SUMMARIES OF STATE AID JUDGMENTS AT NATIONAL LEVEL

JUDGMENTS SELECTED FROM THE 2009 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL

I- Information on the judgment

Supreme Court ("Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 3ª"), 07.02.2006, Appeal in cassation 2250/1997, Shipbuilding in Galicia

II- Brief description of the facts and legal issues
Parties:

The appellant: Central Administration;
The defendant: Government of *Galicia.*

Appeal by the Central Administration against the regional Decree of *Galicia* 217/1994 *on aid for the shipbuilding sector* ("Decree 217/1994"), on the grounds that it constituted State aid scheme that had not been notified to the European Commission before its implementation. The Supreme Court (the "Court") declared Decree 217/1994 as null and void.

III- Summary of the Court's findings

The Court noted the following issues in connection to Decree 217/1994:

1. Competence of the Government of *Galicia* for enacting Decree 217/1994

The Court noted that the powers granted to the Regional Government of *Galicia* by the Statute of *Galicia (*the law granting the Regional Government capacity to approve regional laws) included the capacity to develop and execute plans for the restructuring of economic sectors. The Regional Government of *Galicia* enacted Decree 217/1994 on such legal basis.

2. Compatibility of Decree 217/1994 with the State Aid legislation

The Court referred to the ECJ judgment of 21 July 2005 (Case C-71/04, Administración del Estado v. Junta de Galicia, [2005] ECR I-7419) in which it was held that:

i. Aid to shipbuilding and ship conversion that could be caught by Article 87(1) EC should be notified before their application; and
ii. The scheme of aid set up by Decree 217/1994 did not fall within the scope of Council Directive 90/684/EEC, of 21 December 1990, on aid to shipbuilding.

Notwithstanding the aforementioned ECJ judgment, the Court stated that in this case the notification procedure set by Directive 90/684/EEC applied to aid to shipbuilding and ship conversion even if they were not specifically included within the scope of the Directive. Therefore, the aid to shipbuilding set by Decree 217/1994 were subject to the notification obligation under Article 88(3) EC.

Although the Court acknowledged the general principle of State aid, it did not apply the *de minimis* regime. The Court stated that there was minimum threshold under which trade exchanges were not affected, and that even a minimal amount of aid was capable of distorting competition in highly competitive industrial sectors. It added that the relatively reduced amount of a State aid or the relatively reduced size of the beneficiary company did not *per se* exclude the potential distortion of competition.

In the instant case, the purpose of Decree 217/1994 was to allow the shipyards of *Galicia* to offer similar guarantees and financing conditions to their customers as those offered by their competitors. However, the Court considered that the beneficiaries of the aid could compete with the shipyards of other Member States without the need for aid. Therefore, the Court deemed that trade between Member States could be affected by the aid granted and hence the aid fell into the scope of Article 87 EC.

Based on the above, the Court concluded that, taking into account that the regime set by Decree 217/1994 could be a State aid in the sense of Article 87(1) EC, such regime could distort competition. Therefore, Decree 217/1994 was declared null and void on the basis that it had not been notified to the European Commission as required by Article 88(3) EC.

I- Information on the judgment

Supreme Court ("Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección 2ª"), 03.10.2008, Appeal in cassation 3672/2007, Companies' tax (III)

II- Brief description of the facts and legal issues

Parties:

- The appellant: Regional Administration of Vizcaya and Chamber of Commerce, Industry and Sailing of Bilbao;
- The defendant: Regional Government of La Rioja.

Appeal by the Regional Administration of Vizcaya and the Chamber of Trade, Industry and Sailing of Bilbao (the "Appellants") against two writs of the Superior Court of Justice of the Basque Country temporarily suspending the regional Decree of Vizcaya 10/2006 on Companies' Tax ("Decree 10/2006") (the "Writs") until a pending reference for preliminary ruling brought by the Supreme Court to the ECJ (Joined cases C-428/06 to C-434/06 Unión General de Trabajadores de La Rioja (UGT-Rioja) and Others v Juntas Generales del Territorio Histórico de Vizcaya and Others; [2008] ECR) was ruled.

Decree 10/2006 modified the Companies' Tax regime and established reduced rates and quota deductions to companies located in the Basque Country. The appeal was upheld by the Supreme Court, which declared the writs null and void.

III- Summary of the Court's findings

The appellants lodged an appeal against the Writs temporarily suspending Decree 10/2006 before the ECJ rendered its judgment in answer to the reference for preliminary ruling.

The Writs suspended Decree 10/2005 on the grounds that its aid scheme was very similar to the aid scheme set by a previous Companies' Tax regime, which had been declared null and void by the Supreme Court (Decree 10/2006 modified the Decree 81/1997 on Companies' Tax and established reduced rates and quota deductions for companies located in the Basque Country. In connection to this, the Supreme Court pointed out that the Decree 81/1997 on Companies' Tax had been partially annulled by the judgment of the Supreme Court of 9 December 2004 on grounds of its lack of prior notification for evaluation to the European Commission).

The appellants considered that the aid scheme set by Decree 10/2006 did not constitute State aid and hence prior notification to the European Commission was not required. They added that such notification was only necessary if it could be said with total certainty that the measure constituted State aid. The appellants stated that in the instant case it was not clear whether the aid scheme set by Decree 10/2006 could be qualified as State aid within the meaning of Article 87(1) EC. In addition, they considered that the Superior Court of Justice of the Basque Country had misapplied the EU legislation by applying Articles 87 and 88 EC to measures which did not constitute State aid (Decree 10/2006).

The Supreme Court based its conclusions on the following points:

1. The Superior Court of Justice of the Basque Country had based its Writs temporarily suspending Decree 10/2006 on the existence of a prior annulment of similar rules by the Supreme Court (Judgment of the Superior Court of 9 December 2004). However, by the time the Writs were approved the Supreme Court had already referred a question for preliminary ruling to the ECJ on whether tax measures such as those set by Decree 10/2006 (which established a tax rate lower than the national tax rate and quota deductions for companies located in the region of *Vizcaya*), should be qualified as State aid and hence had to be notified to the European Commission.

2. The Supreme Court pointed out that the recent ECJ Judgment of 11 September 2008 (Joined cases C-428/06 to C-434/06 Unión General de Trabajadores de La Rioja (UGT-Rioja) and Others v Juntas Generales del Territorio Histórico de Vizcaya and Others, not yet published) (preliminary ruling relating to the interpretation of Article 87(1) EC), stated that when a Regional Government has enough institutional, procedural and economic autonomy to determine the operative framework of the companies located in its territory, the regional tax measures should not be qualified as State aid (since these measures would not have the exclusive character that determines such qualification). The ECJ also mentioned that these three cumulative criteria (institutional, procedural and economic autonomy) determine the exclusion of the application of the State aid regime to any European region. The ECJ added that the national court has alone jurisdiction to identify the national law applicable and to interpret it, as well as to apply Community law to the cases pending before it. The national court has competence to determine whether the local authorities have autonomy, which, if so, would have the result that the laws adopted within the limits of the areas of competence granted to those infra- State bodies by the Spanish Constitution and the other provisions of Spanish law are not of a selective nature within the meaning of Article 87(1) EC. In such case, the measure enacted in breach of the competences would be considered as a State aid, and therefore subject to the authorisation regime of Article 87(1) EC.

3. The Supreme Court considered that the application of an aid scheme consisting of a tax deduction should not be suspended if a final decision on the unlawfulness of such aid scheme had not been yet issued. In this respect, the Supreme Court recalled that it had previously enacted two judgments (Judgments of the Supreme Court of 12 July 2007 and 13 March 2007) rejecting the temporary suspension of a regional law which contained tax measures similar to the aid scheme by Decree 10/2006.

The Supreme Court upheld the appeal and thus declared the Writs as null and void.

I- Information on the judgment

Administrative legal organ of Alava ("Organismo Jurídico Administrativo de Alava"), 10.07.2008, Appeal 95/2008, Deferment and break up of recovery payment

II- Brief description of the facts and legal issues

Parties:

Appellant: Individual company;
Defendant: Local Administration of *Alava.*

Appeal before the Administrative Legal Organ of Alava (the "ALOA") by a company against a decision of the Local Administration of Alava ("LAA") refusing the deferment and break up of the recovery of a State aid and requiring the immediate repayment of the State aid granted in the form of tax rate reduction (the "LAA's decision"). The LAA based its decision (i) on a previous decision of the European Commission which required the effective and immediate recovery of unlawfully granted State aid granted by the Member States (the "Decision") and (ii) on the fact that the payment was not a tax debt. The ALOA annulled the LAA's decision and submitted the case to the LAA or the competent administrative organ to decide on the application for deferment and break up of the recovery payment requested by the appellant.

III- Summary of the Court's findings

The LAA's resolution refused the deferment and break up of a State aid recovery on the grounds that the State aid had been granted unlawfully and should be immediately and effectively recovered. The appellant requested the ALOA: (i) to declare the deferment and break up the payment and, (ii) the suspension of the LAA's decision.

The ALOA noted that the regional legislation of Alava considered the possibility of requesting a deferment and break up of tax and non-tax debts. It declared that the LAA should not have refused the appellant's application on the grounds that the Decision required the effective and immediate recovery of unlawfully granted State aid and because the debt was not a tax debt. The ALOA concluded that the LAA should (i) have applied the regional legislation which consider the deferment of tax and non-tax debts, or (ii) have declared itself as incompetent to resolve such application and submit it to the competent organ.

For the reasons before mentioned, the ALOA admitted the appellants' claim, annulled the LAA's resolution and submitted the case to the LAA or the competent administrative organ to resolve about the deferment and break up of the payment according to the regional legislation of Alava.

JUDGMENTS SELECTED FROM THE 2006 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL – PART I

I- Information on the judgment

Judgment number 96/2002, 25 April 2002, Annulment of a regulation, Tax/regional aid

II- Brief description of the facts and legal issues

As a consequence of Commission decision 1993/337, which declared some Basque tax regulations illegal State aid following proceedings under Article 88 (2) EC, the Spanish Legislature enacted Law 42/1994 to conform those tax regulations with Commission decision 1993/337.

Law 42/1994 included a clause which granted EU nationals non-resident in Spain, but operating in the Basque Country, the same tax benefits as those afforded to residents in the Basque Country. The region of La Rioja challenged this clause in 1995, requesting the Constitutional Court to decide on its constitutionality.

III- Summary of the Court's findings

The judgment focused on the analysis of the Spanish law and declared the challenged clause unconstitutional because it generated a sizeable disadvantage for EU nationals based in other Spanish territories, and also those based in the Basque Country, who would not be granted benefits such as freedom of establishment, residence and circulation, in breach of certain constitutional principles.

The Constitutional Court recognised that, although a different tax regime could be established based on the status of "non-resident", this could not be used to release a group from the constitutional responsibility of contributing to the general expenses.

The judgment also referred to the disproportionality of the measure adopted by the government to conform with the Commission decision and considered that the amendment required by the Commission decision should be carried out by the Basque Authorities following the Commission's instructions, as these Authorities were empowered to legislate on tax matters. The Constitutional Court declared the challenged clause unconstitutional and, therefore, void.

I- Information on the judgment

Appeal number 12703/1991, 7 February 1998, Appeal in cassation, Tax sector

II- Brief description of the facts and legal issues

By regional law 14/1987 of 7 July 1988, the Region of Vizcaya granted tax incentives for investment. The contested law introduced tax incentives to corporate income tax, personal income tax, transfer tax and stamp duty. The Spanish Central Government brought an action before the Supreme Court against such regional law, alleging that it infringed the constitutional principle of equality, since the established tax regime was more favorable than the general regime, therefore benefiting the people and entities to which it applied.

III- Summary of the Court's findings

Prior to this judgment, the Commission had initiated proceedings under Article 88 (2) EC regarding regional laws 28/1988 of Alava, 8/1988 of Vizcaya and 6/1988 of Guipuzcoa, all territories within the Basque Country. Consequently, it issued Decision 1993/337/EEC of 10 May 1993, establishing that the above-mentioned regional laws constituted illegal aid in breach of Article 52 EC and were contrary to the principle of free competition. The Spanish Central Government issued Law 42/1994 of 30 December, which included an additional clause, adapting the tax system in the Basque Country to the requirements set out in the decision, so that the group of companies granted the tax benefits would include EU companies non-resident in Spain but operating in the Basque Country (note that this additional clause was, nevertheless, declared unconstitutional by the Constitutional Court as it was considered discriminatory to all those Spanish companies non-resident in the Basque territory; see judgment of 25 April 2002 of the Constitutional Court, above).

The Supreme Court found that the challenged regional law, even after the amendment provided in Law 42/1994 would infringe the principle of equality, since the Spanish companies operating in the Basque Country, but established outside it, would not be caught by such amendment, and therefore face a competitive disadvantage.

I- Information on the judgment

Appeal number 7484/1990, 13 October 1998, Appeal in cassation, Tax sector

II- Brief description of the facts and legal issues

On April 1987, the Region of Guipuzcoa published regional law number 14/1987, granting tax incentives for investment. The Spanish Central Government brought an action before the Supreme Court against such regional law, alleging that it introduced subsidies that may be considered State aid of a tax nature, having the effect that the effective tax burden for Guipuzcoa was lower than that of other territories of Spain. The contested law introduced tax incentives to corporate income tax, personal income tax, transfer tax, capital duty, stamp duty and local taxes.

III- Summary of the Court's findings

In the judgment, the Supreme Court referred to the proceedings initiated by the Commission under Article 88 (2) EC regarding regional laws 28/1988 of Alava, 8/1988 of Vizcaya and 6/1988 of Guipuzcoa, all territories within the Basque Country.

During the course of these proceedings, the Commission issued decision 1993/337/EEC of 10 May 1993. Such decision established that the above-mentioned regional laws constituted illegal aid in breach of Article 52 EC, and were contrary to the principle of free competition.

As a consequence of this decision, the Spanish Central Government issued Law 42/1994 of 30 December, which included an additional clause adapting the tax system in the Basque Country to the requirements set out in the decision, so that the group of companies granted the tax benefits would include EU companies non-resident in Spain but operating in the Basque Country (please note that this additional clause was, nevertheless, declared unconstitutional by the Constitutional Court as it was considered discriminatory to all those Spanish companies non-resident in the Basque territory; see judgment of 25 April 2002 of the Constitutional Court, above).

The Supreme Court found that the challenged regional law should be rendered null since the creation of subsidies established by it reduced free competition between companies and led to discrimination, consisting of an effective lower tax pressure in a specific territory in relation to other territories of Spain, which was contrary to Spanish tax law. The Supreme Court considered as evidence of such discrimination the findings of the Commission in the decision mentioned. In addition, the Supreme Court explained that its judgment was based on the criteria settled by the European authorities, which stated that such laws were discriminatory and that the internal regulations of the Member States should prohibit the creation of incentives promoting the incorporation of companies in a specific territory of the EU, in prejudice of those resident in other territories.

After this decision, the Supreme Court considered that any regional regulation granting tax privileges or benefits, excluding any EU resident operating in a territory under a similar situation, must be considered discriminatory and contrary to free competition in the market.

I- Information on the judgment

Appeal number 7565/1992, 22 October 1998, Appeal in cassation, Tax sector

II- Brief description of the facts and legal issues

This appeal referred to regional law 28/1988 issued by the territory of Alava, in the Basque Country, granting only companies operating in the Basque Country under the status of resident for tax purposes certain tax incentives for investment under certain conditions, in the form of reductions/tax relief on income tax..

The Attorney General alleged that these incentives infringed the principle of equality, and also infringed Spanish legislation against the distortion of competition and discrimination because they resulted in a lower tax burden for that particular territory. The Basque Authorities referred essentially to their constitutional autonomy in tax matters to establish differences with the national regime, and the lack of evidence for the Attorney General's allegations.

III- Summary of the Court's findings

The judgment is based on the precedent set by the judgment of this court of 13 October 1998 (see above). Based on that precedent, the Supreme Court considered that a regional regulation granting tax benefits only to some companies operating in the same territory must be considered discriminatory and, as a consequence, annulled it in its entirety. The provision of incentives, promoting the establishment of companies to the prejudice of others in a particular territory in the EU, and distorting free competition between them, must be rejected.

I- Information on the judgment

Appeal number 2580/1995, 22 January 2000, Appeal in cassation, Tax sector

II- Brief description of the facts and legal issues

The Spanish Central Government challenged a Decree issued by the Autonomous Region ("*Comunidad Autónoma*") of the Basque Country, providing for certain tax measures such as tax relief on different taxes (in some cases, over 95 per cent tax relief). These tax benefits were granted to preferred industries and zones within a preferred industrial location based in the Basque territory.

III- Summary of the Court's findings

The judgment referred to precedents set by the Supreme Court, annulling other Basque tax regulations (see judgments of 13/10/1998 and 22/10/98 above).

Following its precedent, the Supreme Court found that the challenged tax measures were contrary to free competition in the market, and also to the free movement of capital and labour, prejudicing other companies based in other EU territories and in breach of Spanish tax laws.

The Supreme Court considered, again, as evidence of such discrimination the findings of the Commission in its decision 1993/337, which had declared other tax regulations in the Basque country to be illegal aid (see judgment of 13/10/1998 above) and referred to the principle of the supremacy of EC Law over national law. While the Spanish Central Government had amended the law to conform to the Commission decision (see judgment of 13/10/1998 above) and converted the tax benefit into non-illegal aid under EC Law, the new regime was discriminatory under the national legislation. The Supreme Court declared the relevant provision of the Basque Decree null.

I- Information on the judgment

Appeal number 8648/1999, 3 November 1999, Appeal in cassation

II- Brief description of the facts and legal issues

In a previous judgment, the Superior Tribunal of Justice ("STJ") of the Basque country had annulled certain corporate tax reductions established by the corporate tax regulations of each of the three Basque provinces. This case concerned the appeal against that judgment, filed by the legislative and executive bodies of the Vizcaya and Guipúzcoa Provinces and the Chambers of Commerce ("*Cámaras de Comercio*") of Álava and Bilbao. They all sought the annulment of the previous judgment.

III- Summary of the Court's findings

The Supreme Court found that the Rioja region had *locus standi* and then considered that the question had already been dealt with in its case law (in particular in its judgments of 7 February 1998, 13 October 1998 and 22 January 2000). Those judgments annulled tax reductions similar to the one established by the Guipúzcoa region on the grounds that they had been declared in breach of Article 87 EC by Commission decisions that had direct effect.

I- Information on the judgment

Appeal number 3806/1999, 17 November 2004, Appeal in cassation, Tax/regional aid

II- Brief description of the facts and legal issues

In a previous judgment, the STJ of the Basque country had refused to analyse the validity of certain corporate tax quota reductions established by the Guipúzcoa provincial budget. The STJ had considered that the claimant, the Rioja Region, lacked *locus standi*. This case concerned the appeal against the STJ's judgment, filed by the Rioja Region, seeking annulment of the previous judgment.

III- Summary of the Court's findings

The Supreme Court found that the Rioja region had *locus standi* and then considered that the question had already been dealt with in its case law (in particular in its judgments of 7 February 1998, 13 October 1998 and 22 January 2000). Those judgments annulled tax reductions similar to the one established by the Guipúzcoa Region on the grounds that they had been declared in breach of Article 87 EC by prior Commission decisions. This judgment follows a previous judgment by the Administrative Division of the Spanish Supreme Court of 3 November 2004 (see above).

I- Information on the judgment

Appeal number 7893/1999. 9 December 2004, Appeal in cassation, Tax/regional aid

II- Brief description of the facts and legal issues

In a previous judgment, the STJ of the Basque country had annulled Article 26 of the Basque tax regulation on corporate income. Pursuant to that provision, certain tax based reductions had been granted for new companies created in the Basque country. This case concerned the appeal against that judgment filed by (i) the three territorial entities of the Basque country, which sought annulment of the previous judgment, and (ii) the Federation of Entrepreneurs of the region of La Rioja, which sought the annulment of the entire tax regulations.

III- Summary of the Court's findings

The Supreme Court stated that any citizen of the EU may claim the application of EC law on State aid (Article 88 (3) EC) before national courts and that it may not be held that, in the absence of any specific preliminary ruling by the ECJ on the matter, Spanish citizens were excluded from that benefit.

The Supreme Court recognised that the territorial entities of the Basque country had some legislative autonomy in relation to tax. However, that autonomy should not conflict with (i) recognised constitutional principles (equality, unity and solidarity) or (ii) EC State aid law.

The Supreme Court found that some of the provisions of the Basque tax rules, apart from the annulled Article 26, may be initially considered State aid according to the case law of the ECJ, and that they had not been notified to the Commission. Following the principle that national courts may not rule on the compatibility of national measures constituting State aid under EC law, but may, for the application of Article 88 (3) EC, decide whether those measures may qualify as State aid, the Supreme Court annulled certain provisions of the tax rules on the grounds that the State aid had not been notified to the Commission.

I- Information on the judgment

Appeal number 500/2002, 28 June 2002, Annulment of a regulation, Tax sector

II- Brief description of the facts and legal issues

The region of La Rioja (a region bordering the Basque Country) disputed several tax regulations issued by the Basque regional authorities that provided for several tax advantages for companies based in the Basque country. Those tax advantages included a number of benefits which improved the company tax conditions that applied in the rest of Spain. The decision lists the following tax benefits as amounting to an improvement in the tax conditions commonly applicable in Spain: deduction for investments in fixed assets; special financial reserve for investments; capitalisation of small companies; venture capital firms; special tax breaks.

The region of La Rioja considered that the tax regulations were contrary *inter alia* to the EC law on State aid.

III- Summary of the Court's findings

The Tribunal addressed the issue of EC State aid law and discussed the possibility of requesting a preliminary ruling on whether or not the tax regime should have been notified to the Commission. On that particular point, the Tribunal noted the direct effect of Article 88 (3) EC. The judgment concluded that it would not be of use to request such preliminary ruling, given that what must be at stake in the application of the Community rules on State aid is inter-State trade. In this case, there was no effect on inter-State trade; the economic effect of the relevant regulations had its impact on trade within Spain, and therefore it was an internal matter to be resolved under national law.

The judgment concluded by annulling the relevant tax provisions for being contrary to a number of Spanish constitutional law principles: the measure was deemed not proportionate and liable to impact on the free circulation of persons and goods.

I- Information on the judgment

Court Order number 172/2002, Appeal number 1894/2002, 1 October 2002, Ratification of suspension of law, Tax/Financial Institutions

II- Brief description of the facts and legal issues

The Constitutional Court considered whether the suspension of a law on tax on deposits of credit entities (the Law) passed by the Autonomous Region ("*Comunidad Autónoma*") of Extremadura should continue. The Law had been suspended by the Spanish Government before coming into force.

Under Article 161 of the Spanish Constitution, the Spanish Government has the power to suspend laws of the Autonomous Regions of Spain, preventing the laws from coming into force, on the basis that the courts must decide whether to either ratify or lift such suspension within a period of five months.

At the end of this five-month period in relation to the law, the case was considered by the Constitutional Court. The Attorney General argued that the suspension should continue. One of the Attorney General's arguments was that the Commission was at that time considering whether the law was prohibited by EC State aid law. In particular, the Attorney General argued that the tax deductions set out in the law could amount to positive discrimination and thus be contrary to EC State aid provisions. He further argued that continuation of the suspension might avoid the Commission later finding the law contrary to EC State aid law.

III- Summary of the Court's findings

The Constitutional Court held that the alleged positive discrimination and breach of EC State aid law related to the basic question of constitutionality of the law. This was an independent issue which should be considered separately from that of whether or not the suspension should be lifted. The Constitutional Court therefore did not take the Attorney General's argument into account.

The action of the Attorney General was dismissed; suspension of the law was lifted.

The Constitutional Court did not consider the requirement under Article 88 (3) EC which has direct effect, that no Member State should put its proposed measures to grant or alter aid into effect until the Commission has been notified and come to a final decision.

I- Information on the judgment

Judgment number 10/2005, 20 January 2005, Annulment of a regulation Tax / Financial Institutions

II- Brief description of the facts and legal issues

The STJ of Cataluña requested that the Constitutional Court decide on the legality of an exemption from the tax on economic activities granted to saving banks ("*Cajas de Ahorro*").

The background to the proceedings was that the Spanish tax authorities had refused to accept that the savings banks were exempt from the tax. The savings banks who had been refused the exemption then appealed before the STJ of Cataluña against the decision of the tax authorities.

III- Summary of the Court's findings

The Constitutional Court ruled that the exemption, as far as it concerned the commercial activity of the savings banks (as opposed to charity and social activities), infringed the constitutional principle of equal contribution to public expenses. The Constitutional Court further stated (without this having been alleged by any of the parties) that this conclusion was also reached under EC law, pursuant to Article 88 EC. For this purpose, the Constitutional Court quoted the ECJ's judgment of 15 March 1994[1] concerning tax exemptions in favour of public financial institutions in Spain, where tax exemptions in favour of public or private entities that place them in a more favourable situation in relation to other tax payers, were considered State aid, contrary to EC law.

[1] Case C-387/92, Banco Exterior de España [1994] ECR I-877.

I- Information on the judgment

Judgment number 465/2003, 29 May 2003, Annulment of administrative act, Tax sector

II- Brief description of the facts and legal issues

The regional government of the Canary Islands brought an action against the State General Administration and the entity Cumbre Nueva SL, complaining that a property bought by this entity should be treated as an "investment good" under the Law 19/1994 on Modification of the Fiscal and Economic Regime in the Canary Islands and should not therefore be subject to exemption from certain taxes. It was alleged that the State General Administration had therefore misapplied Law 19/1994 in relation to this entity.

III- Summary of the Court's findings

The Tribunal noted that Law 19/1994 had been considered by the Commission. The Commission had held that the Law contained provisions for "State aid for regional purposes" which was only compatible with the EC regime on State aid to the extent that such aid was for an "initial investment" (i.e. an "initial investment into the total capital in relation to the creation of a new establishment, the development of an existing establishment or the initiation of a activity which entails a fundamental change in the products or methods of production of an existing establishment").

The Tribunal found that this "initial aid" exception did not apply to the property bought by Cumbre Nueva SL as it considered that the Commission had intended that this should only apply in exceptional cases. The Tribunal therefore found that the Spanish Government had misapplied Law 19/1994 and that the entity was not eligible for the tax exemption.

I- Information on the judgment

Appeal number 1178/1989, 9 June 1994, Annulment of a regulation, Tax sector

II- Brief description of the facts and legal issues

The question concerned a Resolution of the Municipality of Valencia on the partial liquidation of a municipal establishment tax for the financial years of 1983 to 1986. Banco de Crédito Industrial, S.A. challenged that resolution, arguing that it was contrary to Article 29 of Law 13/71 of 19 June 1971 on the Organisation and Regime of the Official Credit, which established an exemption from taxes payable to the State, regions, municipalities and other entities of public law, applicable to public credit institutions.

Regarding the tax liquidation of 1986, the question of the compatibility of the above mentioned provision with Articles 81 to 90 EC was raised.

III- Summary of the Court's findings

The Tribunal recalled the Ruling of the ECJ of 15 March 1994[2], issued in a preliminary ruling addressed to the STJ of Valencia on June 24 1991, according to which *"a measure through which a Member State grants a tax exemption to public companies is State aid under article* [88] *(1); when such aid is an existing aid, it can continue being executed until the moment the Commission declares its incompatibility with the Common Market.*"

Therefore, the tax exemption provided in Article 29 of Law 13/71 of 19 June 1971 was legal State aid.

This summary has not been prepared by DG Competition or any other service of the Commission. The content of this judgment and this summary have not in any way been approved by the Commission and should not be relied upon as a statement of the Commission's or DG Competition's views.

[2] Case C-387/92, Banco Exterior de España [1994] ECR I-877.

I- Information on the judgment

Appeal number 241/1996,18 February 1998, Annulment of regulation, Construction/Housing

II- Brief description of the facts and legal issues

The National Association of House Builders ("*Associación Nacional de Promotores Constructores de Edificios*") requested the annulment of Royal Decree 2028/1995 of 22 December 1995, regulating the conditions of access to the State-qualified financing of the works promoted by housing cooperatives and owners' communities under the national housing plans. The appellant argued that such Royal Decree infringed, amongst other national provisions, Articles 87(1) and 87(2) a EC.

III- Summary of the Court's findings

The Supreme Court held that the Royal Decree only intended to establish protection for the benefit of members of communities or cooperatives in relation to the correspondent entities, and with regard to the latter in relation to the entities charged with the actual building of the houses. Therefore, the appeal intended to combat the existence of the State-qualified financing regime itself, which had not been established by that Royal Decree.

The Supreme Court recalled previous decisions on this matter, according to which Article 87 was not considered to be infringed by such a financing regime, since the State aid did not hinder competition. It decided that this was the case because promoters of buildings aimed at self-use could not be considered to be economic operators in the building sector (i.e. they were not putting the buildings on the market for sale, but rather constructing). The fact that professional constructors faced a restriction on the housing market was a mere consequence of the economic policy choices made by the State.

I- Information on the judgment

Appeal number 930/1998, 24 November 1998, Appeal in cassation, Fishing sector

II- Brief description of the facts and legal issues

The Order of 19 November 1990 of the Galicia Assembly ("*Junta de Galicia*") approved aids for the modernisation and renovation of the fishing fleet for the year 1991. This Order was challenged before the Superior Tribunal of Justice of Galícia ("*Tribunal Superior de Justicia de Galicia*"). This Tribunal held that such order was (i) null, since it infringed Regulation EEC 4028/1986, modified by Regulation 3944/1990; (ii) illegal, as the aid, being new (since the order modified the Autonomic Decree 191/1987 of 2 July), should have been notified to the Commission. The Galicia Assembly appealed to the Supreme Court.

III- Summary of the Court's findings

The Supreme Court upheld the decision of the Superior Tribunal of Justice of Galícia regarding the nullity of the order and its illegality. It considered that the Order, establishing a system of new aids, should have been notified to the Commission, so that the latter could examine its compatibility with the Common Market.

I- Information on the judgment

Appeal number 7001/1991, 20 April 1999, Appeal in Cassation, Cinematographic Industry

II- Brief description of the facts and legal issues

The Region of Cataluña decided to revoke aid granted to Ganesh, S.A., a cinematographic company, due to of the non-fulfillment of one of the obligations underlying the granting of the aid – the exploitation of the movie in its Catalan version only, within the Catalan territory. The appellant argued that the decision infringed Community law, in particular Articles 7, 48, 52, 56, 59 and 92 EC, such infringement resulting from the considerations of the Commission decision of 21 December 1988, relative to the granting of aid by the Greek Government to the cinematographic industry for the production of Greek movies.

III- Summary of the Court's findings

The Supreme Court considered that the decision did not infringe Community law, stating that: (i) contrary to the facts in the mentioned Commission decision, in the present case there was no discrimination by reason of nationality; (ii) the Commission decision itself recognised that aid to cinematography may fall under Article 87 (3) (c) EC, provided that all the conditions of the Treaty were observed, especially those relating to the free movement of people and services; (iii) evidence of the infringement of such freedoms had not been found; (iv) the consequence of the legal arguments of the appellant would be the annulment of the provisions relative to the granting of aid, and not the annulment of the revocation decision; and (v) the obligation to exploit the film in its Catalan version should be understood as the expression of the intention of stimulating both cinematographic production in Cataluña and the diffusion of the knowledge and use of the Catalan language within Catalan territory.

I- Information on the judgment

Appeal number 117/2000, 11 June 2001, Annulment of regulation, Electricity sector (payments of stranded costs)

II- Brief description of the facts and legal issues

The facts are identical to those of Appeal number 51/2001, below. The main difference with regard to that case is that the Commission State Aid decision of 25 July 2001, cited, had not yet been issued at the time of the judgment.

III- Summary of the Court's findings

Given that Commission decision of 25 July 2001, declaring the compatibility with EC law of the Spanish stranded costs regime, had not yet been issued, the Supreme Court was faced with the issue of whether it should apply Article 88 (3) EC. The Supreme Court noted that the scheme had been notified to the Commission. The Supreme Court also noted that, pursuant to the *Preussen Elektra* case law, the type of payment in the case at hand (which was made directly from consumers to producers) did not qualify as State aid; likewise, the Supreme Court noted the *Lorenz* case law, and given that two years had gone by since notification had been made to the Commission, the Supreme Court considered that it could not stop application of the compensation system.

I- Information on the judgment

Appeal number 51/2001, 21 November 2001, Annulment of regulation, Electricity sector (payments for stranded costs)

II- Brief description of the facts and legal issues

The claimants, private individuals, challenged the regulation for the electricity tariff that includes, as part of that tariff, an amount as compensation for stranded costs. The claimants argued that the system for compensation of the stranded costs was State aid, granted in breach of the EC Treaty.

III- Summary of the Court's findings

Regarding the matter of State aid, the Supreme Court recalled that the Commission had dealt with the matter of the Spanish compensation payments for stranded costs in its Decision of 25 July 2001 (NN49/1999), approving the stranded costs system in its existing status at the time of the judgment. Therefore, the claimant's request was dismissed.

I- Information on the judgment

Appeal number 154/2001, 25 November 2002 Annulment of a regulation, Energy sector (distribution of electricity)

II- Brief description of the facts and legal issues

The claimant, the Spanish Association of Builders, filed an appeal against the provisions of Royal Decree 1955/2000 of 1 December, regulating the activities of transmission, distribution, commercialisation and supply, and authorisation procedures for electrical power installations.

Royal Decree 1955/2000 established a system for the allocation of costs of the power distribution installations between distribution companies and the landowner. In some instances, the landowner was to bear the cost for the distribution installation. The claimant argued, *inter alia*, that this was an unjustified benefit given to distribution companies and constituted State aid contrary to Community law.

III- Summary of the Court's findings

The Supreme Court considered that Royal Decree 1955/2000 only had the purpose of establishing a just allocation of costs between distribution companies and landowners; distribution companies were not receiving any benefit since they were taking care of the functioning costs, while landowners' costs were being compensated through capital gains in the value of land and landowners were being released from paying the running costs of the distribution grid.

The Supreme Court dealt with the claimant's argument that the regulation was contrary to EC law by declaring that there was no State aid which merited a request to the ECJ for a preliminary ruling (as was requested by the claimant). The Supreme Court did not enter into any analysis of the formal requirements of State aid as set out under Community law (although it did declare that, under Spanish law, there had not been unjust enrichment).

I- Information on the judgment

Appeal number 899/1998, 19 December 2001, Proceedings in first instance, Agricultural sector

II- Brief description of the facts and legal issues

The Association of wine makers of La Rioja ("*Agrupación de Artesanos Bodegueros de La Rioja*") brought an action against the Spanish Central Government, alleging that the Order issued by the Minister of Economy on 4 March 1998 granting subsidies to exporters' associations contravened Article 87 EC.

III- Summary of the Court's findings

The Tribunal considered that the prohibition of Article 87 EC deals with aid to companies or manufacturers, provided that they operate in the market and the aid may distort competition. It found that the Order did not contravene that provision of the EC Treaty. The Order specifically determined that the aid was directed at exporters' associations due to the important role these associations played in export activities. The purpose of the subsidies was the functioning of the exporters' associations as collaborating entities of the General Administration. In addition, the Tribunal noted that the costs that may be financed were: staff expenses, offices, fees of international entities, processing and transmission of information, legal advice to solve conflicts in multilateral fora and any other expenses that were not considered a subsidy for the export activity. The Tribunal noted that the Order financed an association activity, especially in the international context, and expressly prohibited that this may imply subsidies to companies. Therefore, the Tribunal concluded that the Order did not amount to State aid, and therefore did not infringe EC law.

I- Information on the judgment

Appeal number 729/1998, 4 January 2001, Ordinary Proceedings for the annulment of a regulation

II- Brief description of the facts and legal issues

On 3 December 1997, the regional authority of Alava, in the Basque Country, issued Administrative Order 932/97. The Order approved the creation of a new sector in the industrial area of Lantarón by the zoning reclassification of land for residential development to land for industrial use.

The Order was challenged by the local authority of the town of Leciñana del Camino and two individuals. The claimants alleged that the reason behind the modification of the land was to favour the installation of Transpapel, a paper manufacturing company, and that this company would receive land at a price much lower than the market price (nearly free). The claimants alleged that this would constitute illegal aid in breach of Article 87 (1) EC. The regional authority of Alava alleged that when the granting of land at that price took place, the question should be raised before the competent authorities.

III- Summary of the Court's findings

The Tribunal recognised that, according to the system established under in Articles 87 and 88 EC, any project for granting or amending aid should be notified to the Commission and that such projects should not be implemented until the Commission had decided on their compatibility. The Tribunal also declared that national courts could not decide on the compatibility of the aid and that the prohibition of Article 88 (3) EC had direct effect. In relation to the challenged Order, the Tribunal found that, even if the request for land from Transpapel had been influenced by the possibility of obtaining certain aid, and that any eventual decision from the Commission on the compatibility of the aid could lead to the withdrawal of the installation of that company and a finding of no justification for the reclassification of the land, it was not for the Tribunal to decide on the principles for controlling the discretionary powers of the Administration in the present case. The Tribunal dismissed the appeal.

I- Information on the judgment

Appeal number 756/2003, 7 February 2005, Annulment of a regulation, Energy sector

II- Brief description of the facts and legal issues

The private company Eolica Navarra S.L. ("ENSL") requested the annulment of an addendum to Decree 91/2003. The addendum had been passed by the defendant, the Autonomous Region of Navarre ("ACN"). The addendum sought to establish a new regime of aid and investment in relation to solar and biomass projects in Navarre. The addendum also purported to have retrospective effect from 2001. ENSL argued that this was a breach of EC law on State aid as the new regime had not been notified to nor considered by, the Commission.

The ACN argued that, on the basis that the original decree had been notified to and approved by the Commission under Article 88 EC, the addendum should be considered approved since it was part of the same decree.

III- Summary of the Court's findings

The Tribunal found that the addendum was in clear breach of Article 88 (3) EC as it had not been informed to or considered by the Commission. The Tribunal noted that Article 88 (3) EC applied equally to grants or modifications of State aid. The Tribunal further noted that Article 88 (3) EC had direct effect, despite any internal laws purporting to override its provisions. The Tribunal declared that the addendum should be annulled.

I- Information on the judgment

Judgment number 126/2002, 23 May 2002 Annulment of a regulation, Environment

II- Brief description of the facts and legal issues

This case related to a dispute between the Autonomous Region ("*Comunidad Autónoma*") of Cataluña and the Spanish Central Government regarding distribution of legislative powers. The distribution of legislative powers in environmental issues between the State and the different regions established in the Spanish Constitution grants the basic regulatory powers to the State and allows the regions to create additional regulation. In the ministerial order challenged by the Spanish region of Catalonia, the Spanish Central Government had established a plan for granting aid and concessions to those companies concerned with waste management. The region of Catalonia believed that the plan exceeded that constitutional distribution of legislative powers.

III- Summary of the Court's findings

The Constitutional Court recognised the Autonomous Region's powers to grant aid in environmental matters in accordance with the constitutional distribution of powers, and attributed the disputed legislative power to those authorities. In spite of this statement, the Constitutional Court recognised the State the general power to coordinate and assure the homogeneity of the aid granted.

I- Information on the judgment

Judgment number 175/2003, 30 September 2003, Positive conflict of competences before the Constitutional Court, Industry

II- Brief description of the facts and legal issues

The Constitutional Court was asked by the Catalan Government to adjudicate on the division of competences between the Autonomous Region of Cataluña and the Spanish Central Government. The case concerned certain aid in the industry sector for the grant of which both parties considered themselves competent.

III- Summary of the Court's findings

The Constitutional Court's judgment was based mainly on Spanish constitutional law and will be referred to here only inasmuch as EC law is concerned. The Constitutional Court stated *inter alia* that, although the competence for executing "industry" matters would normally belong to the Autonomous Region of Cataluña, that was not the case regarding State aid. The Constitutional Court held that in the case of State aid, account should be taken of the fact that all aid granted by a given State, regardless of whether this is granted by national, regional or local entities, will be considered by the EU when appraising whether that aid is or not legal under EC law. Hence, the Constitutional Court held that the competence for executing industrial policy, including the granting of aid, would exceptionally remain with the Central Government.

I- Information on the judgment

Appeal number 7349/1992, 22 February 1999, Annulment of regulation, Civil Aviation

II- Brief description of the facts and legal issues

The Association of Aeronautic Training Schools ("*Agrupación de Escuelas de Formación Aeronáutica*") requested the annulment of Article 3 of Royal Decree 990/1992 of 31 July 1992, granting the State Society for the Civil Aeronautic Formation ("*Sociedad Estatal para las Enseñanzas Aeronauticas Civiles, S.A.*") ("SENASA") the increase of its capital with the revenue of the transfer of movable assets, and the use of real estate and facilities, with access from third parties under conditions to be determined by SENASA. According to the appellant, this would affect the principles relative to free competition and infringe Articles 87 and 88 EC.

III- Summary of the Court's findings

The Supreme Court considered that the measures did not have the characteristics of a decision adopted with the object or effect of favouring a certain company; rather, those measures were logical in view of: the reorganisation of the Directorate General of Civil Aviation; the assumption by SENASA of the performance of the activities previously carried out by the Directorate General; and its obligation of teaching courses of general interest.

I- Information on the judgment

Appeal number 1251/1997, 11 April 2000, Annulment of administrative act, Transport

II- Brief description of the facts and legal issues

Fred Olsen, S.A. and the Professional Association of Naval Companies for Regular Lines ("*Asociación Profesional de Empresas Navieras de Líneas Regulares*") ("ANALIR") brought two separate actions against the Central Administration. These actions challenged the decision issued by the Secretary of State for Infrastructure and Transport on 16 December 1997, opening a tender for sea transportation services for passengers and vehicles. Following the tender procedure, the company Transmediterranea, S.A. was awarded the contract. Under that contract, Transmediterranea, S.A. would receive subsidies of up to €40 million approximately. At the time of these proceedings, the Commission was investigating the subsidies received by Transmediterranea, S.A. under Article 88 (2) EC. The claimants alleged, *inter alia*, that because of the Commission's proceedings there was a presumption of breach of the EC law on State aid.

III- Summary of the Court's findings

In the judgment, the Tribunal did not focus much on the question of infringement of EC State aid rules. It found that the infringement alleged by the claimants was only a presumption and that it was for the Commission to establish whether the subsidies granted to Transmediterranea, S.A. were compatible with EC law or not and if such subsidies should be deemed an obligation of public service under Article 86 (2) EC, or State aid, subject to the EC legal regime. The Tribunal also found that it was not necessary to submit a preliminary ruling to the ECJ regarding the interpretation of EC law on State aid for maritime transport as the case could be solved under Spanish law. The Tribunal dismissed the appeal on the basis that the tender was not in breach of the applicable national administrative regulations, and recognised that its findings were subject to the conclusion of the Commission proceedings.

I- Information on the judgment

Appeal number 174/1998, 21 May 2002, Annulment of administrative act, Transport

II- Brief description of the facts and legal issues

This case regards the same measure as case 3.5.2. above. Fletamentos de Baleares, S.A. brought an action against the Central General Administration. The action challenged the resolution issued by the Secretary of State for Infrastructure and Transport on 16 December 1997, establishing a request for tenders for contracting sea transportation services for passengers and vehicles. Following the tender procedure, the company Transmediterranea, S.A. was awarded the contract.

III- Summary of the Court's findings

The Tribunal found that the challenged resolution was in breach of certain procedural rules for this type of tender. The contract with Trasmediterranea, S.A. meant for this company the receipt of subsidies to compensate the low tariffs paid by end-users (political prices). The Tribunal declared that political prices covered by aid must be authorised by the Commission under Article 88 (3) EC. The Tribunal annulled the bid for tenders on the basis, among others, that there was not a previous authorising decision from the Commission. It concluded that this understanding was confirmed by a Commission decision of 27 February 2001, which declared that Transmediterranea, S.A. had received illegal aid.

The claimant had requested the return of the aid by Transmediterranea, S.A. and to be indemnified for damages resulting from the breach by the State of EC law. The Tribunal referred, in relation to the first request, to the Commission decision mentioned above and declared that Transmediterranea, S.A. was not bound to return the aid because the Commission had found that such aid was justified for public interest reasons under Article 86 (2) EC. Regarding the second request, the Tribunal found that the conditions required under Spanish administrative law on administrative responsibility, consisting mainly of an effective damage, were not met. The Tribunal based this conclusion on the findings of the Commission decision mentioned above, where the Commission declared that the aid granted to Transmediterranea, S.A. compensated unfavorable conditions resulting from public interest concerns. The Tribunal declared that such conditions were not present in the activities carried out by the claimant, and therefore it was not possible to conclude that Transmediterranea, S.A. enjoyed a privileged position.

I- Information on the judgment

Exp. R 340/98, 7 May 1999, Administrative proceedings before the Competition Authority – appeal against the decision by the Service for the Defence of Competition (SDC) to close proceedings against RENFE, Railways sector

II- Brief description of the facts and legal issues

The National Association of Bus Transportation ("FENEBUS") filed a complaint with the Spanish SDC against the National Railway Company ("RENFE"), accusing the latter of unfair prices affecting competition in the passenger transportation business.
FENEBUS made the subsidiary argument that RENFE funded its deficit with public subsidies, and that this public finance constituted unfair competition. However, FENEBUS did not (according to the information available in the decision) rely on any Community law reasoning such as that flowing from Article 88 (3) EC.

III- Summary of the Court's findings

The Tribunal for the Defence of Competition ("TDC") made a brief reference to the issue of State aid, but did not deal with the issue of notification of the subsidy to the Commission, nor did it deal with the EC Treaty provisions on State aid in any other way.

The TDC dealt with the issue on subsidies only by stating that the Spanish Legislature has decided on the financing on RENFE in view of its public interest and universal service obligations.

I- Information on the judgment

Exp. R.311/98, 21 March 2002, Resolution in execution of the judgment of the National Court dated 29 June 2001, Real Estate sector

II- Brief description of the facts and legal issues

On 20 July 1998, this Tribunal had rejected the appeal filed by the Trade Association ("*Asociación de Empresarios*") against the Service for the Defence of Competition's ("SDC") rejection of a claim against several city councils of Gran Canaria for conduct contrary to Articles 1, 6 and 7 of Law 16/1989 of 17 July on the Defence of Competition. Such conduct consisted of the free assignment of land to a company wholly owned by the Government of Gran Canaria to build State-subsidised houses. The SDC had found that this conduct did not infringe national law, but did amount to State aid, which was only forbidden if it infringed Article 87 EC and which could only be assessed by the Commission.

The TDC decision was appealed before the *Audiencia Nacional* and annulled by the latter, which ordered re-opening of the proceedings and completion of all the information necessary for the TDC to issue a new resolution. The *Audiencia Nacional* found that there existed reasonable evidence of infringement of national law and that the TDC should also consider in its decision Articles 86 EC and 87 EC because it could be the case that the company owned by the Government of Gran Canaria was subject to competition rules, including those on State aid. The *Audiencia Nacional* agreed with the SDC that only the Commission was competent to decide on the compatibility of State aid with the Common Market.

III- Summary of the Court's findings

The Tribunal ordered the SDC to re-open proceedings and gather enough evidence for the Tribunal to issue a new resolution.

I- Information on the judgment

Appeal number 2824/1999, 24 May 2001

II- Brief description of the facts and legal issues

As part of an arrangement with creditors within a temporary receivership process, the Spanish Central Government cancelled a debt against a company which was subject to such process. The Commission declared such cancellation of debt as illegal State aid and ordered the Spanish State to recover the aid. This case consisted of the appeal filed by the beneficiary of the aid against the decision issued by the National Tax Authority ("*Agencia Estatal de Administración Tributaria*"), ordering recovery of the cancelled debt.

III- Summary of the Court's findings

The Tribunal found that the beneficiary could not oppose the execution of the Commission decision on the basis that an appeal against this decision had been filed before the ECJ and that a suspension of the Commission decision had been requested to the ECJ (Articles 256 and 243 EC). Also, the beneficiary could not rely on the argument that the cancellation of the debt was an act which was covered by the national legislation on temporary receivership. The tribunal held that actions for recovery would infringe the national principle under which the Public Administration may not act against its own actions ("*doctrina de los actos propios de la Administración*", a variant of the principle of legitimate expectations) (Articles 10 and 256 EC). Finally, the Tribunal stated that the competent entity for the recovery of illegal State aid resulting from a negative decision of the Commission was the National Tax Authority (Article 8.4 of Royal Decree 225/1993, Articles 4 and 7 of General Regulation on Tax Collection and Article 103.1 of Law 31/1990)

I- Information on the judgment

Appeal number 1260/2003, 4 May 2005, Appeal in cassation, Tax

II- Brief description of the facts and legal issues

As referred to above, this case refers to illegal aid granted by the regional government of Navarra and consisting of a tax benefit of a 50% deduction in the total tax due for those companies active in and complying with several requirements related to investment and the creation of jobs. The illegality of such aid was declared by the Commission in Decision 11/07/01. Although this decision affected different companies located in the region of Navarra, Paneles Eléctricos, S.A. was the only company who appealed against the recovery order, ordered by virtue of a Regional Decree issued by the competent authority.

Regarding the specific actions of the beneficiary company to oppose the recovery action, in this case, Paneles Eléctricos, S.A. firstly applied for an administrative remedy against the Decree 53/03 of 26 February relating to recovery of the aid, in order to exhaust the available administrative procedures, as is obligatory under Spanish law ("*recurso de alzada*").

After this appeal was rejected by an agreement of 15 September 2003 issued by the regional government, the company initiated judicial proceedings and asked for suspension of the execution of the contested decree. The Tribunal in this case consented to stay the execution, but required a bank security, in order to guarantee the purpose of proceeding.

Paneles Eléctricos appealed again, this time against the order for a bank security. Given that the Government of Navarra did not oppose this appeal, the Tribunal decided to continue with the proceeding.

III- Summary of the Court's findings

Decision 446/2005, issued by the Tribunal on 4 May 2005, finally solved the judicial proceeding initiated by Paneles Eléctricos, S.A. against the order of recovery held in Decree 53/03. The Tribunal decided to reject this appeal, based on different arguments.

Once the jurisdiction of the Tribunal had been affirmed, the Tribunal considered the General Decree an appropriate measure to enforce the Commission decision. Although under Spanish law there was not a common procedure established for the recovery of illegal aid, the decision had to be considered as an executory order, compulsory for the State.

The appellant applied for annulment of Decree 53/03, alleging that the benefit obtained from the State aid prevented Paneles Eléctricos, S.A. from obtaining other economic incentives under Spanish law that were incompatible with the illegal aid (which incentives the company had renounced in order to obtain the aid). The Tribunal stated that this argument was not valid and that Paneles Eléctricos, S.A. would be able to claim for the other incentives should the granting of the State aid have damaged the company. In fact, the agreement of 15 September 2003 showed the favourable position of the Government of Navarra regarding the availability of those incentives.

Finally, regarding the application to the case of the statute of limitations, declared by Paneles Eléctricos, S.A. for the fiscal years of 1998 and 1999, the Tribunal stated that the time limits to be followed in the proceeding were those applicable under the Community legal order. That meant a

time limit of ten years from the date of granting of the aid, and not the four-year period established under Spanish law for this kind of proceedings.

For all these reasons, the Tribunal decided in Resolution 446/2005 to reject the appeal of Paneles Electricos, S.A. and considered the agreement adopted by the government to be in accordance with law.

I- Information on the judgment

Appeal number 2250/1997, 22 December 2003, Appeal in cassation, Shipbuilding

II- Brief description of the facts and legal issues

The Spanish Central Government contested the passing of Decree 217/1994 of 23 June to the STJ of Galicia by which the Council of the Government of Galicia regulated aid to the shipbuilding sector, because it considered that (i) the Decree should have been notified to the Commission and (ii) the Government of Galicia was not competent to adopt the Decree. The STJ of Galicia considered that the Decree was not incompatible with EC law as Article 88 (3) EC does not impose a notification obligation for each project involving State aid to small and medium shipbuilders. The Spanish Central Administration appealed to the Supreme Court.

III- Summary of the Court's findings

The Supreme Court stated that according to Article 87 EC, any aid granted by a Member State or through State resources that distorts competition is incompatible with the Common Market. However, paragraph 3 of Article 87 states that some categories of aid may be compatible if they are specified by the Council, acting by a qualified majority. Therefore, the Supreme Court examined Council Directive 90/684/CEE of 21 December 1990 (hereinafter the Directive), on aid to shipbuilding, which established that State aid also includes aid granted by regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship repair undertakings which they directly or indirectly control and which do not represent the provision of risk capital according to standard company practice in a market economy.
The Directive also states that the following types of aid to the shipbuilding sector shall be notified to the Commission in advance and authorised by the Commission before they are put into effect: (i) any aid scheme - new or existing - or any amendment of an existing scheme covered by the Directive; (ii) any decision to apply any general or regional aid scheme to the undertakings covered by the Directive; and (iii) any individual application of aid schemes in the cases referred to in the Directive or when specifically provided for by the Commission in its approval of the aid scheme concerned. As the present case dealt with the possibility of a regional Decree regarding State aid to shipbuilding being incompatible with EC law without previous notification to the Commission, the Supreme Court considered that it was the ECJ who should take the decision. Therefore, the Supreme Court submitted a preliminary ruling to the ECJ about the possibility of approving a Decree by a regional authority concerning State aid to the shipbuilding sector without previous notification to the Commission.

JUDGMENTS SELECTED FROM THE 2006 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL – PART II

I- Information on the judgment

Superior Court of Justice, Administrative Section, 4 May 2005, regarding State aid granted to Paneles Eléctricos, S.A.

II- Brief description of the facts and legal issues

As referred to above, this case refers to illegal aid granted by the Regional Government of Navarra, consisting of a tax benefit of a 50% of deduction in the total tax due for those companies initiating their activity and complying with several requirements relating to investment and the creation of jobs. The illegality of such aid was declared by the Commission in its decision of 11 July 2001. Although this decision affected different companies located in the region of Navarra, Paneles Eléctricos, S.A. was the only company which appealed against the recovery order deriving from a Regional Decree of the competent authority.

Regarding the specific actions of the beneficiary company to oppose the recovery action, in this case, Paneles Eléctricos, S.A. firstly applied for an administrative remedy against Decree 53/03 of 26 February regarding recovery of the aid, in order to exhaust the available administrative procedures ("recurso de alzada"), which is compulsory under Spanish law in order for the administrative courts to review the administrative action.

After this appeal was rejected by an agreement of 15 September 2003 issued by the Regional Government, the company initiated judicial proceedings and asked for the suspension of execution of the contested decree. The Court, in this case, consented to stay the execution, but required security from a bank, in order to guarantee the purpose of the proceedings.

Paneles Eléctricos appealed again, this time against the order for bank security. Given that the Government of Navarra did not oppose this appeal, the Court decided to continue with the proceedings.

III- Summary of the Court's findings

Decision 446/2005, issued by the Court on 4 May 2005, finally settled the judicial proceedings initiated by Paneles Eléctricos, S.A. against the order for recovery contained in Decree 53/03. The Court decided to reject this appeal based on different arguments.

Once the jurisdiction of the Court had been affirmed, the Court considered the General Decree to have been an appropriate measure for enforcing the Commission decision. Although under Spanish law there is no common procedure established for the recovery of illegal aid, the decision has to be considered an executory order, binding on the State.

The appellant applied for the annulment of Decree 53/03, alleging that the benefit obtained from the State aid prevented Paneles Eléctricos, S.A. from obtaining other economic incentives under Spanish law that were incompatible with the illegal aid (which the company had renounced in order to obtain the aid). The Court stated that this argument was not valid and that Paneles Eléctricos, S.A. would be able to claim for the other incentives in the event that the granting of the State aid damaged the

company. In fact, the agreement of 15 September 2003 showed the favourable position of the Government of Navarra regarding the availability of those incentives.

Finally, regarding the applicability to this case of the statute of limitations, declared by Paneles Eléctricos, S.A. for the fiscal years of 1998 and 1999, the Court stated that the time limits to be followed in the proceeding were those applicable under the Community legal order. That meant a time limit of ten years from the date the aid was granted, and not the four-year period established under Spanish law for this kind of proceedings.

For all of the above reasons, the Court decided in Resolution 446/2005 to reject the appeal of Paneles Electricos, S.A. and to regard the agreement adopted by the government as compliant with the law.

I- Information on the judgment

Resolution of the Central Economic-Administrative Court number 368/2001, of 24 May, Appeal number 2824/1999

II- Brief description of the facts and legal issues

As part of an arrangement with creditors within a temporary receivership process, the Spanish Central Government cancelled a debt against the company, subject to such process. The Commission declared this cancellation of the debt as illegal State aid and ordered the Spanish State to recover the aid. This case concerns the appeal filed by the beneficiary of the aid against the decision issued by the National Tax Authority ("*Agencia Estatal de Administración Tributaria*") ordering payment of the debt cancelled.

III- Summary of the Court's findings

The Tribunal found that the beneficiary could not oppose the execution of the Commission decision by means of the fact that an appeal against this decision had been filed before the ECJ and that suspension of the Commission decision had been requested to the ECJ (Articles 256 and 243 EC). Also, the beneficiary could not rely on the argument that cancellation of the debt was an act covered by the national legislation on temporary receivership. The Tribunal held that actions for recovery would infringe the national principle according to which the Public Administration may not act against its own actions ("*doctrina de los actos propios de la Administración*", a variant of the principle of legitimate expectations) (Articles 10 and 256 EC). Finally, the Tribunal stated that the competent entity for the recovery of illegal State aid resulting from a negative decision of the Commission is the National Tax Authority (Article 8.4 of Royal Decree 225/1993, Articles 4 and 7 of the General Regulation on Tax Collection and Article 103.1 of Law 31/1990).