TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA

CVRIA
LUXEMBOURG

)POS BENDRIJŲ TEISINGUMO TEISMAS
/RÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 23/06**

16 March 2006

Judgment of the Court of Justice in Case C-234/04

*Rosmarie Kapferer v. Schlank & Schick GmbH*

# AS A GENERAL RULE, A NATIONAL COURT DOES NOT HAVE AN OBLIGATION TO RE-OPEN AND SET ASIDE A JUDICIAL DECISION WHICH HAS BECOME FINAL, EVEN IF THAT DECISION SHOULD BE CONTRARY TO COMMUNITY LAW

*It is important that final judicial decisions can longer be called into question*

In her capacity as a consumer, Ms Kapferer, who lives in Hall in Tirol (Austria), received advertising material containing prize notifications on a number of occasions from Schlank & Schick, a company established under Germany law, which operates a mail order business in Austria and other countries. According to a letter which was personally addressed to Ms Kapferer, a prize of EUR 3 906.16 was waiting for her. The award of that prize was subject to a test order without obligation.

Ms Kapferer returned the order form to Schlank & Schick, but it was not possible to establish whether she had in fact placed an order on that occasion.

Not having received the prize she believed she had won, Ms Kapferer claimed that prize on the basis of the Austrian Consumer Protection Law (Konsumentengesetz)[1], seeking an order from the Bezirksgericht Hall in Tirol directing Schlank & Schick to pay her the sum of EUR 3 906.16, plus interest.

[1] Konsumentenschutzgesetz, in it version resulting from the Law which entered into force on 1 October 1999 (BGBi. I, 185/1999).

Relying on the Community regulation on jurisdiction[2], Schlank & Schick claimed that the Austrian courts lacked international jurisdiction. The Bezirksgericht dismissed that argument.

As regards the merits, the Bezirksgericht dismissed all of Ms Kapferer's claims. Ms Kapferer therefore appealed to the Landesgericht Innsbruck. Schlank & Schick did not, however, challenge the decision of the Bezirksgericht as regards international jurisdiction and, therefore, that decision became final.

Since the Landesgericht Innsbruck had doubts about the international jurisdiction of the Bezirksgericht, it decided to ask the Court of Justice of the European Communities if it has an obligation under the EC Treaty to reopen and set aside a final and conclusive judgment on international jurisdiction if that judgment were proved to be contrary to Community law.

The Court recalls the importance of the principle of *res judicata*. In order to ensure both the stability of the law and legal relations and the sound administration of justice it is important that judicial decisions, which have become final after all rights of appeal have been exhausted or after the expiry of the time-limits provided for by those proceedings, can no longer be called into question.

Therefore, **Community law does not require a national court to disapply its internal rules of procedure in order to review and reopen a final judicial decision if that decision should be contrary to Community law.**

The judgment in Case C-453/00 *Kühne & Heitz* [2004] ECR I-837 is not such as to call into question that finding.

The Court further states that compliance with the limits imposed by Community law on the power of Member States in procedural matters has not been called into question in the dispute in the main proceedings as regards appeal proceedings.



*For further information, please contact Christopher Fretwell*
*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*

[2] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).