Reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 5 February 2010 — Scarlet Extended SA v Société Belge des auteurs, compositeurs et éditeurs (SABAM)

(Case C-70/10)

(2010/C 113/30)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Scarlet Extended SA

Defendant: Société Belge des auteurs, compositeurs et éditeurs (SABAM)

Questions referred

1. Do Directives 2001/29 ([1]) and 2004/48, ([2]) in conjunction with Directives 95/46, ([3]) 2000/31 ([4]) and 2002/58, ([5]) construed in particular in the light of Articles 8 and 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, permit Member States to authorise a national court, before which substantive proceedings have been brought and on the basis merely of a statutory provision stating that: 'They [the national courts] may also issue an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right', to order an Internet Service Provider (ISP) to introduce, for all its customers, in abstracto and as a preventive measure, exclusively at the cost of that ISP and for an unlimited period, a system for filtering all electronic communications, both incoming and outgoing, passing via its services, in particular those involving the use of peer-to-peer software, in order to identify on its network the sharing of electronic files containing a musical, cinematographic or audio-visual work in respect of which the applicant claims to hold rights, and subsequently to block the transfer of such files, either at the point at which they are requested or at which they are sent?

2. If the answer to the question in paragraph 1 is in the affirmative, do those directives require a national court, called upon to give a ruling on an application for an injunction against an intermediary whose services are used by a third party to infringe a copyright, to apply the principle of proportionality when deciding on the effectiveness and dissuasive effect of the measure sought?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
([2]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004). Corrected version in (OJ 2004 L 195, p. 16).
([3]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
([4]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 78, p. 1).
([5]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002, L 201, p. 37).

Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 8 February 2010 — Office of Communications v The Information Commissioner

(Case C-71/10)

(2010/C 113/31)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Office of Communications

Defendant: The Information Commissioner

Question referred

Under Council Directive 2003/4/EC ([1]), where a public authority holds environmental information, disclosure of which would have some adverse effects on the separate interests served by more than one exception (in casu, the interests of public security served by article 4(2)(b) and those of intellectual property rights served by article 4(2)(e)), but it would not

do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, does the Directive require a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure?

(1) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
OJ L 41, p. 26

Appeal brought on 9 February 2010 by European Renewable Energies Federation ASBL (EREF) against the order of the Court of First Instance (Sixth Chamber) delivered on 19 November 2009 in Case T-94/07: European Renewable Energies Federation ASBL (EREF) v Commission of the European Communities

(Case C-74/10 P)

(2010/C 113/32)

Language of the case: English

Parties

Appellant: European Renewable Energies Federation ASBL (EREF) (represented by: J. Kuhbier, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the order of the Court of First Instance of 19 November 2009 in Case T-94/07, EREF v Commission of the European Communities, null and void;

— refer the case back for judgment to the Sixth Chamber of the General Court;

— order the European Commission to pay the procedural costs of the appeal procedure.

Pleas in law and main arguments

The Appellant asks the Court to declare the Order of the CFI of 19 November 2009 in case T-94/07 null and void and to refer it back to the General Court for reconsideration.

The Appellant contests the CFI's conclusion that its lawyer, Dr Fouquet, could not represent it before the CFI and that its application was therefore inadmissible.

The CFI considers that because Dr Fouquet was nominated as a director of EREF on 29 June 2004 she could no longer be considered an independent third party. The Appellant submits that Dr Fouquet had not been formally nominated as a director of EREF — under Belgian law such a nomination would have required official registration with the competent Belgian authorities. The director status of Dr Fouquet at EREF was titular only and not, or only to a very limited extent, linked to the power of representation.

The Appellant also submits that even if it is assumed that the position of Dr Fouquet as director was of a formal nature the CFI incorrectly applied the criteria for assessing the status of a lawyer as an independent third party. It is submitted that the CFI misunderstood both the legal situation of EREF's representative before the Court and the real distribution of tasks and obligations between Dr Fouquet and EREF. Pursuant to German law the position of Dr Fouquet as director of EREF would allow her to represent the Appellant before the Court.

Appeal brought on 9 February 2010 by European Renewable Energies Federation ASBL (EREF) against the order of the Court of First Instance (Sixth Chamber) delivered on 19 November 2009 in Case T-40/08: European Renewable Energies Federation ASBL (EREF) v Commission of the European Communities

(Case C-75/10 P)

(2010/C 113/33)

Language of the case: English

Parties

Appellant: European Renewable Energies Federation ASBL (EREF) (represented by: J. Kuhbier, Rechtsanwalt)

Other party to the proceedings: European Commission