

Form of order sought by the appellant

The appellant claims that the Court should:

- Set aside of the judgment of the Civil Service Tribunal (3rd Chamber) delivered on 1 December 2010 in Case F-82/09 (Michel Nolin v Commission);
- and, giving judgment itself,
 - annul the decision of 19 December 2008 of the Director-General of the Personnel and Administration Directorate-General of the European Commission, to cancel all of the appellant's merit points and priority points following his promotion to grade AD 13 under Article 29(1)(a)(iii) of the Staff Regulations;
 - order the Commission to pay the costs in both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellant relies on two pleas in law.

1. First plea, alleging infringement of the principles of legality and legal certainty, since the CST erred in law in deciding that the Commission was entitled, with no legal basis, to base the contested decision on the general scheme of the general implementing provisions under Article 45(1) of the Staff Regulations of Officials of the European Union.
2. Second plea, alleging misapplication of the principle of non-discrimination, since the CST erred in law (i) in deciding that the Director-General of the Personnel and Administration Directorate-General had residual power which had not been legally conferred on him by a decision of the appointing authority in accordance with Article 2(ii) of the Staff Regulations and (ii) in deciding that officials promoted pursuant to Articles 29 and 45 of the Staff Regulations would, following their appointment or promotion, be in the same legal situation, even though that situation would not be the same either in terms of procedure or in terms of duties and responsibilities.

Action brought on 31 January 2011 — ISOTIS v Commission

(Case T-59/11)

(2011/C 89/47)

Language of the case: Greek

Parties

Applicant: Information Society open to impairmentS — ISOTIS (Athens, Greece) (represented by: B. Khristianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant asks the General Court to:

- Declare that the applicant has in no way infringed Article II.16.2 of the general conditions of the FP6 contracts, Articles II.7.3 (serious financial regularity) and II.7.4 (false declarations) of the general conditions of the eTEN contracts and Article II.10.3 (breach of contract and failure to provide information) of the general conditions of the CIP contracts;
- Declare that by calling into question the eligibility of the applicant's costs the Commission has infringed the contracts in question;
- Declare that the costs amounting to EUR 932 362,44 which the applicant submitted to the Commission in connection with the ACCESS-eGOV, EU4ALL, eABILITIES, EMERGE, ENABLE, ASK-IT, NAVIGABILE, EURIDICE and T-SENIORITY contracts are eligible costs and that the applicant is not obliged to repay the sums contributed by the Commission;
- Declare that Commission's delay in paying the final funding payments in respect of the EU4ALL, ASK-IT and ENABLE contracts constitutes a breach of its contractual obligations;
- Declare that the Commission must pay to the applicant the sum of EUR 52 584,05 in interest from the notification of this action, in respect of the costs incurred by the applicant in connection with the EU4ALL contract;
- Declare that the Commission must pay to the applicant the sum of EUR 20 678,61 in interest from the notification of this action, in respect of the costs incurred by the applicant in connection with the ASK-IT contract;
- Declare that the Commission must pay to the applicant the sum of EUR 11 693,05 interest from the notification of this action, in respect of the costs incurred by the applicant in connection with the ENABLE contract;
- Order the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

In support of this action, which is based on (1) the arbitration clauses in the contracts in question and (2) on Belgian law, which governs the contracts in question, the applicant puts forward two arguments.

First, the applicant maintains that the costs which it submitted to the Commission were eligible costs and that it has not infringed its contractual obligations. In particular, the applicant maintains that the objections which the Commission sent to it after the financial audit checks on the ACCESS-eGOV, EU4ALL, eABILITIES, EMERGE, ENABLE, ASK-IT, NAVIGABILE, EURIDICE and T-SENIORITY programmes in respect of its economic management and the eligibility of its costs are wholly unfounded. Accordingly, there was no infringement of its contractual obligations and all of its costs must be declared to be eligible costs.

Second, by calling into question the eligibility of the costs and by delaying the payment of certain costs the Commission is in breach of its contractual obligations. In particular, the applicant maintains that the Commission's questioning of the eligibility of the costs constitutes a breach of contract, contrary to the principle of good faith and an abuse of rights, because the findings which were drawn from the financial audit were entirely unsupported, vague and general. Moreover, the applicant maintains that the Commission's delay in paying the final funding payments in respect of the EU4ALL, ASK-IT and ENABLE contracts constitutes a breach of its contractual obligations and the applicant seeks a declaration that the Commission is obliged to make payment.

Action brought on 28 January 2011 — Vermop Salmon v OHIM — Leifheit (Clean Twist)

(Case T-61/11)

(2011/C 89/48)

Language in which the application was lodged: German

Parties

Applicant: Vermop Salmon GmbH (Gilching, Germany) (represented by: W. von der Osten-Sacken, O. Sude and M. Ring, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Leifheit AG (Nassau, Germany)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2010 in Case R 671/2010-1;
- Declare Community trade mark No 4892642 'Clean Twist' invalid;
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to bear its own costs and to pay those of the applicant;
- In the event that Leifheit AG intervenes in the proceedings, order the intervener to bear its own costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'Clean Twist' for goods in Class 21

Proprietor of the Community trade mark: Leifheit AG

Applicant for the declaration of invalidity of the Community trade mark: the applicant

Grounds for the application for a declaration of invalidity: the earlier word marks 'TWIX' and 'TWIXTER' for goods in Classes 9, 12,

21, 22 and 25. Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) of Regulation (EC) No 207/2009. ⁽¹⁾

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) of Regulation (EC) No 207/2009 as there is a likelihood of confusion between the marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 28 January 2011 — Run2Day Franchise v OHIM — Runners Point (Run2)

(Case T-64/11)

(2011/C 89/49)

Language in which the application was lodged: English

Parties

Applicant: Run2Day Franchise BV (Utrecht, Netherlands) (represented by: H.J. Koenraad, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Runners Point Warenhandels GmbH (Recklinghausen, Germany)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 November 2010 in case R 349/2010-1;
- Order the defendant, and if applicable the other party to the proceedings before the Board of Appeal, to bear the costs of the proceedings;

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'Run2', for goods and services in classes 18, 25 and 35 — Community trade mark application No 6517502

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Community trade mark registration No 3800448 of the word mark 'RUN2DAY', for goods and services in classes 25, 28 and 35; Community trade mark registration No 3832458 of the figurative mark in colours 'RUN2DAY', for goods and services in classes 25, 28 and 35; Benelux trade mark registration No 811897 of the figurative mark in colours 'RUN2DAY', for goods and services in class 25