

JUDGMENT OF THE COURT (Fifth Chamber)

15 June 2000 *

In Case C-237/98 P,

Dorsch Consult Ingenieurgesellschaft mbH, established in Munich (Germany), represented by Professor K.M. Meessen, with an address for service in Luxembourg at the chambers of P. Kinsch, 100 Boulevard de la Pétrusse,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 28 April 1998 in Case T-184/95 *Dorsch Consult v Council and Commission* [1998] ECR II-667, seeking to have that judgment set aside and the same form of order as that sought by the appellant at first instance,

the other parties to the proceedings being:

Council of the European Union, represented by S. Marquardt and A. Tanca, of its Legal Service, acting as Agents, with an address for service in Luxembourg at

* Language of the case: German.

the office of A. Morbilli, General Counsel of the Legal Affairs Directorate in the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by A. Rosas, Principal Legal Adviser, and J. Sack, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants at first instance,

THE COURT (Fifth Chamber),

composed of: L. Sevón (President of the First Chamber), acting for the President of the Fifth Chamber, P.J.G. Kapteyn (Rapporteur), P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. La Pergola,

Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 14 October 1999,

after hearing the Opinion of the Advocate General at the sitting on 14 December 1999,

gives the following

Judgment

- 1 By application lodged at the Registry of the Court on 6 July 1998 Dorsch Consult Ingenieurgesellschaft mbH brought an appeal under Article 49 of the Statute of the Court of Justice of the EC against the judgment of the Court of First Instance of 28 April 1998 in Case T-184/95 *Dorsch Consult v Council and Commission* [1998] ECR II-667 (hereinafter 'the contested judgment') by which the Court of First Instance dismissed the application for compensation for the damage allegedly suffered as a result of the adoption of Council Regulation (EEC) No 2340/90 of 8 August 1990 preventing trade by the Community as regards Iraq and Kuwait (OJ 1990 L 213, p. 1).

Facts and procedure before the Court of First Instance

- 2 The legal background and the facts at the origin of the appeal are set out as follows in the contested judgment:
 - '2 On 30 January 1975 the applicant concluded with the Ministry of Works and Housing of the Republic of Iraq (hereinafter "the Iraqi Ministry") a contract for services relating to the organisation and supervision of works on the construction of Iraqi Expressway No 1. The contract, which was for a minimum period of six years, was subsequently renewed several times for the

purposes of execution and supervision of the abovementioned works. Article x of the contract provided *inter alia* that, in the event of differences arising as to the interpretation of the contract or non-performance of contractual obligations, the contracting parties were to endeavour to find an acceptable solution by conciliation (Article X(1)). In the event of the differences persisting, the matter was to be referred to the Planning Board, whose decision would be final and binding. However, no decision taken in relation to the contract could prevent the contracting parties from bringing a dispute before the competent Iraqi courts (Article X(2)).

- 3 According to the documents before the Court, outstanding debts owed to the applicant by the Iraqi authorities at the beginning of 1990 for services rendered under the abovementioned contract were acknowledged in two letters, dated 5 and 6 February 1990, from the Iraqi Ministry to an Iraqi bank, Rafidian Bank, directing it to transfer the sums due to the applicant to the latter's bank account.

- 4 On 2 August 1990 the United Nations Security Council adopted Resolution No 660 (1990) to the effect that there had been a breach of international peace and security resulting from Iraq's invasion of Kuwait and that Iraqi forces should withdraw immediately and unconditionally from the territory of Kuwait.

- 5 On 6 August 1990 the United Nations Security Council adopted Resolution No 661 (1990) in which, declaring that it was "mindful of its responsibilities under the Charter of the United Nations for the maintenance of international peace and security" and noting that the Republic of Iraq (hereinafter "Iraq") had not complied with Resolution No 660 (1990), decided to impose an embargo on trade with Iraq and Kuwait.

- 6 On 8 August 1990 the Council, referring to the “serious situation resulting from the invasion of Kuwait by Iraq” and to United Nations Security Council Resolution No 661 (1990), adopted, on a proposal from the Commission,... Regulation... No 2340/90...

- 7 Article 1 of Regulation No 2340/90 prohibits as from 7 August 1990 the introduction into the territory of the Community of all commodities or products originating in, or coming from, Iraq or Kuwait and the export to those countries of all commodities or products originating in, or coming from, the Community. Article 2 of the same regulation prohibits as from 7 August 1990 (a) all activities or commercial transactions, including all operations connected with transactions which have already been concluded or partially carried out, the object or effect of which is to promote the export of any commodity or product originating in, or coming from, Iraq or Kuwait; (b) the sale or supply of any commodity or product, wherever it originates or comes from, to any natural or legal person in Iraq or Kuwait or to any other natural or legal person for the purposes of any commercial activity carried out in or from the territory of Iraq or Kuwait; and (c) any activity the object or effect of which is to promote such sales or supplies.

- 8 According to the documents before the Court, on 16 September 1990 the “Higher Revolutionary Council of the Republic of Iraq”, referring to “arbitrary decisions by certain governments”, adopted with retroactive effect from 6 August 1990 Law No 57 on protection of Iraqi property, interests and rights in Iraq and elsewhere (hereinafter “Law No 57”). Article 7 of that Law froze all property and assets and income from them held at the material time by the governments, undertakings, companies and banks of those States which had adopted “arbitrary decisions” against Iraq.

- 9 Not having received payment from the Iraqi authorities of the sums acknowledged as due in the abovementioned letters of 5 and 6 February 1990 from the Iraqi Ministry (see paragraph 3 above), the applicant, by letters of 4 August 1995, asked the Council and the Commission to compensate it for the damage suffered as a result of those debts having

become irrecoverable through application of Law No 57, since that Law had been adopted in response to the adoption by the Community of Regulation No 2340/90. In those letters, the applicant claimed that the Community legislature was under an obligation to compensate operators affected by the embargo imposed on trade with Iraq and that the failure to do so rendered the Community liable under the second paragraph of Article 215 of the EC Treaty. It added that, as a precaution, it had registered its claims against Iraq with the United Nations Iraq Claims Compensation Commission.

10 By letter dated 20 September 1995 the Council refused to grant the applicant's request for compensation.

11 In those circumstances the applicant, by application lodged at the Registry of the Court of First Instance on 6 October 1995, brought the present action.'

3 In its action, the appellant submitted that, as the origin of Law No 57 lay in the adoption of Regulation No 2340/90, which established a trade embargo against Iraq, the Community is obliged to compensate it for the damage caused to it by the refusal of the Iraqi authorities to honour their debts to it. It submitted that the Community was liable, principally, on the basis of the principle of the Community's liability for lawful acts, because its property rights had been infringed in a way equivalent to an expropriation and, in the alternative, on the basis of the principle of liability for an unlawful act, the unlawful act having consisted in this case in the failure by the Community legislature, when adopting that regulation, to establish a procedure for compensating economic operators for the loss caused by that regulation.

The contested judgment

- 4 In the contested judgment the Court rejected the application in its entirety.

- 5 At the outset, the Court of First Instance pointed out, in paragraph 59, that if the Community is to incur non-contractual liability as the result of a lawful or unlawful act, it is necessary in any event to prove that the alleged damage is real and that a causal link exists between that act and the alleged damage. Secondly, with respect to the Community's liability in respect of a lawful act, the Court noted that it was clear from the relevant case-law that, in the event of such a principle being recognised as forming part of Community law, a precondition for such liability would in any event be the existence of 'unusual' and 'special' damage.

- 6 In paragraphs 60 to 67, the Court of First Instance therefore examined, first, whether in the case before it there had been actual and certain damage within the meaning of the case-law, pointing out that it was incumbent upon the appellant to produce to the Community judicature the evidence to establish the fact of the loss which it claimed to have suffered.

- 7 Following that examination, the Court of First Instance concluded, in paragraph 68, that the appellant had been unable to prove to the requisite legal standard that it had suffered actual and certain damage within the meaning of the relevant case-law.

- 8 Second, even if it were assumed that the damage alleged by the appellant could be regarded as 'actual and certain', the Court of First Instance held, in paragraph 69,

that the Community's liability for a lawful act could be incurred only if there was a direct causal link between Regulation No 2340/90 and that damage.

- 9 In that regard, the Court of First Instance held, in paragraph 74, that the damage alleged could not be attributed to the adoption of Regulation No 2340/90 but, rather, had to be attributed to United Nations Security Council Resolution No 661 (1990) which imposed the embargo on trade with Iraq. It therefore held that the appellant had not demonstrated the existence of a direct causal link between the alleged damage and the adoption of Regulation No 2340/90.

- 10 Third, the Court of First Instance took the view, in paragraph 75, that it was also appropriate to examine whether, in the event that the conditions relating to the existence of actual and certain damage and of a direct causal link had been fulfilled, the damage could be classified as 'special' and 'unusual' within the meaning of the case-law concerning the Community's liability in respect of a lawful act.

- 11 In paragraphs 82 to 85, the Court of First Instance held that the applicant could not be regarded as forming part of a category of economic operators whose property interests were affected in a manner which set them apart from all other economic operators whose claims became irrecoverable as a result of imposition of the Community embargo. It could not therefore claim to have suffered special damage or to have made an exceptional sacrifice. Moreover, Iraq had to be regarded, even before the invasion of Kuwait, as a 'high-risk country'. The damage alleged by the appellant could not therefore be regarded as exceeding the economic risks inherent in operating in the economic sector concerned.

- 12 Consequently, the Court of First Instance concluded, in paragraph 89, that the appellant's claim for compensation, based on the principle of Community non-contractual liability in respect of a lawful act, was unfounded and had therefore to be rejected.

- 13 It is apparent from paragraph 90 of the contested decision that, in the alternative, the appellant sought to establish the Community's liability for an unlawful act, should the Court of First Instance consider that it was entitled, not to compensation corresponding to the current value of its claims, but merely to a fixed rate of compensation for the damage suffered. It submitted in that regard that the condition to be met for the Community to incur liability, namely the existence of an unlawful act, was fulfilled, such illegality consisting in breach of the obligation to pay, or to provide for, compensation for persons whose property rights have, without fault, been adversely affected, an obligation which constitutes a general principle of law.
- 14 The Court of First Instance took the view, in paragraphs 98 and 99, that it was apparent from examination of the appellant's main claim that it could not be held to be entitled to any compensation since it had not established, in particular, that it had suffered actual and certain damage.
- 15 Consequently, in paragraphs 99 and 100, the Court of First Instance held that, in those circumstances, whatever the relevance of the distinction drawn by the applicant between a possible right to compensation corresponding to the current value of its claims and a possible right to compensation at a fixed rate, and since both claims sought compensation for the same damage, its alternative claim had also to be rejected.

The appeal

- 16 The appeal is based on 18 pleas, which can be grouped as follows:

— existence of actual and certain damage (first to third pleas);

- existence of a direct and foreseeable causal link (fourth to sixth pleas);

- existence of special and unusual damage (7th to 16th pleas);

- right to compensation for damage suffered as a result of a lawful act (17th plea);

- right to compensation for damage suffered as a result of the failure of the Community legislature to exercise its discretion in regard to fixing the amount of the compensation, that plea being submitted in the alternative (18th plea).

Preliminary observations

- 17 It should be pointed out at the outset that the Court of First Instance has rightly pointed out, in paragraph 59 of the contested judgment, that it is settled law of the Court of Justice that if the Community is to incur non-contractual liability as a result of a lawful or unlawful act, it is necessary in any event to prove that the alleged damage is real and that a causal link exists between that act and the alleged damage (Case 26/81 *Oleifici Mediterranei v European Economic Community* [1982] ECR 3057, paragraph 16, Joined Cases C-258/90 and C-259/90 *Pesqueras De Bermeo and Naviera Laida v Commission* [1992] ECR I-2901, paragraph 42).

- 18 The Court of First Instance also rightly considered that it is clear from the relevant case-law that, in the event of the principle of Community liability for a lawful act being recognised in Community law, a precondition for such liability would in any event be the existence of 'unusual' and 'special' damage (see Joined Cases 9/71 and 11/71 *Compagnie d'Approvisionnement, de Transport et de Crédit et Grands Moulins de Paris v Commission* [1972] ECR 391, paragraphs 45 and 46, and Case 59/83 *Biovilac v European Economic Community* [1984] ECR 4057, paragraph 28).
- 19 It follows that the Community cannot incur non-contractual liability in respect of a 'lawful' act, as in the present case, unless the three conditions referred to in the two preceding paragraphs, namely the reality of the damage allegedly suffered, the causal link between it and the act on the part of the Community institutions, and the unusual and special nature of that damage, are all fulfilled.

Existence of actual and certain damage

- 20 In its first plea the appellant complains that the Court of First Instance erred in law in finding, in paragraph 68 of the contested judgment, that the appellant had not demonstrated to the requisite legal standard that it had suffered actual and certain damage within the meaning of the relevant case-law.
- 21 In that regard, the appellant submits that the Court of First Instance misinterpreted the expression 'impossibility of recovery' which it had used in its application. It had never alleged that the financial claims against Iraq had ceased to exist legally. To the contrary, the appellant had stated that those claims were currently, that is to say only temporarily, irrecoverable and that this fact constituted actual damage within the meaning of the case-law of the Court of

Justice. According to it, the Court of First Instance wrongly took the view that the existence of such damage can result only from a definite refusal to pay its claims.

- 22 The Council and the Commission submit, in essence, that the appellant has not explained how the Court of First Instance incorrectly applied the conditions laid down in the case-law regarding non-contractual liability. The Council considers that the concept of the 'impossibility of recovery' from the Iraqi authorities of the appellant's claims is not a legal concept.
- 23 The Court observes, first of all, that the Court of First Instance rightly observed that it is incumbent upon the appellant to produce to the Community judicature the evidence to establish the fact of the loss which it claims to have suffered (see Case 26/74 *Roquette Frères v Commission* [1976] ECR 677, paragraph 24, and Case C-362/95 P *Blackspur DIY and Others v Council and Commission* [1997] ECR I-4775, paragraph 31).
- 24 Next, the Court of First Instance found, in paragraph 61 of the contested judgment, that 'whilst it is common ground that the applicant's claims have not yet been paid, the fact remains that the evidence produced by the applicant is not such as to show, to the requisite legal standard, that it has been confronted with a definitive refusal by the Iraqi authorities to settle their debts, prompted by the adoption of Regulation No 2340/90. The applicant has produced no evidence to show that it has actually contacted, or at least attempted to contact, either the appropriate Iraqi State authorities or Rafidian Bank in order to clarify why the orders for payment of its claims given to Rafidian Bank by letters of 5 and 6 February 1990 from the Iraqi Ministry have not yet been executed.'

25 Lastly, the existence of actual and certain damage cannot be considered in the abstract by the Community judicature but must be assessed in relation to the specific facts characterising each particular case in point.

26 Where, as in the present case, an applicant alleges that he has suffered actual and certain damage because his claims have become temporarily irrecoverable following the adoption of a Community measure, the fact that those claims have not yet been paid at the date of the application for compensation cannot suffice to prove that those claims have become irrecoverable and that there is therefore actual and certain damage within the meaning of the relevant case-law.

27 An appellant must at least produce evidence to show that it has exhausted all avenues and legal remedies open to it in order to recover its claims.

28 That is the meaning to be attributed to paragraph 61 of the contested judgment, in which the Court of First Instance held that the evidence produced by the appellant was not such as to show, to the requisite legal standard, that it had been confronted with a definitive refusal by the Iraqi authorities to settle its debts.

29 In those circumstances, the Court of First Instance did not err in law in making that finding.

30 Consequently, the first plea must be rejected as unfounded.

- 31 By its second plea, the appellant claims that the Court of First Instance based its finding in paragraph 68 of the contested judgment, namely that it had not been able to show the existence of actual and certain damage, on grounds that are irrelevant, or constitute erroneous views of the law, or distort the legal assessment of the facts as they appear in the documents before the Court.
- 32 The Council and the Commission contend, in essence, that the appellant is basically disputing the assessment by the Court of First Instance of the matter of actual and certain damage. However, they consider that the appellant does not clearly explain in its appeal what error of law was committed by the Court of First Instance. According to the Council and the Commission, the appellant's line of argument must be regarded as an attempt to induce the Court of Justice to make a fresh assessment of the evidence.
- 33 The Court finds, first, that in so far as the second plea is based on the legally irrelevant or erroneous nature of the grounds of the contested judgment relating to the existence of actual and certain damage, it cannot but be rejected for the same reasons as those which led to the rejection of its first plea.
- 34 Second, in so far as that plea is based on objections other than those which were rejected in the course of the examination of the first plea, those objections seek to call in question the facts as found and assessed by the Court of First Instance.
- 35 It is settled law that the Court of First Instance alone has jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and also to appraise those facts. The appraisal of the facts therefore does not, save where the clear sense of the evidence has been

distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (see Case C-390/95 P *Antillean Rice Mills and Others v Commission* [1999] ECR I-769, paragraph 29).

- 36 Consequently, it is only where the appellant contends that the Court of First Instance has made findings which the documents in the file show to be substantially incorrect or that it has distorted the clear sense of the evidence before it, that objections based on findings of fact and their assessment in the contested judgment will be admissible.
- 37 The appellant submits that this is, first of all, the case of the finding by the Court of First Instance, in paragraph 61 of the contested judgment, that it had not adduced evidence to show that it had actually contacted, or at least attempted to contact, either the appropriate Iraqi State authorities or Rafidian Bank in order to clarify why the orders for payment of its claims given to Rafidian Bank had not yet been executed, a finding which is contradicted by other findings of the Court of First Instance and by the documents in the file.
- 38 The Court points out in that regard that it is clear from paragraph 62 of the contested judgment that the appellant admitted that it had not exchanged any correspondence with the Iraqi authorities. Moreover, it is also apparent from paragraph 65 that in response to the measure of organisation of procedure ordered by the Court of First Instance, inviting the appellant to explain whether it had taken the necessary steps following the repeal of Law No 57 to secure payment of its claims, that the appellant merely stated that Law No 57 could not be regarded as the cause of the Iraqi authorities' refusal to pay.
- 39 That argument cannot therefore be upheld.

- 40 The appellant contends, next, that the finding by the Court of First Instance, in paragraph 66 of the contested judgment, that it had not even attempted to avail itself of the contractual remedies included for that purpose in the contract, was not in any way apparent from the documents in the file.
- 41 It must be stated that it is apparent from the file that, first, the appellant produced documents relating to the existence of such legal remedies and, second, that it merely referred to the fact that it had requested a local official to 'assemble and send confidential reports, even after the extension of the embargo, in order to pursue performance in full of the payment orders'. Moreover, the appellant has accepted, in its appeal, that this finding by the Court of First Instance is correct as a matter of substance.
- 42 Consequently, the claim that the substantive findings by the Court of First Instance are incorrect as regards its failure to exhaust recourse to contractual remedies cannot be upheld.
- 43 Finally, the appellant contests the finding by the Court of First Instance, in paragraph 66 of the contested judgment, that Council Regulation (EEC) No 3155/90 of 29 October 1990 extending and amending Regulation (EEC) No 2340/90 (OJ 1990 L 304 p. 1) did not prevent it from instructing, and therefore paying fees to, Iraqi lawyers. It claims, in substance, that payment of Iraqi lawyers would have benefited the economy of Iraq, which was prohibited by Regulation No 3155/90.
- 44 As to that argument, it is pointed out, first, that the Court of First Instance found, in paragraph 66 of the contested judgment, that 'whilst the possibility cannot be excluded that, in view of the domestic situation in Iraq after the end of the Gulf War, recourse by foreign undertakings to Iraqi lawyers to resolve disputes between them and the Iraqi authorities might be difficult, the fact remains that, contrary to the applicant's assertion, that difficulty did not derive from

Regulation No 3155/90 since the latter merely prohibited the provision of services, in or from the Community, to natural persons in Iraq or to undertakings registered in Iraq with the object or effect of promoting the economy of Iraq, but not the provision of services in Iraq to third parties by natural or legal persons established in that country’.

- 45 Moreover, the appellant does not rely in its appeal on any argument of such a nature as to show that the alleged substantive inaccuracy of the finding made by the Court of First Instance in paragraph 66 of the contested judgment is evident from the documents in the file submitted for its assessment. It follows that the argument alleging a material error of assessment by the Court of First Instance regarding the scope of Regulation No 3155/90 is unfounded and must be rejected.
- 46 There are therefore no grounds for alleging that the Court of First Instance made findings whose material incorrectness is clear from the documents in the file or that it distorted the clear sense of the evidence presented to it.
- 47 It follows from the foregoing that the second plea must be rejected in its entirety as being partly unfounded and partly inadmissible.
- 48 By its third plea, the appellant complains that the Court of First Instance did not attempt to clarify the factual situation to which it had itself referred, since it neither used nor discussed the relevant evidence which the appellant had adduced, and some of which it did not even mention. As a result, according to the appellant, there was a failure to comply with elementary rules of evidence and, at the very least, a failure to state reasons. It therefore requests that the contested judgment be annulled and the case referred back to the Court of First Instance for assessment of the new evidence.

- 49 It should be pointed out that, by this third plea, the appellant, in referring to mere disagreement as to the assessment made by the Court of First Instance of certain evidence, is seeking to obtain, after annulment of the contested judgment, a fresh assessment by the Court of First Instance of that evidence.
- 50 It is settled law that it is for the Court of First Instance alone to assess the value to be attached to the items of evidence adduced before it (Case C-136/92 P *Commission v Brazzelli Lualdi* [1994] ECR I-1981, paragraph 66, and *Blackspur DIY and Others v Council and Commission*, cited above, paragraph 29).
- 51 As the Advocate General has observed in point 11 of his Opinion, the Court of First Instance cannot, subject to its obligation to observe general principles and the Rules of Procedure relating to the burden of proof and the adducing of evidence and not to distort the true sense of the evidence, be required to give express reasons for its assessment of the value of each piece of evidence presented to it, in particular where it considers that that evidence is unimportant or irrelevant to the outcome of the dispute.
- 52 It follows that the third plea must be rejected as inadmissible and that, therefore, none of the three pleas of actual and certain damage allegedly suffered by the applicant can be upheld.
- 53 As has already been held in paragraph 19 of this judgment, the Community can incur non-contractual liability in respect of lawful acts, as in this case, only if three cumulative conditions are satisfied, namely that the alleged damage was actually suffered, there is a causal link between the damage and the act by the Community institutions, and the damage alleged was unusual and special.

- 54 The cumulative nature of those conditions means that if one of them is not satisfied, the Community cannot incur non-contractual liability in respect of a lawful act of its institutions. In the present case, it is clear from the whole of the foregoing that the appeal must be rejected in that regard and that it is not necessary to examine the 4th to 17th pleas submitted in it.

The failure by the Community legislature to exercise its discretion regarding the fixing of the amount of compensation

- 55 By its 18th plea, submitted as an alternative plea, the appellant submits that the argument set out by the Court of First Instance in paragraph 99 of the contested judgment is based on an error of law. It claims that the documents in the file show that it has not submitted an alternative claim, but merely relied on its application for compensation by an alternative line of reasoning and that, at the very least, contrary to the findings of the Court of First Instance, it has a right to compensation in respect of a lawful act, since the Community legislature failed therein to exercise its discretion as to fixing the amount of compensation.
- 56 It must be stated in that respect that, even assuming that the Community legislature was obliged under Community law to exercise its discretion regarding the fixing of the amount of compensation, as the appellant alleges, the appellant would at least have to show that it had suffered actual and certain damage.
- 57 Consequently, since the pleas alleging the existence of such damage have been rejected, the Court of First Instance did not err in law in holding that the appellant had no right whatsoever to compensation as it had not been able to

prove, in particular, that it had suffered actual and certain damage. The 18th plea must therefore also be rejected.

58 It follows that the appeal must be rejected in its entirety.

Costs

59 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the Council has asked for costs against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. Dismisses the appeal;

2. Orders Dorsch Consult Ingenieurgesellschaft mbH to pay the costs.

Sevón

Kapteyn

Jann

Ragnemalm

Wathelet

Delivered in open court in Luxembourg on 15 June 2000.

R. Grass

D.A.O. Edward

Registrar

President of the Fifth Chamber