices)

(2004/C 85/59)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 71, 20.3.2004

Past publications

OJ C 59, 6.3.2004

OJ C 47, 21.2.2004

OJ C 35, 7.2.2004

OJ C 21, 24.1.2004

OJ C 7, 10.1.2004

OJ C 304, 13.12.2003

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