territory of that Member State and not subject to that tax on a subsequent sale or new registration.

Operative part

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

Judgment of the court (Fifth Chamber) of 9 December 2010 — Commission v Spain

(Case C-340/09)

(Failure of a Member State to fulfil obligations — Directive 1999/22/EC — Article 4(2) to (5) — Keeping of wild animals — Zoos)

1. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on the Commission — Production of evidence showing failure — Incumbent on the Member State concerned to refute evidence (Art. 226 EC) (see paras 36-38)*

2. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 39)*

3. *Member States — Obligations — Implementation of directives — Failure to fulfil obligations — National system pleaded as justification — Not permissible (Art. 226 EC; Council Directive 1999/22, Art. 4(2) to (5)) (see paras 43-45)*

4. *Procedure — Costs — Withdrawal justified by the conduct of the opposite party (Rules of Procedure of the Court of Justice, Art. 69(5)) (see paras 46, 49-50)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(2), (3), (4) and (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ 1999 L 94, p. 24).

Operative part

The Court:

1. Declares that, by failing to take, within the period prescribed, all the measures necessary with respect to the zoos that are the subject of the present action in the Autonomous Communities of Aragon, Asturias, the Balearic Islands, the Canary Islands, Cantabria, Castile and Leon, Valencia, Extremadura and Galicia concerning the inspection, licensing and, if appropriate, the closure of those establishments in accordance with Article 4(2) to (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, the Kingdom of Spain has failed to fulfil its obligations under that directive;

2. Orders the Kingdom of Spain to pay the costs.