

- the Court of First Instance, when rejecting the second plea in law, infringed Articles 49 and 50 in conjunction with Article 220 of the Treaty on European Union (Consolidated Version);
- the Court of First Instance, when rejecting the second plea in law, did not take into account that OHIM misused their power.

(¹) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, p. 1).

Reference for a preliminary ruling from the Hof van beroep te Gent (Belgium) lodged on 8 January 2009 — Erotic Center BVBA v Belgian State

(Case C-3/09)

(2009/C 82/20)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Applicant: Erotic Center BVBA

Defendant: Belgian State

Question referred

Should a cubicle consisting of a lockable space where there is room for only one person and where this person can watch films on a television screen for payment, where this person personally starts the film projection by inserting a coin and has a choice of different films, and during the time paid for can continually modify his/her choice of projected films, be regarded as a 'cinema' as referred to in the Sixth Council Directive No 77/388/EEC (¹) of 17 May 1977, Annex H, Category 7 (subsequently: Annex III, No 7, of Council Directive 2006/112/EC (²) of 28 November 2006)?

(¹) Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

(²) Council Directive 2006/112/EC on the common system of value added tax (OJ 2006 L 347, p. 1).

Appeal brought on 8 January 2009 by Gerasimos Potamianos against the judgment delivered on 15 October 2008 in Case T-160/04 Potamianos v Commission

(Case C-4/09 P)

(2009/C 82/21)

Language of the case: French

Parties

Appellant: Gerasimos Potamianos (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- Annul all the provisions of the judgment of the Court of First Instance (Seventh Chamber) of 15 October 2008 in Case T-160/04 *Potamianos v Commission*, by which the Court of First Instance dismissed in its entirety the appellant's action of 26 April 2004 against the decision of the authority empowered to conclude contracts of employment (AECE) not to extend his contract as a temporary agent;
- annul the decision of the AECE not to renew his contract as a temporary agent;
- order the defendant to pay the costs at both instances.

Pleas in law and main arguments

By his appeal, the appellant relies on four pleas in support of his appeal.

In accordance with the first plea, he alleges that the interpretation of the Court of First Instance that the fact that his contract as a temporary agent was not renewed is based on reasons related to the interests of the service is incorrect. The appellant's hierarchy made a number of requests for his contract to be extended. On the contrary, objective, relevant and concordant evidence shows that the sole basis of the decision not to renew his contract was the application of the rule prohibiting aggregation of service, which imposes a maximum limit of six years on the employment of a temporary agent.

By his second plea, the appellant submits that the Court of First Instance erred in law in that it considered that he had not submitted an application for the post in question, whereas, in good time, he had requested that his contract be extended and reiterated that request on several occasions, including after publication of the vacancy notice.