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(Information)

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JUDGMENT OF THE COURT

(Third Chamber)

of 7 July 2005

in Case C-5/03: Hellenic Republic v Commission of the European Communities [1]

(EAGGF — Exclusion of certain expenditure — Fruit and vegetables — Oranges — Animal premiums — Bovine animals — Sheep and goats)

(2005/C 243/01)

(Language of the case: Greek)

In Case C-5/03, Hellenic Republic (Agents: S. Charitaki and E. Svolopoulou) v Commission of the European Communities (Agent: M. Condou-Durande, assisted by N. Korogiannakis) — action for annulment under Article 230 EC, brought on 3 January 2003 — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, J.-P. Puissochet, J. Malenovský and U. Lõhmus, Judges; L. A. Geelhoed,, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 7 July 2005, in which it:

1. *Annuls Commission Decision 2002/881/EC of 5 November 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it excludes from Community financing 2 % of the expenditure incurred in the fruit and vegetable sector;*

2. *Dismisses the remainder of the application;*

3. *Orders the Hellenic Republic to pay two thirds of the costs of the Commission of the European Communities;*

4. *Orders the parties to pay their own costs as to the remainder.*

[1] OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 July 2005

in Case C-130/04: Commission of the European Communities v Greek Republic [1]

(Failure to fulfil obligations — Road transport — Regulation (EC) No 1172/98 — Statistical return in respect of the carriage of goods by road)

(2005/C 243/02)

(Language of the case: Greek)

In Case C-130/04 Commission of the European Communities (Agent:M. D Triantafyllou) v Greek Republic (Agent: S Chala) — action under Article 226 EC for failure to fulfil obligations, brought on 11 March 2004 — the Court (Fifth Chamber), composed of R Silva de Lapuerta, President of the Chamber, R. Schintgen and J Klučka (Rapporteur), Judges; J. Kokott, Advocate General; R. Grass, Registrar, gave a judgment on 21 July 2005, in which it:

1. *Declares that, by failing to transmit to the Statistical Office of the European Communities (Eurostat), for the years 1999 to 2002, statistical returns in respect of the carriage of goods by road in accordance with the requirements of Council Regulation (EC) No 1172/98 of 25 May 1998 on statistical returns in respect of the carriage of goods by road, the Greek Republic has failed to fulfil its obligations under that regulation;*

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

[1] OJ C 106 of 30.04.2004.

Appeal brought on 4 May 2005 by Energy Technologies ET SA against the order made on 28 February 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-445/04 between Energy Technologies ET SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Aparellaje eléctrico, SL

(Case C-197/05 P)

(2005/C 243/03)

(Language of the case: English)

An appeal against the order made on 28 February 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-445/04 ([1]) between Energy Technologies ET SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Aparellaje eléctrico, SL, was brought before the Court of Justice of the European Communities on 4 May 2005 by Energy Technologies ET SA, established in Fribourg (Switzerland), represented by Ms A. Boman.

The Appellant

1) claims that the Court annuls the contested decision and remands the case to the Court of First Instance for trial of the trade mark matter.

2) requests further respite of six months in order to be able to evaluate the need for further substantiation of this appeal and possibly for submittance of expert opinion.

Pleas in law and main arguments:

In the appealed decision the Court of First Instance dismissed the application on the grounds that Energy Technologies ET SA was not represented by a lawyer pursuant to Article 19 of the Statute of the Court of Justice.

The appellant claims that the Court of First Instance has misinterpreted Article 19 of the Statute of the Court of Justice and that its finding that the appellant was not represented by a lawyer within the terms of that Article is incorrect.

([1]) OJ C 182, 23.07.2005, p. 36

Appeal brought on 18 May 2005 by Osman Ocalan, on behalf of the Kurdistan Worker's Party (PKK) and Serif Vanley, on behalf of the Kurdistan National Congress (KNK) against the order made on 15 February 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-229/02, between Kurdistan Workers' Party (PKK) and Kurdistan National Congress (KNK) and the Council of the European Union, supported by the United Kingdom of Great Britain and Northern Ireland and by the Commission of the European Communities

(Case C-229/05 P)

(2005/C 243/04)

(Language of the case: English)

An appeal against the order made on 15 February 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-229/02 ([1]), between the Kurdistan Worker's Party (PKK) and the Kurdistan National Congress (KNK) and the Council of the European Union, supported by United Kingdom of Great Britain and Northern Ireland and by the Commission of the European Union, was brought before the Court of Justice of the European Communities on 18 May 2005 by Osman Ocalan, on behalf of the Kurdistan Worker's Party (PKK) and Serif Vanley, on behalf of the Kurdistan National Congress, established in Brussels, Belgium, represented by M. Muller and E. Grieves, barristers, instructed by J.G. Pierce, solicitor.

The Appellants claim that the Court should:

1. declare that the Application of Osman Ocalan on behalf of the organisation formerly known as the PKK is admissible;

2. declare that the Application of Serif Vanly on behalf of the organisation known as the KNK is admissible;

3. make an order for costs relating to the admissibility proceedings.

Pleas in law and main arguments:

The First Applicant appeals the Ruling on the following grounds:

It is submitted that the ruling is erroneous as the Court of First Instance had already accepted that the first applicant existed and had the requisite capacity to institute proceedings, nominate legal representatives, and respond to pleadings. On the face of the papers the first applicant's power of attorney plainly complied with Article 44 of the rules of procedure of the Court of First Instance governing such powers. The said power was neither contested by the defendant nor the Court when it communicated the application to the defendant in accordance with the normal rules governing receipt of a valid power of attorney.

The defendant's objection relating to capacity due to alleged PKK dissolution is contrary to Article 114(1) (formerly Article 91) of the rules of procedure as it goes to the substance of the application. In short, the objection should not have been considered or dealt with at the admissibility stage.

Likewise, the Court's ruling on capacity, arising out of a provisional construction of the first applicant's case concerning dissolution, constituted an irregular de facto ruling upon a matter of substance which should not have been made at this state of proceedings. Such a ruling contradicts the Court's injunction that the 'reality of PKK's existence' was a matter of substance not to be examined at the admissibility stage.

The Court's construction of the first applicant's case on dissolution is wholly misplaced in any event. A close reading of Mr Ocalan's statement does not confirm that the PKK had dissolved for all purposes, including the purpose of challenging proscription.

Even if the Court was correct in construing the first applicant's case as conclusively resting upon an unreserved assertion of dissolution, it is submitted that the issue of residual rights, including the right to an effective remedy to challenge proscription, remained live as a matter of substance which should have been dealt with at a later stage.

It is also submitted that the Court's criteria concerning admissibility, including 'capacity' and the test regarding 'individual and direct concern', is far too restrictive in cases concerning the operation of fundamental freedoms. In particular, the narrow and restrictive criteria applied by the Court breach Articles 6, 13 and 34 of the European Convention on Human Rights and related jurisprudence concerning locus standi.

Further, irrespective of the test to be applied, it is oppressive, disproportionate and contrary to the rules of natural justice for a court to completely shut out an applicant asserting a breach of fundamental rights solely upon a provisional construction of the applicant's case.

The Second Applicant submits that:

The Court of First Instance erred in its application of the admissibility criteria and in relying upon an assumption that the PKK no longer exists, thereby assuming a substantive issue in order to defeat the claim on admissibility.

([1]) OJ C 143, 11.06.2005, p. 34

Reference for a preliminary ruling from the Rechtbank Rotterdam by interim decision of that court of 8 June 2005 in the criminal proceedings against OMNI Metal Service

(Case C-259/05)

(2005/C 243/05)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by interim decision of the Rechtbank Rotterdam of 8 June 2005, received at the Court Registry on 20 June 2005, for a preliminary ruling in the criminal proceedings against OMNI Metal Service on the following questions:

1. Can cable scrap such as that in issue in the present case (in part with a diameter of 15 cm) be classified as 'electronic scrap (e.g. … wire, etc.)' within the terms of Code GC 020 of the green list? ([1])

2. If the Court of Justice should answer Question 1 in the negative, can or must a combination of green list materials, which is not as such mentioned in the green list, be regarded as a green list material and may that combination of materials be transported for purposes of recovery without the notification procedure being applicable?

3. Is it necessary in this connection that the waste materials be offered or transported separately?

([1]) Annex II to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1)

Appeal brought on 27 June 2005 by Jose Maria Sison against the judgment delivered on 26 April 2005 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-110/03, T-150/03 and T-405/03, between Jose Maria Sison and the Council of the European Union

(Case C-266/05 P)

(2005/C 243/06)

(Language of the case: English)

An appeal against the judgment delivered on 26 April 2005 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-110/03, T-150/03 and T-405/03 ([1]), between Jose Maria Sison and the Council of the European Union, was brought before the Court of Justice of the European Communities on 27 June 2005 by Jose Maria Sison, residing in Utrecht, Netherlands, represented by J. Fermon, A. Comte, H. Schultz and D. Gurses, lawyers.

The Appellant claims that the Court should:

— annul the Judgment of the Court of First Instance (Second Chamber) of 26 April 2005 in Joined Cases T-110/03, T-150/03 and T-450/03.

— annul, on the basis of Article 230 EC, the following: (a) Council Decision of 27 February 2003 (06/c/01/03): Answer adopted by the Council on 27 February 2003 to the confirmatory application of Mr Jan Fermon sent by fax on 3 February 2003 under Article 7 (2) of the Regulation (EC) No 1049/2001 ([2]), notified to the applicant's counsel on 28 February 2003; (b) Council Decision of 21 January 2003 (41/c/01/02): Answer adopted by the Council on 21 January 2003 to the confirmatory application of Mr Jan Fermon sent by fax on 11 December 2002 under Article 7 (2) of the Regulation (EC) No 1049/2001, notified to the Applicant's counsel on 23 January 2003; and (c) Council Decision of 2 October 2003 (36/c/02/03): Reply adopted by the Council on 2 October 2003 to the confirmatory application by Mr Jan Fermon (2/03) made to the Council by telefax on 5 September 2003 registered by the General Secretariat of the Council on 8 September 2003, pursuant to Article 7(2) of Regulation (EC) No 1049/2001, for access to documents.

— require the Council to bear the costs of suit.

Pleas in law and main arguments:

The appellant submits that the judgment of the Court of First Instance should be annulled on the following grounds:

1. Infringement of Articles 220, 225 and 230 EC, of the general principle of Community law enshrined in Articles 6 and 13 ECHR and of the rights of defense.

   The Court of First Instance unduly limits the scope of its review of legality without responding to the applicant's arguments.

2. Infringement of the right of access to documents (Article 1 EU second paragraph and Article 6(1) EU, Article 255 EC and, Article 4, paragraph 1 (a), Article 4 paragraph 6, and of Articles 220, 225 and 230 EC).

   The review made by the Court of first Instance effectively leads to a complete discretion of the Council and to a complete denial of the right of access to documents.

3. Infringement of the duty to state reason (Article 253 EC) and of Articles 220, 225 and 230 EC.

   The Court of First Instance review leads to a denial of the duty to state reason and infringes Article 253 EC.

4. Infringement of the right of access to documents (Article 1 EU second paragraph and Article 6(1) EU, Article 255 EC) and of Article 6.2 of the ECHR and the right to the presumption of innocence and Article 13 ECHR establishing the right to an effective remedy to violations of the rights enshrined in the ECHR.

   The Court of First Instance arbitrarily limits the scope of the case.

5. Infringement of the right of access to documents and of Article 1 EU second paragraph and Article 6(1) EU, Article 255 EC and, Article 4, paragraph 5 and Article 9, paragraph 3 of Council Regulation 1049/2001.

   The Court of First Instance misinterpreted and misapplied Articles 4 and 9 of Council Regulation 1049/2001.

([1]) OJ C 171, 09.07.05, p. 15

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

Appeal brought on 27 June 2005 by Giorgio Lebedef against the judgment delivered on 12 April 2005 by the First Chamber of the Court of First Instance of the European Communities in Case T-191/02 between Giorgio Lebedef and the Commission of the European Communities

(Case C-268/05 P)

(2005/C 243/07)

(Language of the case: French)

An appeal against the judgment delivered on 12 April 2005 by the First Chamber of the Court of First Instance of the European Communities in Case T-191/02 between Giorgio Lebedef and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 June 2005 by Giorgio Lebedef, represented by G. Bouneou and F. Frabetti, lawyers.

The appellant claims that the Court should:

Set aside the judgment delivered on 12 April 2005 by the Court of First Instance of the European Communities in Case T-191/02 between Giorgio Lebedef, an official of the Commission of the European Communities, residing in Senningerberg (Luxembourg), represented by G. Bouneou and F. Frabetti, lawyers, with an address for service in Luxembourg, appellant, against Commission of the European Communities, represented by J. Currall, acting as Agent, with an address for service in Luxembourg, respondent — application for annulment of the Commission's decision of 5 December 2001, by which it repudiated the Framework Agreement of 20 September 1974, adopted again the operational rules concerning the levels, process and procedure of consultation agreed between the Commission and the majority of trade union and professional organisations on 19 January 2000, confirmed the Agreement of 4 April 2001 on the resources to be made available to the staff representatives, ratified the provisions on strikes laid down in Annex I to the Framework Agreement of 20 September 1974, requested the Vice-President of the Commission, Mr N. Kinnock, to negotiate with the trade union and professional organisations and to propose for adoption by the Commission, before the end of March 2002, a new Framework Agreement and to include in the series of amendments to the Staff Regulations, on which the trade union and staff organisations were to be consulted, an amendment providing for the opportunity to adopt electoral rules by way of a vote by the staff of the institution, and, if necessary, annulment of Mr Kinnock's letter of 22 November 2001 addressed to the President of each trade union to notify them of his decision to ask the Commission to repudiate, on 5 December 2001, the above-mentioned Framework Agreement of 20 September 1974, and to adopt several of the above-mentioned points, and annulment of Mr E. Halskov's decision of 6 December 2001 refusing to grant the applicant leave to attend, on a mission basis, the meeting of 7 December 2001 on the 'comprehensive package of proposed amendments to the Staff Regulations'.

Please in law and main arguments:

In support of his action to have the judgment under appeal contested set aside, the appellant contests part 4, paragraphs 96 to 103, of the judgment. More specifically, the admissibility of '… the application for annulment of the decision of 5 December 2001 because it adopts operational rules and in so far as it denies rights guaranteed to the appellant under the Agreement of 4 April 2001'.

The operational rules, in so far as they exclude from the process of consultation the union represented thererin by the appellant, affect his situation by denying him individual rights conferred on him by his status as union representative in that process (see, to that effect, Joined Cases 193/87 and 194/87 *Maurissen and Union Syndicale* v *Court of Auditors* [1989] ECR 1045, and Case T-42/97 *Lebedef* v *Commission* [1998] ECR SC I-A-371 et II-1071, paragraphs 18 to 21). Accordingly, the operational rules adversely affect him and give him standing to challenge them with a view to having them annulled.

This finding is not affected by the case-law as established in Joined Cases T-97/92 and T-111/92 *Rijnoudt and Hocken* v *Commission* [1994] ECRSC I-A-159 and II-511, paragraphs 82 and 86, and Joined Cases T-576/93 to T-582/93 *Browet and Others* v *Commission* [1994] ECR SC I-A-191 and II-619, paragraph 44. The situations in question in the cases giving rise to those judgments are distinguishable from the present case because, in this case, the appellant's rights derive directly from the rules on resources and, although conferred in order to facilitate the appellant's union's participation in the consultation, they fall within Staff Regulation proceedings because they affect directly his own legal situation.

In the judgment under appeal, with regard to the admissibility considered, the Court of First Instance accepted de facto that A&D (the appellant's union) is not representative. The appellant contests that finding because the operational rules do not examine objectively whether the trade unions and professional organisations are representative and there is a manifest error in the comparative assessment of that issue. Moreover, the principles of equal treatment and non-discrimination, with respect to the rights of the defence, the obligation to state reasons, the prohibition of arbitrary procedure and Article 24a of the Staff Regulations were breached.

Appeal brought on 5 July 2005 by Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment delivered on 14 April 2005 by the Third Chamber of the Court of First Instance of the European Communities in Case T-260/03 between Celltech R&D Ltd and Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-273/05 P)

(2005/C 243/08)

(Language of the case: English)

An appeal against the judgment delivered on 14 April 2005 by the Third Chamber of the Court of First Instance of the European Communities in case T-260/03 ([1]) between Celltech R&D Ltd and Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of Justice of the European Communities on 5 July 2005 by Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), represented by Arnaud Folliard-Monguiral, acting as Agent.

The Appellant claims that the Court should:

1. annul the Judgment of the Court of First Instance of 14 April 2005 in Case T-260/03,

2. dismiss the appeal filed by the Applicant before the Court of First Instance against the decision of the Second Board of Appeal of OHIM of 19 May 2003 (Case R 659/2002 2) concerning an application for registration as a Community trade mark of the word mark CELLTECH,

3. order the Applicant before the Court of First Instance to pay the costs in relation to the proceedings before the Court of First Instance and before the Court of Justice.

In the event that the Court of Justice does not uphold the Appellant's main claim under (2), the Appellant would respectfully request the Court of Justice:

1. to annul the Judgment of the Court of First Instance of 14 April 2005 in Case T-260/03,

2. to remand the case to the Court of First Instance.

Pleas in law and main arguments:

In its action before the Court of Justice the Office requests that the Judgment of the Court of First Instance be set aside. The Office claims that the decision of the Court of First Instance violated Article 7(1)(b) and (c) CTMR and is vitiated by the failure to give proper reasons in support of the Court's findings. The ground of appeal consists of the five following limbs:

— Although the Court of First Instance recognised 'that at least one meaning of the word mark CELLTECH is "cell technology"', it incorrectly required the Board of Appeal to give 'an explanation of the meaning in scientific terms of cell technology' in order to explain 'in what way those terms give any information about the intended purpose and nature of the goods and services referred to in the application for registration, in particular about the way in which those goods and services would be applied to cell technology or how they would result from it';

— The Court of First Instance wrongly disregarded the principle following which a mere combination of elements, each of which is descriptive of characteristics of the goods or services in question, without any unusual variations as to syntax or meaning, remains descriptive of those characteristics for the purposes of Article 7(1)(c) CTMR;

— The Court's statement that a finding of descriptiveness or of lack of distinctiveness requires a description of the 'intended purpose' of the goods and services in question is erroneous as a matter of law. Although the Court recognised that 'cell technology' is an 'area of use' for the goods and services in question, it wrongly held that the description of such an 'area of use' would be insufficient to establish that the sign CELLTECH is descriptive and therefore devoid of distinctiveness;

— The Court incorrectly considered that the description of a process for the production or the supplying of the goods and services in question does not fall within the ambit of Article 7(1)(c) CTMR;

— The Court also failed to give reasons in support of the latter finding.

([1]) OJ C 155, 25.06.05, p. 16

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, by order of that court of 22 June 2005, in 1) Carol Marilyn Robins 2) John Burnett v Secretary of State for Work and Pensions

(Case C-278/05)

(2005/C 243/09)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England and Wales), Chancery Division, of 22 June 2005, received at the Court Registry on 6 July 2005, for a preliminary ruling in the proceedings between 1) Carol Marilyn Robins 2) John Burnett and Secretary of State for Work and Pensions on the following questions:

(1) Is Article 8 of Directive 80/987/EEC [1] to be interpreted as requiring Member States to ensure, by whatever means necessary, that employees' accrued rights under supplementary company or inter company final salary pension schemes are fully funded by Member States in the event that the employees' private employer becomes insolvent and the assets of their schemes are insufficient to fund those benefits?

(2) If the answer to Question (1) is no, are the requirements of Article 8 sufficiently implemented by legislation such as that in force in the United Kingdom as described above?

(3) If the UK legislative provisions fail to comply with Article 8, what test should be applied by the national court in considering whether the consequent infringement of Community law is sufficiently serious to attract liability in damages? In particular, is the mere infringement enough to establish the existence of a sufficiently serious breach, or must there also have been a manifest and grave disregard by the Member States for the limits on its rule making powers, or is some other test to be applied and if so which?

[1] Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.1980, p. 23).

Reference for a preliminary ruling from the Bundesgerichtshof by order of that court of 2 June 2005 in Montex Holdings Ltd. v Diesel S.p.A.

(Case C-281/05)

(2005/C 243/10)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichtshof (Germany) of 2 June 2005, received at the Court Registry on 13 July 2005, for a preliminary ruling in the proceedings between Montex Holdings Ltd. and Diesel S.p.A. on the following questions concerning the interpretation of Article 5(1) 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 [1] and concerning Articles 28 to 30 EC:

(a) Does a registered trade mark grant its proprietor the right to prohibit the transit of goods with the sign?

(b) If the answer is in the affirmative: may a particular assessment be based on the fact that the sign enjoys no protection in the country of destination?

(c) If the answer to (a) is in the affirmative and irrespective of the answer to (b), is a distinction to be drawn according to whether the article whose destination is a Member State comes from a Member State, an associated State or a third country? Is it relevant in this regard whether the article has been produced in the country of origin lawfully or in infringement of a right to a sign existing there held by the trade-mark proprietor?

[1] OJ 1989 L 40, p. 1.

Reference for a preliminary ruling from the Simvoulio tis Epikratias by decision of that court of 10 May 2005 in Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries v Minister for Merchant Shipping and Minister for the Aegean

(Case C-285/05)

(2005/C 243/11)

(Language of the case: Greek)

Reference has been made to the Court of Justice of the European Communities by decision of the Simvoulio tis Epikratias (Council of State, Greece) of 10 May 2005, received at the Court Registry on 15 July 2005, for a preliminary ruling in the proceedings between Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries and the Minister for Merchant Shipping and the Minister for the Aegean on the following questions:

(a) In accordance with Article 6(3) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364), are individuals entitled to rely on that regulation to contest the validity of provisions adopted by the Greek legislature before 1 January 2004?

(b) If the answer to the first question is in the affirmative, do Articles 1, 2, and 4 of Regulation (EEC) No 3577/92 permit the adoption of national rules under which shipowners may provide maritime cabotage services only on specific operational routes determined each year by a national authority competent for that purpose and after first obtaining an administrative licence granted under an authorisation scheme having the following characteristics: (i) it relates to all operational routes, without exception, which serve islands, and (ii) the competent national authorities may approve an application submitted for the grant of a licence to operate a service by unilaterally amending, in the exercise of their discretion and without prior definition of the criteria applied, the elements of the application which relate to the frequency and the period of interruption of the service and to the fare tariff?

(c) If the answer to the first question is in the affirmative, is a restriction on the freedom to provide services that is impermissible for the purposes of Article 49 of the Treaty establishing the European Community introduced by national legislation which provides that a shipowner to whom the administration has granted a licence to operate a ship on a specified route (either after his application in that regard has been approved as it stands, or after it has been approved with amendments to certain of its elements, which he accepts) is in principle obliged to work the particular operational route continuously for the entire duration of the annual operational period, and that to secure compliance with this obligation imposed on him he must deposit, before the operational service commences, a letter of guarantee all or part of whose amount will be forfeited if the obligation in question is not complied with or not complied with precisely?

(d) Do Article 5(2) and Article 6(3)(a), (b), (c), (f) and (g) of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ 1998 L 144) in the version in force at the material time, before its amendment by Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 (OJ 2003 L 123), permit a national rule which prohibits absolutely the operation on domestic voyages of ships which have reached a specified age?

Reference for a preliminary ruling from the Efetio Patron by order of that court of 8 June 2005 in Irini Lekhoritou, V. Karkoulias, G. Pavlopoulos, P. Bratsikas, D. Sotiropoulos and G. Dimopoulos v the State of the Federal Republic of Germany

(Case C-292/05)

(2005/C 243/12)

(Language of the case: Greek)

Reference has been made to the Court of Justice of the European Communities by order of the Efetio Patron (Court of Appeal, Patras) of 8 June 2005, received at the Court Registry on 20 July 2005, for a preliminary ruling in the proceedings between Irini Lekhoritou, V. Karkoulias, G. Pavlopoulos, P. Bratsikas, D. Sotiropoulos and G. Dimopoulos and the State of the Federal Republic of Germany on the following questions:

1. Do actions for compensation which are brought by natural persons against a Contracting State as being liable under civil law for acts or omissions of its armed forces fall within the scope *ratione materiae* of the Brussels Convention in accordance with Article 1 thereof where those acts or omissions occurred during a military occupation of the plaintiffs' State of domicile following a war of aggression on the part of the defendant, are manifestly contrary to the law of war and may also be considered to be crimes against humanity?

2. Is it compatible with the system of the Brussels Convention for the defendant State to put forward a plea of immunity, with the result, should the answer be in the affirmative, that the very application of the Convention is neutralised, in particular in respect of acts and omissions of the defendant's armed forces which occurred before the Convention entered into force, that is to say during the years 1941-44?

Action brought on 26 July 2005 by the Commission of the European Communities against the European Parliament and the Council

(Case C-299/05)

(2005/C 243/13)

(Language of the case: French)

An action against the European Parliament and the Council was brought before the Court of Justice of the European Communities on 26 July 2005 by the Commission of the European Communities, represented by Denis Martin and Marie-José Jonczy, acting as Agents, with an address for service in Luxembourg.

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

1. annul the provisions of Annex I, point 2, of Regulation (EC) No 647/2005 of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 ([1]) relating to headings W. Finland (b), X. Sweden (c) and Y. United Kingdom (d), (e) and (f);

2. order the defendants to pay the costs.

Pleas in law and main arguments

According to the Commission, by adopting Regulation No 647/05, the legislature accepted the criteria previously laid down by the Court of Justice for the coordination of special and non-contributory benefits. However, the legislature failed to draw all the consequences of those criteria when it included in the list of permitted benefits set out in Annex IIa of Regulation No 1408/71 those under the headings W. Finland (b), X. Sweden (c) and Y. United Kingdom (d), (e) and (f), which, in the Commission's view, do not satisfy the criteria of 'special' benefits within the meaning of Article 4(2a) of that regulation.

([1]) OJ L 117, 04.05.2005, p. 1

Reference for a preliminary ruling from the Bundesfinanzhof by order of that court of 17 May 2005 in Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH

(Case C-300/05)

(2005/C 243/14)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof of 17 May 2005, received at the Court Registry on 27 July 2005, for a preliminary ruling in the proceedings between Hauptzollamt Hamburg-Jonas and ZVK Zuchtvieh-Kontor GmbH on the following question:

Is the loading and unloading time part of the 'travel' time within the meaning of point 48(4)(d) of the Annex to Directive 91/628/EEC ([1]) on the protection of animals during transport (as amended by Directive 95/29/EC ([2]))?

([1]) OJ 1991 L 340, p. 17.
([2]) OJ 1995 L 148, p. 52.

Reference for a preliminary ruling from the Cour d'arbitrage (Belgium) by order of that court of 13 July 2005 in Ordre des barreaux francophones et germanophones, Ordre français des avocats du barreau de Bruxelles v Conseil des ministres and Ordre des barreaux flamands and Ordre néerlandais des avocats du barreau de Bruxelles v Conseil des ministres

(Case C-305/05)

(2005/C 243/15)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by order of the Cour d'arbitrage (Belgium) of 13 July 2005, received at the Court Registry on 23 July 2004, for a preliminary ruling in the proceedings between Ordre des barreaux francophones et germanophones, Ordre français des avocats du barreau de Bruxelles v Conseil des ministres and Ordre des barreaux flamands and Ordre néerlandais des avocats du barreau de Bruxelles v Conseil des ministres on the following question:

Does Article 1(2) of Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering [1] infringe the right to a fair trail such as is guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and, as a consequence, Article 6(2) of the Treaty on European Union, in so far as the new Article 2a(5) which it inserts into Directive 91/308/EEC requires the inclusion of members of the independent legal profession, without excluding the profession of avocat, in the scope of application of this same directive, which, in substance, has the aim of imposing an obligation on persons or establishments covered by it to inform the authorities responsible for the fight against money laundering of any fact which might be an indication of such laundering (Article 6 of Directive 91/308/EEC, replaced by Article 1(5) of Directive 2001/97/EC)?

[1] OJ L 344, 28.12.2001, p. 76

Action brought on 4 August 2005 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-308/05)

(2005/C 243/16)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 4 August 2005 by the Commission of the European Communities, represented by A. Aresu and H. van Vliet, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by not taking the legal and administrative measures necessary to implement Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, or in any event by not communicating such measures to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.

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

Pleas in law and main arguments

Article 21 of that directive provides that Member States are to bring the laws, regulations and administrative provisions necessary in order to comply with the directive into force with effect from 15 January 2004, and to inform the Commission thereof forthwith.

The Commission observes that the Kingdom of the Netherlands has still not taken or notified those implementing measures.

Reference for a preliminary ruling from the Il Tribunale di Bergamo by order of that court of 28 June 2005 in D.I.A Srl in liquidation v Cartiere Paolo Pigna SpA

(Case C-309/05)

(2005/C 243/17)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Il Tribunale di Bergamo of 28 June 2005, received at the Court Registry on 4 August 2005, between D.I.A Srl in liquidation and Cartiere Paolo Pigna SpA on the interpretation of Articles 17 and 19 of Council Directive 86/653 of 18 December 1986 for the reasons already set out by the Corte di Cassazione, Sezione Lavoro, in Order No 20410 ([1]) of 18 October 2004.

([1]) *Honyvem Informazioni Commerciali srl* v *Mariella De Z|otti* (Case C-465/04) OJ C 31, of 05.02.2005, page 4.

Action brought on 8 August 2005 by Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-310/05)

(2005/C 243/18)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 8 August 2005 by the Commission of the European Communities, represented by Marie-José Jonczy and Antonio Aresu, 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 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, ([1]) or, in any event, by failing to communicate the said provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 21(1) of that directive;

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

Pleas in law and main arguments

The Grand Duchy of Luxembourg has yet to take the measures which it was obliged to put in place by 15 January 2004 in relation to Directive 2001/95 and in any event has failed to communicate those measures to the Commission.

([1]) OJ L 11 of 15.01.2002, p. 4

Appeal brought on 8 August 2005 by Naipes Heraclio Fournier, S.A. against the judgment delivered on 11 May 2005 by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-160/02 to T-162/02 between Naipes Heraclio Fournier, S.A. and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (intervener: France Cartes SAS)

(Case C-311/05 P)

(2005/C 243/19)

(Language of the case: Spanish)

An appeal against the judgment delivered on 11 May 2005 by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-160/02 to T-162/02 between Naipes Heraclio Fournier, S.A. and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (intervener: France Cartes SAS), was brought before the Court of Justice of the European Communities on 8 August 2005 by Naipes Heraclio Fournier, S.A., represented by E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers.

The appellant claims that the Court should set aside the judgment under appeal and uphold its claims.

Grounds of appeal and main arguments

The appeal is founded on three grounds of appeal:

The first ground of appeal alleges infringement by the Second Board of Appeal of the principle of legality and of the rights of defence of Naipes Heraclio Fournier, S.A.. The Court of First Instance should not have confined itself to consideration of the legality of the contested decision but should have carried out a new and thorough examination of the case in the light of the wording of the contested decisions and the specific claims of the applicant and the intervener.

The second ground of appeal alleges that the Second Board of Appeal infringed the principle of legality and Article 7(1)(b) and (c) of Regulation No 40/94. ([1]) The Court of First Instance exceeded its jurisdiction in that it rectified and corrected with its own arguments the substantive errors made by the Second Board of Appeal in connection with the application of the grounds of refusal in Article 7(1)(b) and (c) of Regulation No 40/94 to the appellant's figurative marks.

The third ground of appeal alleges that the judgment under appeal fails to state grounds for the purposes of Article 253 EC. The judgment under appeal does not show clearly and unequivocally the reasons which led the Court to hold that the absolute ground for refusal in Article 7(1)(b) of Regulation No 40/94 applied to the applicant's figurative marks.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).

Appeal brought on 8 August 2005 by TeleTech Holdings, Inc. against the judgment delivered on 25 May 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-288/03 between TeleTech Holdings, Inc. and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (intervener: TeleTech International, S.A.)

(Case C-312/05 P)

(2005/C 243/20)

(Language of the case: Spanish)

An appeal against the judgment delivered on 25 May 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-288/03 between TeleTech Holdings, Inc. and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (intervener: TeleTech International, S.A.), was brought before the Court of Justice of the European Communities on 8 August 2005 by TeleTech Holdings, Inc, represented by E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers.

The appellant claims that the Court should set aside the judgment under appeal and uphold its claims.

Grounds of appeal and main arguments

This appeal is founded on two grounds of appeal:

The first ground of appeal is based on the premiss that the Court of First Instance infringed Article 52 of Regulation No 40/94 ([1]) (in conjunction with Article 8(1)(b) of that regulation) by having misinterpreted that provision in breach of the principle of coexistence and equivalence between Community marks and national marks. This ground of appeal further complains of an infringement, also on account of incorrect interpretation, of Article 74 of Regulation No 40/94 and of the appellant's rights of defence.

The second ground of appeal alleges that the Court of First Instance's interpretation of Article 8(1)(b) Regulation No 40/94 is vitiated by an error of law resulting from the Court's incorrect application of the test relating to the perception of the relevant public when assessing the likelihood of confusion between the conflicting marks.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).

III

(Notices)

(2005/C 243/21)

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

OJ C 229, 17.9.2005

Past publications

OJ C 217, 3.9.2005

OJ C 205, 20.8.2005

OJ C 193, 6.8.2005

OJ C 182, 23.7.2005

OJ C 171, 9.7.2005

OJ C 155, 25.6.2005

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