2. Infringement of an essential procedural requirement in that there was no Management Committee report, given that until now measures to punish Member States for exceeding their quotas were adopted by means of a Commission Regulation following a prior report by the Management Committee.

3. Infringement of the rights of the defence, since the contested regulation was adopted without the Kingdom of Spain having previously been heard.

4. Infringement of the principle of legal certainty, in so far as, in imposing the contested measure, the Commission left open the possibility of extending that penalty thereafter, over an unspecified number of years.

5. Infringement of the principle of legitimate expectations, since the contested regulation entered into force when the fishing year for mackerel had already begun.

6. Infringement of the principle of non-discrimination, in that the Commission applied the test relating to socio-economic consequences differently from how it has applied it in other comparable situations.

Appeal brought on 21 May 2011 by Carlo De Nicola against the judgment of the Civil Service Tribunal of 8 March 2011 in Case F-59/09, De Nicola v EIB

(Case T-264/11 P)

(2011/C 211/64)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by L. Isola, lawyer)

Other party to the proceedings: European Investment Bank

Form of order sought by the appellant

The appellant claims that the Court should, acting as an appeal court and dismissing the submissions of the other party to the proceedings, reverse the judgment under appeal in part, grant the application for measures of inquiry and the outstanding heads of claim in the administrative appeal and order the EIB to pay the costs of the appeal proceedings.

Pleas in law and main arguments

In support of the appeal, the appellant relies on 7 pleas in law.

The application for annulment

1. With regard to the application for annulment of Memorandum No HR/Coord/2008-0038/BK of 22 September 2008, the appellant claims that the Civil Service Tribunal totally ignored that document, even though it referred to the EIB's defence, according to which it is legitimate to choose not to provide the employee with a copy of the sound recording of the meeting of the Appeals Committee or of the formal minutes of the meeting, so that, in conclusion, the EIB is free to distort the facts because it is impossible to adduce evidence in rebuttal.

2. The appellant none the less sought annulment of the decision of the Appeals Committee.

   The Civil Service Tribunal, in line with the procedure under Article 90 of the Staff Regulations, held that the fact that the application (made first in the administrative procedure and then before the Tribunal) is the same entitled it to examine only the latter and to consider that the former as being completely encompassed within the latter. The appellant disputes that Article 90 of the Staff Regulations is applicable and claims the right to a declaration of annulment, because the document in question forms part of his personal file and could have an adverse effect on his future career.

3. Finally, the Civil Service Tribunal rejected the application for annulment of the promotions on the basis that it was out of time. The appellant submits that that decision was unlawful on four grounds.

The application for a declaration

4. The appellant sought a declaration from the Tribunal that the harassment to which he has been subjected for 18 years should be considered as a whole and fulfils all the criteria of what has been identified by academic legal writing and employment case-law as *mobbing*. The appellant claims that the document entitled 'Policy of respect for an individual's dignity in the workplace' (which does not even define *mobbing*) is inadequate and disputes the decision of the Civil Service Tribunal, which held that the application was inadmissible, since it sought *findings of principle* or *orders* against the EIB which the Tribunal is not entitled to make. In fact, the appellant maintains that his application was misconstrued, because he sought a declaration that he had been subjected to abuse by a number of employees, a determination as to whether that harassment, considered as a whole, constituted the offence which is summarised by the term *mobbing*, and a finding that the EIB was liable for that conduct, as agent.

5. The appellant also challenges the judgment under appeal in so far as the Civil Service Tribunal, in breach of Article 41 of the Staff Regulations, claimed that it was necessary, which was not the case, to have recourse to analogy and itself created a set of rules applicable to the EIB, in breach of its right of self-determination.

6. Moreover, the Civil Service Tribunal incorrectly applied to a private employment contract rules which are instead laid down only for civil servants and, what is worse, claimed to be entitled to apply to tortious acts committed by certain employees the rules governing administrative acts.

The application for orders to be made

7. The appellant sought three orders, namely that the EIB should be ordered to: (1) desist from the mobbing; (2) pay compensation for the personal, material and non-material damage; and (3) pay the costs of the proceedings.

The Tribunal failed to rule on the first claim.

It rejected the second claim after misconstruing it, because the appellant claimed compensation as a result of the unlawful conduct on the part of the EIB, irrespective of the manner in which that conduct may classified when the request that the claim be viewed as a whole is considered.

In any event, the appellant does not consider the claim to be inadmissible on the ground that there is no 'act capable of causing injury' to which a claim for compensation could be linked, since the employment relationship is private and what is at issue here are not administrative acts but tortious act.

The third claim was rejected by the Tribunal on the incorrect assumption that the appellant had not applied for the EIB to pay the costs of the proceedings.

Action brought on 24 May 2011 — Video Research USA/OHMI (VR)

(Case T-267/11)

(2011/C 211/65)

Language of the case: English

Parties

Applicant: Video Research USA, Inc. (New York, U.S.A.) (represented by: B. Brandreth, Barrister)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2011 in case R 1187/2010-2;

— Remit the case to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with a recommendation that restitutio in integrum be granted in respect of community trade mark application No 919324;

— Order the defendant to pay the costs incurred before the Board of Appeal and the General Court.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'VR' — Community trade mark registration No 919324

Decision of the Trade Marks and Register Department: Rejected the request for restitutio in integrum and confirmed the cancellation of the Community trade mark registration No 919324

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 81 of Council Regulation No 207/2009, as the Board of Appeal erred in the application of this article and in its assessment of the facts in holding that the applicant's representatives had failed to exercise due care in the circumstances.

Action brought on 23 May 2011 — Xeda International/Commission

(Case T-269/11)

(2011/C 211/66)

Language of the case: English

Parties

Applicant: Xeda International SA (Saint Andiol, France) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission

Form of order sought

— Declare the Application admissible and well-founded.

— Annul the Contested Decision.

— Order the Defendant to pay the costs and expenses of these proceedings.

Pleas in law and main arguments

The Applicant seeks the annulment of Commission Decision 2011/143/EU of 3 March 2011 concerning the non-inclusion of ethoxyquin in Annex I to Council Directive 91/414/EEC and amending Commission Decision 2008/941/EC (OJ L 59, p. 71).

As a result of the contested Decision, the entry for ethoxyquin in Decision 2008/941/EC has been deleted and ethoxyquin shall not be included as an active substance in Annex I to Directive 91/414/EEC. As a result, the applicant will no longer be allowed to produce and sell ethoxyquin and ethoxyquin-based products in the European Union and will lose its product registrations in the Member States as of 3 September 2011.

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging a manifest error of assessment. According to the applicant, the contested Decision effectively bans the use of ethoxyquin in plant protection products on the basis of a scientific concern and alleged data gaps mentioned in recital 6 thereof, each of which was either adequately addressed by the applicant or was not a concern justifying non-inclusion.