

# COURT OF JUSTICE

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**Reference for a preliminary ruling made by the Court of Appeal by order of that court dated 30 October 1992 in the case of Elsie Rita Johnson against the Chief Adjudication Officer**

(Case C-410/92)

(93/C 29/05)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the Court of Appeal of 30 October 1992, in the proceedings between Elsie Rita Johnson and the Chief Adjudication Officer which was lodged at the Court Registry on 10 December 1992 on the following questions:

1. Is the decision of the European Court of Justice in Emmott (Case C 208/90) to the effect that Member States may not rely on national procedural rules relating to the time limits for bringing proceedings so long as that Member State has not properly transposed Directive 79/7/EEC<sup>(1)</sup> into its legal system to be interpreted as applying to national rules on claims for benefit for past periods in cases where a Member State has implemented measures to comply with that Directive before the relevant deadline but has left in force a transitional provision such as that considered by the Court of Justice of the European Communities in Case 384/85 (Jean Borrie Clarke)?
2. In particular in circumstances where:
  - (i) a Member State has adopted and implemented legislation to fulfil its obligations under Council Directive 79/7/EEC ('the Directive') prior to the deadline laid down in the Directive;
  - (ii) the Member State introduces ancillary transitional arrangements in order to safeguard the position of existing social security beneficiaries;
  - (iii) it subsequently transpires as a result of a preliminary ruling by the Court of Justice that the transitional arrangements breach the Directive;
  - (iv) an individual brings a subsequent claim for benefit shortly after the preliminary ruling referred to above relying on the transitional arrangements and the Directive in a national tribunal pursuant to which that individual is awarded the benefit for the future and for 12 months prior to the bringing of the claim in accordance with the relevant national rules on

payments for the period prior to the making of the claim;

must that national tribunal disapply those national rules on arrears of payment from the date that the deadline for implementation of the Directive has expired, that is 23 December 1984?

**Action brought on 14 December 1992 by the Federal Republic of Germany against the Commission of the European Communities**

(Case C-413/92)

(93/C 29/06)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 December 1992 by the Federal Republic of Germany, represented by Dr Ernst Röder, Ministerialrat, Federal Ministry for Economic Affairs, PO Box 140260, D-W-5300 Bonn 1.

The applicant claims that the Court should:

1. annul Commission Decision 92/491/EEC (K(92) 1783 final) of 23 September 1992<sup>(1)</sup> on the clearance of the accounts presented by the Member States in respect of the expenditure for 1989 of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, in so far as it disallows expenditure of DM 432 000;
2. order the Commission to pay the costs.

*Pleas in law and main arguments adduced in support:*

The application challenges the Commission's refusal to charge to the EAGGF aid paid out by the Federal Republic in the amount of DM 432 000. The Federal Republic of Germany paid that amount in the 1989 financial year in accordance with Community law, in particular the provisions of Commission Regulation (EEC) No 756/70<sup>(2)</sup> (on granting aid for skimmed milk processed into casein and caseinates). Regular supervision of the producer undertakings pursuant to Article 3 (3) of that Regulation took place according to a

<sup>(1)</sup> OJ No L 6, 10. 1. 1979, p. 24.

<sup>(1)</sup> OJ No L 298, 14. 10. 1992, p. 23.

<sup>(2)</sup> Official Journal, English Special Edition 1970 (I), p. 201.

procedure of continuous individual testing previously expressly recognized by the Commission in the context of past statements of account which the Commission — wrongly — no longer wishes to regard as control by sampling (with extrapolation of the results).

Should the German practice in fact not have been in accordance with Community law, the Commission's action is nonetheless contrary to the Commission's duty to cooperate with the Member States.

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**Reference for a preliminary ruling by the Bundesgerichtshof by order of that court of 5 November 1992 in the case of Solo Kleinmotoren GmbH v. Emilio Boch**

(Case C-414/92)

(93/C 29/07)

Reference has been made to the Court of Justice of the European Communities by an order of the Ninth Civil Chamber of the Bundesgerichtshof [Federal Court of Justice] of 5 November 1992, which was received at the Court Registry on 15 December 1992, for a preliminary ruling in the case of Solo Kleinmotoren GmbH v. Emilio Boch on the following questions:

May a judgment within the meaning of Article 27 (3) of the Brussels Convention with which the judgment whose recognition is sought is irreconcilable include an enforceable settlement reached by the same parties before a judge of the State in which recognition is sought in the course of, and to settle, a legal dispute?

If so, does that apply to all the terms laid down in that settlement or only to those which are capable of independent enforcement pursuant to Article 51 of the Brussels Convention and possibly only if the conditions for enforcement are met?

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**Action brought on 16 December 1992 by the Commission of the European Communities against Ireland**

(Case C-418/92)

(93/C 29/08)

An action against Ireland was brought before the Court of Justice of the European Communities on 16 December 1992 by the Commission of the European Communities, represented by Miss Carmel O'Reilly and Mr Xavier Lewis, Members of its Legal Service, acting as agents, with an address for service at the office of Mr Roberto Hayder, representative of the Legal Service, Centre Wagner, Luxembourg-Kirchberg.

The applicant requests the Court to:

1. declare that by failing to bring into force the measures necessary to comply with Council Directive 87/101/EEC of 22 December 1986 amending Directive 75/439/EEC on the disposal of waste oils<sup>(1)</sup> and/or by failing to inform the Commission forthwith thereof, Ireland has failed to fulfil its obligations under that Directive, and in particular Article 2 thereof, and under the Treaty establishing the European Economic Community;
2. order Ireland to pay the costs.

*Pleas in law and main arguments adduced in support:*

Article 189 of the EEC Treaty, under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 1 January 1990 without Ireland having enacted the provisions necessary to comply with the Directive referred to in the conclusions of the Commission.

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<sup>(1)</sup> OJ No L 42, 12. 2. 1987, p. 43.

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**Action brought on 20 December 1992 by NTN Corporation against the Council of the European Communities**

(Case C-423/92)

(93/C 29/09)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 20 December 1992 by NTN Corporation, 3-17, 1 Chome Kyomachibori, Nishi-Ku, Osaka, Japan, represented by Professor Dr Jürgen Schwarze and Malte Sprenger, Rechtsanwalt, with an address for service in Luxemburg at the chambers of Me Claude Penning, 43, avenue du X Septembre.

The applicant claims that the Court should:

- annul Article 1 of Council Regulation (EEC) No 2849/92<sup>(1)</sup> as far as it imposes an anti-dumping duty on the applicant,
- order the Council of the European Communities to pay the costs of the application.

*Pleas in law and main arguments adduced in support:*

The applicant appeals against the Regulation because it contains a decision, i.e. a measure affecting it directly and individually. The applicant is mentioned by name and the duty imposed on the applicant has been

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<sup>(1)</sup> OJ No L 286, 1. 10. 1992, p. 2.