

## Case T-47/02

**Manfred Danzer and Hannelore Danzer**

**v**

**Council of the European Union**

(Company law — Directives 68/151/EEC and 78/660/EEC — Disclosure of annual accounts — Protection of business secrets — Breach of fundamental rights — Legal basis — Action for damages — Inadmissibility)

Judgment of the Court of First Instance (Third Chamber), 21 June 2006 . . . II - 1782

### Summary of the Judgment

1. *Actions for damages — Independent of actions for annulment*  
(Arts 235 EC and 288, second para., EC)
2. *Preliminary rulings — Reference to the Court — Validity of a Community act challenged collaterally before a national court*  
(Art. 234, third para., EC)

3. *Non-contractual liability — Conditions*

(Art. 288, second para., EC; Council Directives 68/151, Art. 2(1)(f), and 78/660, Art. 47)

1. The action for damages provided for in the second paragraph of Article 288 EC is an independent form of action with a particular purpose to fulfil within the system of actions and subject to conditions as to its use dictated by its specific nature. It differs from an action for annulment in that its end is not the abolition of a particular measure but compensation for damage caused by an institution. The principle of the independent character of the action for damages is thus explained by the fact that the purpose of such an action differs from that of an action for annulment. Accordingly, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of a measure which has become definitive and would, if upheld, nullify the legal effects of that measure. That is particularly the case where the action for damages seeks the payment of an amount precisely equal to the duty paid by the applicant pursuant to the measure which has become definitive.
2. Where a question of interpretation of Community law is raised before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal is, in principle, required under the third paragraph of Article 234 EC to bring the matter before the Court of Justice through a reference for a preliminary ruling. Nevertheless, where the correct application of Community law is so obvious as to leave no scope for any reasonable doubt, that court, in exercising discretion which it alone has, may decide to refrain from referring to the Court of Justice a question concerning the interpretation of Community law which has been raised before it.

Nor can that court be bound to grant all requests it receives for a reference for a preliminary ruling on the validity of a Community act.

The mere fact that a party contends that the dispute gives rise to a question concerning the validity of Community law does not mean that the court concerned is compelled to consider that a question has been raised within the meaning of Article 234 EC. It may, in

(see paras 27, 28)

particular, find that there is no doubt as to the validity of the contested Community act and that, accordingly, it is not necessary to make a reference to the Court of Justice on that point. The court in question may consider the validity of a Community act and, if it considers that the grounds put forward before it by the parties in support of invalidity are unfounded, it may reject them, concluding that the measure is completely valid. By taking that action, it is not calling into question the existence of the Community measure.

(see paras 36, 37)

required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, and of Article 47 of Directive 78/660 on the annual accounts of certain types of companies, which provisions provide for mandatory publication of annual accounts, cannot constitute wrongful conduct such as to establish the Community's liability. The unlawfulness of a coordinating directive is not in itself sufficient to establish the Community's non-contractual liability, as there is no non-contractual liability on the part of the Community unless there has been a sufficiently serious breach of a rule of law designed to confer rights on individuals.

3. The adoption of Article 2(1)(f) of Directive 68/151 on coordination of safeguards which, for the protection of the interests of members and others, are

(see para. 52)