

of the insolvency of their employer, to be interpreted as meaning that it requires the Member States to provide guarantees for employees' claims in insolvency proceedings at every stage of those proceedings until the declaration of insolvency, and not only at the opening of those proceedings?

2. Is Article 2(1) of Directive 80/987, as amended by Directive 2002/74, infringed by a provision of national law which enables the guarantee institution to satisfy employees' outstanding claims arising from employment relationships only in so far as those claims arise before the date of the registration of the decision to open the insolvency proceedings, if, by that decision, the activity of the employing company is not terminated and the company is not declared insolvent?
3. If the answers to the previous questions are in the affirmative: Is Article 2(1) of Directive 80/987, as amended by Directive 2002/74, directly applicable, and can it be applied directly by national courts?
4. If the answers to the previous questions are in the affirmative: In the absence of specific national rules on the period within which a request can be made for the guarantee institution to satisfy employees' claims arising before the date of the registration of the decision declaring the employer insolvent (and terminating his activity), may the period of 30 days laid down in national law for the exercise of that right be applied in other cases, in accordance with the principle of effectiveness, the period being deemed to begin on the date on which the decision on the declaration of insolvency is entered in the register of companies?

(<sup>1</sup>) Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ L 270, p. 10.

(<sup>2</sup>) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ 1980 L 283, p. 23.

**Appeal brought on 1 June 2012 by Guillermo Cañas against the order of the General Court (Third Chamber) delivered on 26 March 2012 in Case T-508/09 Cañas v Commission**

(Case C-269/12 P)

(2012/C 235/15)

*Language of the case: French*

**Parties**

*Appellant:* Guillermo Cañas (represented by: Y. Bonnard, avocat)

*Other parties to the proceedings:* European Commission, World Anti-Doping Agency, ATP Tour Inc.

**Form of order sought**

- Annul the order delivered on 26 March 2012 by the General Court in Case T-508/09;
- Order the General Court to examine the action for annulment lodged on 22 December 2009 by Guillermo Cañas;
- Dismiss any other head of claim submitted by any opposing party;
- Order all the opposing parties to pay Guillermo Cañas' costs.

**Pleas in law and main arguments**

The appellant sets out three grounds of appeal against the General Court's decision.

First, the appellant submits that the General Court failed to have regard to the right of an undertaking which is temporarily excluded from a market to bring an action against the shelving of a complaint in respect of an infringement of competition law by making that undertaking's *locus standi* conditional on the immediate advantage which that action for annulment would secure for it. The annulment of the shelving of a complaint never in the appellant's view tends in itself to secure an immediate advantage for the applicant as it can lead only to the examination of the complaint, without any guarantee of the outcome.

Secondly, the appellant submits that the General Court erred in holding that his *locus standi* was lost because he is still adversely affected by the anti-competitive obstacles complained of. He takes the view that, despite the fact that he has ended his career in sports, he still has *locus standi*, namely an interest in securing the annulment of the Commission's decision to shelve his complaint without taking any further action on it and in a declaration on the Commission's part that the obstacles complained of are unlawful, these being the prior stages necessary for making a claim for damages against the World Anti-Doping Agency, ATP Tour Inc. and the International Council of Arbitration for Sport.

Thirdly, the appellant submits that the General Court held that the annulment of the shelving of his complaint would have no effect on his right to make a claim for damages against the undertakings that he has complained about since the administrative procedure before the Commission cannot preclude an action before the competent civil courts. However, that argument is based on an error of fact inasmuch as the decision of the Court of Arbitration for Sport of 23 May 2007 found that the obstacles complained of were not contrary to European Union competition law, which is the reason why, in the absence of a favourable decision on the part of the Commission, it was impossible for the appellant to make a claim for damages.