

Appeal brought on 4 May 2005 by Energy Technologies ET SA against the order made on 28 February 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-445/04 between Energy Technologies ET SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Aparellaje eléctrico, SL

(Case C-197/05 P)

(2005/C 243/03)

(Language of the case: English)

An appeal against the order made on 28 February 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-445/04 ⁽¹⁾ between Energy Technologies ET SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Aparellaje eléctrico, SL, was brought before the Court of Justice of the European Communities on 4 May 2005 by Energy Technologies ET SA, established in Fribourg (Switzerland), represented by Ms A. Boman.

The Appellant

- 1) claims that the Court annuls the contested decision and remands the case to the Court of First Instance for trial of the trade mark matter.
- 2) requests further respite of six months in order to be able to evaluate the need for further substantiation of this appeal and possibly for submittance of expert opinion.

Pleas in law and main arguments:

In the appealed decision the Court of First Instance dismissed the application on the grounds that Energy Technologies ET SA was not represented by a lawyer pursuant to Article 19 of the Statute of the Court of Justice.

The appellant claims that the Court of First Instance has misinterpreted Article 19 of the Statute of the Court of Justice and that its finding that the appellant was not represented by a lawyer within the terms of that Article is incorrect.

⁽¹⁾ OJ C 182, 23.07.2005, p. 36

Appeal brought on 18 May 2005 by Osman Ocalan, on behalf of the Kurdistan Worker's Party (PKK) and Serif Vanley, on behalf of the Kurdistan National Congress (KNK) against the order made on 15 February 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-229/02, between Kurdistan Workers' Party (PKK) and Kurdistan National Congress (KNK) and the Council of the European Union, supported by the United Kingdom of Great Britain and Northern Ireland and by the Commission of the European Communities

(Case C-229/05 P)

(2005/C 243/04)

(Language of the case: English)

An appeal against the order made on 15 February 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-229/02 ⁽¹⁾, between the Kurdistan Worker's Party (PKK) and the Kurdistan National Congress (KNK) and the Council of the European Union, supported by United Kingdom of Great Britain and Northern Ireland and by the Commission of the European Union, was brought before the Court of Justice of the European Communities on 18 May 2005 by Osman Ocalan, on behalf of the Kurdistan Worker's Party (PKK) and Serif Vanley, on behalf of the Kurdistan National Congress, established in Brussels, Belgium, represented by M. Muller and E. Grieves, barristers, instructed by J.G. Pierce, solicitor.

The Appellants claim that the Court should:

1. declare that the Application of Osman Ocalan on behalf of the organisation formerly known as the PKK is admissible;
2. declare that the Application of Serif Vanly on behalf of the organisation known as the KNK is admissible;
3. make an order for costs relating to the admissibility proceedings.

Pleas in law and main arguments:

The First Applicant appeals the Ruling on the following grounds:

It is submitted that the ruling is erroneous as the Court of First Instance had already accepted that the first applicant existed and had the requisite capacity to institute proceedings, nominate legal representatives, and respond to pleadings. On the face of the papers the first applicant's power of attorney plainly complied with Article 44 of the rules of procedure of the Court of First Instance governing such powers. The said power was neither contested by the defendant nor the Court when it communicated the application to the defendant in accordance with the normal rules governing receipt of a valid power of attorney.

The defendant's objection relating to capacity due to alleged PKK dissolution is contrary to Article 114(1) (formerly Article 91) of the rules of procedure as it goes to the substance of the application. In short, the objection should not have been considered or dealt with at the admissibility stage.

Likewise, the Court's ruling on capacity, arising out of a provisional construction of the first applicant's case concerning dissolution, constituted an irregular *de facto* ruling upon a matter of substance which should not have been made at this state of proceedings. Such a ruling contradicts the Court's injunction that the 'reality of PKK's existence' was a matter of substance not to be examined at the admissibility stage.

The Court's construction of the first applicant's case on dissolution is wholly misplaced in any event. A close reading of Mr Ocalan's statement does not confirm that the PKK had dissolved for all purposes, including the purpose of challenging proscription.

Even if the Court was correct in construing the first applicant's case as conclusively resting upon an unreserved assertion of dissolution, it is submitted that the issue of residual rights, including the right to an effective remedy to challenge proscription, remained live as a matter of substance which should have been dealt with at a later stage.

It is also submitted that the Court's criteria concerning admissibility, including 'capacity' and the test regarding 'individual and direct concern', is far too restrictive in cases concerning the operation of fundamental freedoms. In particular, the narrow and restrictive criteria applied by the Court breach Articles 6, 13 and 34 of the European Convention on Human Rights and related jurisprudence concerning *locus standi*.

Further, irrespective of the test to be applied, it is oppressive, disproportionate and contrary to the rules of natural justice for a court to completely shut out an applicant asserting a breach of fundamental rights solely upon a provisional construction of the applicant's case.

The Second Applicant submits that:

The Court of First Instance erred in its application of the admissibility criteria and in relying upon an assumption that the PKK no longer exists, thereby assuming a substantive issue in order to defeat the claim on admissibility.

(¹) OJ C 143, 11.06.2005, p. 34

Reference for a preliminary ruling from the Rechtbank Rotterdam by interim decision of that court of 8 June 2005 in the criminal proceedings against OMNI Metal Service

(Case C-259/05)

(2005/C 243/05)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by interim decision of the Rechtbank Rotterdam of 8 June 2005, received at the Court Registry on 20 June 2005, for a preliminary ruling in the criminal proceedings against OMNI Metal Service on the following questions:

1. Can cable scrap such as that in issue in the present case (in part with a diameter of 15 cm) be classified as 'electronic scrap (e.g. ... wire, etc.)' within the terms of Code GC 020 of the green list? (¹)
2. If the Court of Justice should answer Question 1 in the negative, can or must a combination of green list materials, which is not as such mentioned in the green list, be regarded as a green list material and may that combination of materials be transported for purposes of recovery without the notification procedure being applicable?
3. Is it necessary in this connection that the waste materials be offered or transported separately?

(¹) Annex II to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1)