

JUDGMENT OF THE COURT

14 December 2000 *

In Joined Cases C-300/98 and C-392/98,

REFERENCES to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Arrondissementsrechtbank 's-Gravenhage (Netherlands) (C-300/98) and the Hoge Raad der Nederlanden (Netherlands) (C-392/98) for preliminary rulings in the proceedings pending before those courts between

Parfums Christian Dior SA

and

Tuk Consultancy BV (C-300/98)

and between

Assco Gerüste GmbH,

Rob van Dijk, trading as Assco Holland Steigers Plettac Nederland,

and

Wilhelm Layher GmbH & Co. KG,

Layher BV (C-392/98),

* Language of the case: Dutch.

on the interpretation of Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, as set out in Annex 1 C to the Agreement establishing the World Trade Organisation, approved on behalf of the Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994 (OJ 1994 L 336, p. 1),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward (Rapporteur), J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges,

Advocate General: G. Cosmas,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Tuk Consultancy BV, by K.T.M. Stöpetie and M. van Empel, of the Amsterdam Bar (Case C-300/98),
- Assco Gerüste GmbH and Mr Van Dijk, by G. van der Wal, of the Brussels Bar (Case C-392/98),
- the Netherlands Government, by M.A. Fierstra, Head of the European Law Department in the Ministry of Foreign Affairs, acting as Agent (Case C-392/98),

- the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and S. Seam, Foreign Affairs Secretary in the same directorate, acting as Agents (Case C-392/98),
- the Portuguese Government, by L.I. Fernandes, Director of the Legal Service in the Directorate-General for the European Communities of the Ministry of Foreign Affairs, and T. Moreira and M.J. Palma, Assistant Director-General and Lawyer respectively in the Directorate-General for International Economic Relations, acting as Agents (Case C-300/98),
- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, D. Anderson, Barrister (Case C-300/98), and M. Hoskins, Barrister (Case C-392/98),
- the Council of the European Union, by J. Huber and G. Houttuin, Legal Advisers, acting as Agents (Cases C-300/98 and C-392/98),
- the Commission of the European Communities, by P.J. Kuijper, Legal Adviser, acting as Agent (Cases C-300/98 and C-392/98),

having regard to the Report for the Hearing,

after hearing the oral observations of Assco Gerüste GmbH and Mr Van Dijk, represented by G. van der Wal and G.A. Zonnekeyn, of the Brussels Bar; the Netherlands Government, represented by M.A. Fierstra; the Danish Government, represented by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent; the Spanish Government, represented by N. Díaz Abad, Abogado del Estado, acting as Agent; the French Government, represented by

S. Seam; the United Kingdom Government, represented by J.E. Collins and M. Hoskins; the Council, represented by G. Houttuin; and the Commission, represented by H. van Vliet, of its Legal Service, acting as Agent, at the hearing on 23 May 2000,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2000,

gives the following

Judgment

- ¹ The Arrondissementsrechtbank 's-Gravenhage (District Court, The Hague), by judgment of 25 June 1998, received at the Court on 29 July 1998 (C-300/98), and the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), by judgment of 30 October 1998, received at the Court on 5 November 1998 (C-392/98), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) one and three questions respectively on the interpretation of Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter 'TRIPs'), as set out in Annex 1 C to the Agreement establishing the World Trade Organisation (hereinafter 'the WTO Agreement'), approved on behalf of the Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994 (OJ 1994 L 336, p. 1).
- ² In Case C-300/98, the question submitted was raised in proceedings between the companies Parfums Christian Dior SA (hereinafter 'Dior') and Tuk Consultancy BV (hereinafter 'Tuk').

- 3 In Case C-392/98, the questions were raised in proceedings brought by Assco Gerüste GmbH and Mr Van Dijk (hereinafter jointly referred to as ‘Assco’) against Wilhelm Layher GmbH & Co. KG (hereinafter ‘Layher Germany’) and its subsidiary Layher BV (hereinafter ‘Layher Netherlands’).

Relevant provisions

- 4 The 11th recital in the preamble to Decision 94/800 states:

‘Whereas, by its nature, the Agreement establishing the World Trade Organisation, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts’.

- 5 The first indent of Article 1(1) of that decision provides:

‘The following multilateral agreements and acts are hereby approved on behalf of the European Community with regard to that portion of them which falls within the competence of the European Community:

— the Agreement establishing the World Trade Organisation, and also the Agreements in Annexes 1, 2 and 3 to that Agreement’.

6 Article 50 of TRIPs states:

‘1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
- (b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

...'

7 The Final Act embodying the results of the Uruguay Round of multilateral trade negotiations and, subject to conclusion, the WTO Agreement were signed in Marrakesh (Morocco) on 15 April 1994 by the representatives of the Community and of the Member States.

8 Until 1 January 1975, protection against straightforward copying of products was afforded in the Netherlands by the general law, in particular the law relating

to wrongful acts. These included Article 1401 of the Burgerlijk Wetboek (hereinafter 'the Civil Code'), replaced from 1 January 1992 by Article 162 of Book 6 of the Civil Code (hereinafter 'Article 6:162 of the Civil Code').

- 9 Until 1 January 1992, Article 1401 of the Civil Code provided:

'Where a wrongful act causes damage to another person, the person through whose fault the damage occurred shall be obliged to make it good.'

- 10 Since 1 January 1992, Article 6:162 of the Civil Code has provided, so far as relevant in the present case:

'1. Any person who commits a wrongful act in relation to another person which is attributable to him shall be required to make good the damage suffered by that other person as a result of the said act.

2. Any infringement of a right and any act or omission contrary to a legal obligation or to the requirements of unwritten law in social and economic life shall be considered to be a wrongful act, without prejudice in each case to the existence of a ground of justification.

3. A wrongful act may be attributed to its perpetrator if it is due to his fault or to a circumstance for which he must answer by virtue of the law or views held by society.'

- 11 Article 289(1) of the *Wetboek van Burgerlijke Rechtsvordering* (hereinafter ‘the Code of Civil Procedure’) provides:

‘In all cases where, having regard to the interests of the parties, an immediate interim measure is necessary as a matter of urgency, the application may be made at a hearing before the President on such working days as he shall fix for that purpose.’

- 12 In accordance with Article 290(2) of the Code of Civil Procedure, the parties may appear before the President under his ‘voluntary jurisdiction’ to grant interim measures. The applicant must then be legally represented at the hearing; the defendant may appear in person or be legally represented.
- 13 Under Article 292 of the Code of Civil Procedure, interim decisions are without prejudice to the decision in the substantive proceedings.
- 14 Finally, under Article 295 of the Code of Civil Procedure, an appeal against an interim decision may be brought before the *Gerechtshof* (Court of Appeal) within 14 days following its delivery.

Main proceedings

Case C-300/98

- 15 Dior is the proprietor of the trade marks for the perfumery products *Tendre Poison*, *Eau Sauvage* and *Dolce Vita* (hereinafter ‘the Dior trade marks’), which

have been the subject of various international registrations, in particular for Benelux. It markets its products in the European Community through a selective distribution system. Dior products carry prestige, and enjoy a luxury image.

- 16 Tuk sold and supplied perfume bearing the Dior trade marks to, amongst others, Digros BV, a company established in Hoofddorp (Netherlands).
- 17 In the proceedings before the Dutch court, Dior submitted that Tuk had infringed the Dior trade marks by selling perfume bearing those marks, since the perfume had not been put on the market in the European Economic Area (hereinafter 'the EEA') by Dior or with its consent.
- 18 In the main proceedings Tuk showed that it had acquired some of the products concerned in the Netherlands, and therefore within the EEA. However, it appears that some of the perfume which it supplied to Digros BV came from outside the EEA.
- 19 The Arrondissementsrechtbank 's-Gravenhage considered that the main proceedings raised the issue of the direct effect of Article 50(6) of TRIPs, which entered into force in the Netherlands on 1 January 1996. It therefore decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 50(6) of the TRIPs Agreement to be interpreted as having direct effect in the sense that the legal consequences set out therein take effect even in the absence of any corresponding provision of national law?'

Case C-392/98

- 20 Layher Germany designs and manufactures various types of scaffolding, including one known as the ‘Allroundsteiger’. Layher Netherlands is the exclusive importer of the Allroundsteiger for the Netherlands.
- 21 Layher Germany patented its product in both Germany and the Netherlands. The patent expired on 16 October 1994 in Germany and on 7 August 1995 in the Netherlands.
- 22 Assco Gerüste GmbH manufactures a type of scaffolding known as the ‘Assco Rondosteiger’. That product, whose interlocking assembly and measurement system is identical to that of Layher Germany’s Allroundsteiger, is marketed in the Netherlands by Mr Van Dijk, who trades under the name of Assco Holland Steigers Plettac Nederland.
- 23 On 14 March 1996 Layher Germany and Layher Netherlands applied to the President of the Rechtbank te Utrecht (Utrecht District Court, Netherlands) for interim measures prohibiting Assco from importing into the Netherlands, selling, offering for sale or otherwise trading in the Assco Rondsteiger as then manufactured.
- 24 The basis of their application was that Assco was acting wrongfully towards them in marketing a type of scaffolding which was a straightforward imitation of the Allroundsteiger. It appears that, under Netherlands law, the provisions of national law cited in paragraphs 10 and 11 above can be invoked to prevent wrongful copying of an industrial design.

25 The President of the Rechtbank te Utrecht granted the application. He also ruled that the period referred to in Article 50(6) of TRIPs was to be one year.

26 Assco appealed against that decision to the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal, Netherlands). By judgment of 9 January 1997 the Gerechtshof in substance upheld the interim decision, setting it aside only in so far as it fixed the applicable period under Article 50(6) of TRIPs.

27 Assco appealed on a point of law to the Hoge Raad der Nederlanden, which decided to stay proceedings and to refer the following three questions to the Court of Justice for a preliminary ruling:

‘(1) Does the jurisdiction of the Court of Justice to interpret Article 50 of the TRIPs Agreement also extend to the provisions of that article where they do not concern provisional measures to prevent infringement of trade-mark rights?’

(2) Does Article 50 of the TRIPs Agreement, in particular Article 50(6), have direct effect?

(3) Where an action lies under national civil law against the copying of an industrial design, on the basis of the general rules concerning wrongful acts, and in particular those relating to unlawful competition, must the protection thus afforded to the holder of the right be regarded as an “intellectual property right” within the meaning of Article 50(1) of the TRIPs Agreement?’

28 The questions submitted by the two national courts raise three points, concerning respectively:

- the jurisdiction of the Court of Justice to interpret Article 50 of TRIPs and the conditions for exercising that jurisdiction (the first question in Case C-392/98);
- whether Article 50(6) of TRIPs has direct effect (the only question in Case C-300/98 and the second question in Case C-392/98); and
- the interpretation of the term ‘intellectual property right’ in Article 50(1) of TRIPs (the third question in Case C-392/98).

Admissibility of the reference for a preliminary ruling in Case C-300/98

29 The Council and the Commission, supported at the hearing by the Netherlands Government, have contested the admissibility of the reference in Case C-300/98 on the ground that the order for reference does not indicate why an answer to the question submitted is necessary in order to enable the national court to give judgment.

30 It appears, however, that in the main proceedings the national court, which was called upon to order interim measures pursuant to national law, found, first, that Article 50(6) of TRIPs imposes limits on the life-time of such measures and,

second, that those limits do not appear in the provisions of national law concerning the grant of interim measures. Its question is therefore designed to ascertain whether, under those conditions, it is required, when delivering judgment, to comply with the time-limits imposed by Article 50(6) of TRIPs. Besides, its question is in essence identical to the second question in Case C-392/98, whose admissibility is not disputed.

- 31 In those circumstances, the questions submitted in both cases should be answered. It is appropriate to deal with them in the order indicated in paragraph 28 above.

Jurisdiction of the Court to interpret Article 50 of TRIPs

- 32 The first question asked by the national court in Case C-392/98 is designed to ascertain whether the scope of the judgment in Case C-53/96 *Hermès v FHT* [1998] ECR I-3603, relating to the jurisdiction of the Court of Justice to interpret Article 50 of TRIPs, is restricted solely to situations covered by trade-mark law.
- 33 TRIPs, which is set out in Annex 1 C to the WTO Agreement, was concluded by the Community and its Member States under joint competence (see Opinion 1/94 [1994] ECR I-5267, paragraph 105). It follows that where a case is brought before the Court in accordance with the provisions of the Treaty, in particular Article 177 thereof, the Court has jurisdiction to define the obligations which the Community has thereby assumed and, for that purpose, to interpret TRIPs.
- 34 In particular, the Court has jurisdiction to interpret Article 50 of TRIPs in order to meet the needs of the courts of the Member States when they are called upon to apply national rules with a view to ordering provisional measures for the

protection of rights arising under Community legislation falling within the scope of TRIPs (see *Hermès*, paragraphs 28 and 29).

- 35 Likewise, where a provision such as Article 50 of TRIPs can apply both to situations falling within the scope of national law and to situations falling within that of Community law, as is the case in the field of trade marks, the Court has jurisdiction to interpret it in order to forestall future differences of interpretation (see *Hermès*, paragraphs 32 and 33).
- 36 In that regard, the Member States and the Community institutions have an obligation of close cooperation in fulfilling the commitments undertaken by them under joint competence when they concluded the WTO Agreement, including TRIPs (see, to that effect, Opinion 1/94, cited above, paragraph 108).
- 37 Since Article 50 of TRIPs constitutes a procedural provision which should be applied in the same way in every situation falling within its scope and is capable of applying both to situations covered by national law and to situations covered by Community law, that obligation requires the judicial bodies of the Member States and the Community, for practical and legal reasons, to give it a uniform interpretation.
- 38 Only the Court of Justice acting in cooperation with the courts and tribunals of the Member States pursuant to Article 177 of the Treaty is in a position to ensure such uniform interpretation.

39 The jurisdiction of the Court of Justice to interpret Article 50 of TRIPs is thus not restricted solely to situations covered by trade-mark law.

40 The answer to the first question in Case C-392/98 must therefore be that, where the judicial authorities of the Member States are called upon to order provisional measures for the protection of intellectual property rights falling within the scope of TRIPs and a case is brought before the Court of Justice in accordance with the provisions of the Treaty, in particular Article 177 thereof, the Court of Justice has jurisdiction to interpret Article 50 of TRIPs.

Direct effect of Article 50(6) of TRIPs

41 By the second question in Case C-392/98 and the only question in Case C-300/98, the national courts seek in essence to ascertain whether, and to what extent, the procedural requirements of Article 50(6) of TRIPs have entered the sphere of Community law so that, whether on application by the parties or of their own motion, the national courts are required to apply them.

42 It is settled case-law that a provision of an agreement entered into by the Community with non-member countries must be regarded as being directly applicable when, regard being had to the wording, purpose and nature of the agreement, it may be concluded that the provision contains a clear, precise and unconditional obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, in that regard, Case 12/86 *Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719, paragraph 14, and Case C-162/96 *Racke v Hauptzollamt Mainz* [1998] ECR I-3655, paragraph 31).

- 43 The Court has already held that, having regard to their nature and structure, the WTO Agreement and the annexes thereto are not in principle among the rules in the light of which the Court is to review measures of the Community institutions pursuant to the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) (see Case C-149/96 *Portugal v Council* [1999] ECR I-8395, paragraph 47).
- 44 For the same reasons as those set out by the Court in paragraphs 42 to 46 of the judgment in *Portugal v Council*, the provisions of TRIPs, an annex to the WTO Agreement, are not such as to create rights upon which individuals may rely directly before the courts by virtue of Community law.
- 45 However, the finding that the provisions of TRIPs do not have direct effect in that sense does not fully resolve the problem raised by the national courts.
- 46 Article 50(6) of TRIPs is a procedural provision intended to be applied by Community and national courts in accordance with obligations assumed both by the Community and by the Member States.
- 47 In a field to which TRIPs applies and in respect of which the Community has already legislated, as is the case with the field of trade marks, it follows from the judgment in *Hermès*, in particular paragraph 28 thereof, that the judicial authorities of the Member States are required by virtue of Community law, when called upon to apply national rules with a view to ordering provisional measures for the protection of rights falling within such a field, to do so as far as possible in the light of the wording and purpose of Article 50 of TRIPs.

- 48 On the other hand, in a field in respect of which the Community has not yet legislated and which consequently falls within the competence of the Member States, the protection of intellectual property rights, and measures adopted for that purpose by the judicial authorities, do not fall within the scope of Community law. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50(6) of TRIPs or that it should oblige the courts to apply that rule of their own motion.
- 49 The answer to the second question in Case C-392/98 and the only question in Case C-300/98 must therefore be that:
- in a field to which TRIPs applies and in respect of which the Community has already legislated, the judicial authorities of the Member States are required by virtue of Community law, when called upon to apply national rules with a view to ordering provisional measures for the protection of rights falling within such a field, to do so as far as possible in the light of the wording and purpose of Article 50 of TRIPs, but
 - in a field in respect of which the Community has not yet legislated and which consequently falls within the competence of the Member States, the protection of intellectual property rights, and measures adopted for that purpose by the judicial authorities, do not fall within the scope of Community law. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50(6) of TRIPs or that it should oblige the courts to apply that rule of their own motion.

Interpretation of the term ‘intellectual property right’

- 50 The third question in Case C-392/98 is designed to ascertain whether the right to sue under general provisions of national law concerning wrongful acts, in particular unlawful competition, in order to protect an industrial design against copying is to be classified as an ‘intellectual property right’ within the meaning of Article 50(1) of TRIPs.
- 51 Thus defined, the question falls into two parts. The first issue is whether an industrial design, such as that in question in the main proceedings, falls within the scope of TRIPs. If it does, it must then be determined whether the right to sue under general provisions of national law, such as those relied on in the main proceedings, in order to protect a design against copying constitutes an intellectual property ‘right’ within the meaning of Article 50 of TRIPs.
- 52 As regards the first issue, the national court has correctly pointed out that, according to Article 1(2) of TRIPs, the term ‘intellectual property’ in Article 50 refers to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of that agreement. Section 4 concerns ‘industrial designs’.
- 53 Article 25 sets out the conditions for protection of an industrial design under TRIPs. Article 26 concerns the nature of the protection, possible exceptions and the duration of the protection.
- 54 It is for the national court to determine whether the industrial design at issue in the main proceedings satisfies the requirements laid down in Article 25.

55 As to the second issue, TRIPs contains no express definition of what constitutes an ‘intellectual property right’ for the purpose of that agreement. It is therefore necessary to interpret this term, which appears many times in the preamble and in the main body of TRIPs, in its context and in the light of its objectives and purpose.

56 According to the first recital in its preamble, the objectives of TRIPs are to ‘reduce distortions and impediments to international trade,... taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade’. In the second recital, the Contracting Parties recognise the need for new rules and disciplines concerning:

‘...

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

...’

- 57 In the third and fourth recitals, the Contracting Parties recognise ‘the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods’ and the fact that ‘intellectual property rights are private rights’.
- 58 Article 1(1), concerning the ‘nature and scope of obligations’, provides that members are to be free to determine the appropriate method of implementing the provisions of TRIPs within their own legal system and practice.
- 59 Article 62, which constitutes Part IV of TRIPs, entitled ‘Acquisition and maintenance of intellectual property rights and related *inter partes* procedures’, provides in the first and second paragraphs that the Contracting Parties may make the acquisition or maintenance of intellectual property rights conditional on compliance with reasonable procedures and formalities, including procedures for grant or registration. Such procedures are not, however, an essential requirement for the acquisition or maintenance of an intellectual property right within the meaning of TRIPs.
- 60 It is apparent from the foregoing provisions as a whole that TRIPs leaves to the Contracting Parties, within the framework of their own legal systems and in particular their rules of private law, the task of specifying in detail the interests which will be protected under TRIPs as ‘intellectual property rights’ and the method of protection, provided always, first, that the protection is effective, particularly in preventing trade in counterfeit goods and, second, that it does not lead to distortions of or impediments to international trade.

- 61 Legal proceedings to prevent alleged copying of an industrial design may serve to prevent trade in counterfeit goods and may also impede international trade.
- 62 It follows that a right to sue under general provisions of national law concerning wrongful acts, in particular unlawful competition, in order to protect an industrial design against copying may qualify as an 'intellectual property right' within the meaning of Article 50(1) of TRIPs.
- 63 It follows from all of the foregoing considerations that the answer to the third question in Case C-392/98 must be that Article 50 of TRIPs leaves to the Contracting Parties, within the framework of their own legal systems, the task of specifying whether the right to sue under general provisions of national law concerning wrongful acts, in particular unlawful competition, in order to protect an industrial design against copying is to be classified as an 'intellectual property right' within the meaning of Article 50(1) of TRIPs.

Costs

- 64 The costs incurred by the Netherlands, Danish, Spanish, French, Portuguese and United Kingdom Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decisions on costs are a matter for those courts.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Arrondissementsrechtbank 's-Gravenhage by judgment of 25 June 1998 and the Hoge Raad der Nederlanden by judgment of 30 October 1998, hereby rules:

1. Where the judicial authorities of the Member States are called upon to order provisional measures for the protection of intellectual property rights falling within the scope of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), as set out in Annex 1 C to the Agreement establishing the World Trade Organisation, approved on behalf of the Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, and a case is brought before the Court of Justice in accordance with the provisions of the EC Treaty, in particular Article 177 thereof (now Article 234 EC), the Court of Justice has jurisdiction to interpret Article 50 of the TRIPs Agreement.
2. In a field to which the TRIPs Agreement applies and in respect of which the Community has already legislated, the judicial authorities of the Member States are required by virtue of Community law, when called upon to apply national rules with a view to ordering provisional measures for the protection of rights falling within such a field, to do so as far as possible in the light of the wording and purpose of Article 50 of the TRIPs Agreement.

In a field in which the Community has not yet legislated and which consequently falls within the competence of the Member States, the protection of intellectual property rights, and measures adopted for that purpose by the judicial authorities, do not fall within the scope of Community law. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50(6) of the TRIPs Agreement or that it should oblige the courts to apply that rule of their own motion.

3. Article 50 of the TRIPs Agreement leaves to the Contracting Parties, within the framework of their own legal systems, the task of specifying whether the right to sue under general provisions of national law concerning wrongful acts, in particular unlawful competition, in order to protect an industrial design against copying is to be classified as an 'intellectual property right' within the meaning of Article 50(1) of the TRIPs Agreement.

Rodríguez Iglesias

Gulmann

La Pergola

Wathelet

Skouris

Edward

Puissochet

Jann

Sevón

Schintgen

Macken

Delivered in open court in Luxembourg on 14 December 2000.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President