

Commissioners of Customs and Excise, *ex parte* Tattersalls Limited which was lodged at the Court Registry on 16 January 1987 on the following questions:

1. In Article 10 subparagraph (c) of Council Directive 85/362/EEC are the words '(such goods) ... have been acquired subject to the rules governing the application of value added tax in the Member State of exportation, and have not benefited by virtue of their exportation from any exemption from value added tax;' on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value added tax?
2. In Article 11 second paragraph subparagraph (b) of Council Directive 85/362/EEC are the words 'the goods were not acquired pursuant to the rules governing the application of value added tax in the Member State of exportation or by virtue of being exported benefited from exemption from value added tax;' on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value added tax?

Reference for a preliminary ruling by the Arrondissementsrechtbank, The Hague, by judgment of that court of 28 January 1987 in the case of Gebr. Beentjes BV, Akersloot, v. the State of the Netherlands (Ministry of Agriculture and Fisheries)

(Case 31/87)

(87/C 55/09)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Sixth Chamber of the Arrondissementsrechtbank (District Court), The Hague, of 28 January 1987, which was received at the Court Registry on 3 February 1987, for a preliminary ruling in the case of Gebr. Beentjes BV, Akersloot, v. the State of the Netherlands (Ministry of Agriculture and Fisheries) on the following questions:

1. Is a body with the characteristics of a Local Committee, as provided for in the *Ruilverkavelingswet* 1954 and described in paragraph 5.3 of this judgment, to be regarded as 'the State' or a 'regional or local authority' for the purposes of Council Directive 71/305/EEC of 26 July 1971 (Official Journal, English Special Edition 1971 (II), p. 682)?
2. Does Directive 71/305/EEC allow a tenderer to be excluded from a tendering procedure on the basis of considerations such as those mentioned in paragraph 6.2 of this judgment if in the invitation itself no qualitative criteria are laid down in this regard (but

reference is simply made to general conditions containing a general reservation such as that relied upon by the State in this case)?

3. May legal persons, such as Beentjes, in a civil action such as this, rely on provisions of Directive 71/305/EEC indicating the cases in which and the conditions under which a tenderer may be excluded from the tendering procedure on qualitative grounds, even if in the incorporation of those provisions of the Directive into national legislation the contracting authority is given wider powers to refuse to award a contract than are permitted under the Directive?

Action brought on 3 February 1987 by Wassily Christianos against the Court of Justice of the European Communities

(Case 33/87)

(87/C 55/10)

An action against the Court of Justice of the European Communities was brought before the Court of Justice of the European Communities on 3 February 1987 by Wassily Christianos, residing in Luxembourg, represented by Aloyse May, Avocat-Avoué, with an address for service in Luxembourg at the latter's Chambers, 31 Grand-Rue.

The applicant claims that the Court should

- annul the adverse decision of the complaints committee of the Court dated 4 November 1986;
- declare that the family allowances payable to the person having custody of the applicant's child are to be paid to that person on the basis of the actual exchange rate between the Luxembourg franc and the Greek drachma prevailing on the day of payment of those allowances, without the application of any weighting;
- declare that the defendant must recalculate the sums owed to the applicant, under the supervision of the Court if need be;
- order the defendant to pay the differences between, on the one hand, the amounts deducted from the applicant's salary and, on the other, the amounts paid to be recipient of the family allowances since 15 May 1986;
- order the defendant to pay default interest;
- order the defendant to pay the costs of the case.

Contentions and main arguments adduced in support:

The literal application of the new provisions of Articles 67 and 68 of the Staff Regulations, and of Articles 1, 2, and 3 of Annex VII thereto, leads to unforeseen results which are totally opposed to the interests of those whom they are supposed to protect, by creating an appreciable

discrepancy between the amounts deducted from the applicant's salary and the amounts paid to the recipient of the family allowances, as a result of the application of a weighting. The situation constitutes a breach of the principles of fairness and legitimate expectation, the duty of care towards officials, and the principles of sound administration and equal treatment; furthermore, it gives rise to unjust enrichment on the part of the institution.
