

**Action brought on 29 December 2003 by Jean Arizmendi and 43 other applicants against the Council of the European Union and the Commission of the European Communities**

**(Case T-440/03)**

(2004/C 59/49)

*(Language of the case: French)*

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 December 2003 by Jean Arizmendi and 43 other applicants, all residing in France, represented by Jean-François Péricaud and Philippe Péricaud, lawyers.

The applicants claim that the Court should:

1. Order the Council of the European Union and the Commission of the European Communities jointly and severally to pay to each applicant the compensation representing the loss suffered, together with interest at the legal rate from the date the application was lodged;
2. Order the Council of the European Union and the Commission of the European Communities jointly and severally to pay the costs.

*Pleas in law and main arguments*

The subject matter of the present action is the loss allegedly suffered by the applicants, who are French ship brokers, as a result of the abolition in French law, under Law 2001-43 of 16 January 2001, of the monopoly traditionally held by French ship brokers. This abolition occurred by reason of Article 5 of the Community Customs Code<sup>(1)</sup>, as applied by the Commission, when steps were taken following infringement proceedings against the French Republic (letter of formal notice of 12 February 1997 and reasoned opinion of 3 December 1997) concerning the monopoly held by ship brokers, under French law, in respect of representation for performing the acts and formalities laid down by customs rules.

In support of their claims, the applicants contend that the abolition of the monopoly is an act for which the Commission is liable for the following reasons:

- Breach of Article 55 of the EC Treaty (now Article 45 EC), in that ship brokers, in implementing customs legislation, participate in the exercise of official authority.

- Breach of the principles of legal certainty and legitimate expectations, in that, first, the contested provision refers to customs representation, which is a separate matter from presentation of goods at customs which is the task of the applicants, and, secondly, the monopoly was abolished without any form of transitional measure.
- Breach of the principles of equality and proportionality, in that the abrupt opening-up of the market in presentation of goods at customs has resulted in a draconian reduction in prices, which ships brokers, who are handicapped by the restrictive rules under which they operate, cannot resist, in the absence of any transitional measures.

Lastly, the applicants allege breach of the right to property, as laid down in the First Protocol to the European Convention on Human Rights.

<sup>(1)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

**Action brought on 31 December 2003 by N.V. Firma Léon Van Parys, N.V. Pacific Fruit Company, Pacific Fruchtimport GmbH and Pacific Fruit Company Italy S.p.A. against the Commission of the European Communities**

**(Case T-441/03)**

(2004/C 59/50)

*(Language of the case: Dutch)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 December 2003 by N.V. Firma Léon Van Parys, established in Antwerp (Belgium), N.V. Pacific Fruit Company, established in Antwerp (Belgium), Pacific Fruchtimport GmbH, established in Hamburg (Germany), and Pacific Fruit Company Italy S.p.A., established in Rome (Italy), represented by P. Vlaemminck and J. Holmens.

The applicants claim that the Court should:

1. order the defendant to pay compensation under Article 235 EC in conjunction with Article 288 EC for the damage suffered by the applicants as a result of the unlawful measures introduced by Commission Regulation No 2362/98, including default interest of 8 % to be paid on all amounts with effect from the date on which the damage was caused;