

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance of the European Communities in Case T-36/04, *API v Commission*, of 12 September 2007 in so far as the Court of First Instance upheld the Commission's right not to disclose the Commission's pleadings in cases where an oral hearing was yet to be held;
- annul the parts of Commission Decision D(2003) 30621 of 20 November 2003 not previously annulled by the Court of First Instance in Case T-36/04, or in the alternative refer the case back to the Court of First Instance for further adjudication in the light of the judgment of the Court of Justice; and
- order the Commission to pay costs.

Pleas in law and main arguments

The Appellant submits that the contested judgment should be set aside on the following grounds:

1. First, the Court of First Instance erroneously interpreted Article 4(2) 2nd indent of the Regulation (the 'court proceedings exception') when it held that the Commission need not carry out a concrete assessment as to whether to give access to its written pleadings before the oral hearing. This interpretation (i) is contrary to well-established principles for interpreting the court proceedings exception that are recognised elsewhere in the Judgment; (ii) is premised on a non-existent right by the Commission to defend its interests 'free from all external influences'; (iii) relies on manifestly incorrect legal arguments when invoking the 'equality of arms principle'; (iv) erroneously dismisses the significance of other jurisdictions' rules that allow access to pleadings before the hearing; and (v) wrongly relies on the need to protect the *effet utile* of the Community courts' *in camera* procedures.
2. Second, the Court of First Instance misinterpreted the term 'overriding public interest' in Article 4(2) *in fine* of the Regulation by holding that, when written pleadings submitted to the courts are in issue, the general public interest in the content of proceedings before the Community courts is not capable of overriding any interest protected by the court proceedings exception.

Appeal brought on 29 November 2007 by Commission of the European Communities against the judgment of the Court of First Instance (Grand Chamber) delivered on 12 September 2007 in Case T-36/04: Association de la presse internationale ASBL v Commission of the European Communities

(Case C-532/07 P)

(2008/C 22/66)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: C. Docksey and P. Aalto, Agents)

Other party to the proceedings: Association de la presse internationale ASBL (API)

Form of order sought

The appellant claims that the Court should:

- quash the contested judgment in part insofar as it annulled the decision of the Commission refusing access to documents requested by API as from the date of the hearing concerning all actions save infringement proceedings;
- give final judgment in the matters that are the subject of this appeal;
- order the Applicant in Case T-36/04 to pay the costs of the Commission arising from that case and from the present appeal.

Pleas in law and main arguments

The Commission respectfully submits that, first, the Court of First Instance has erred in law by interpreting court proceedings exception to the effect that the institutions must consider requests for access to written pleadings in non-infringement actions on a case by case basis as from the date of the hearing. In this respect the Commission respectfully submits that the conclusions of the Court of First Instance are inconsistent with its reasoning, that the CFI did not take into account the interest in the proper administration of justice or the interest of other persons mentioned in the procedure, and that the CFI only considered the rights and obligations of one of the parties. Whilst court documents submitted by the institutions are not excluded from the scope of Regulation 1049/2001 (¹), the conclusion reached by the CFI has no basis in Community legislation or in the case law of the Court of Justice.

Second, the CFI has erred in law by interpreting the investigations exception to the effect that the Commission must consider requests for access to written pleadings in infringement proceedings under Article 226 EC on a case by case basis as from the date of the judgement, including actions which have been decided but not yet been resolved, thus weakening the ability of the Commission as guardian of the Treaties to ensure respect by Member States of their obligations under Community law.

Third, the CFI has erred in law by interpreting the court proceedings exception to the effect that the institutions must consider requests for access to their written pleadings on a case by case basis in actions which have been decided but which are related to pending actions, thus weakening their ability to defend their interests before the Community Courts and weakening the ability of the Commission as guardian of the Treaties to seek to enforce Community law.

(¹) OJ L 145, p. 43.

Action brought on 30 November 2007 — Commission of the European Communities v Hellenic Republic

(Case C-541/07)

(2008/C 22/67)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia)

Defendant: Hellenic Republic

Form of order sought

— declare that, by prohibiting in Decree 12078/1343 of 3 March 2004 of the Minister for Transport, as interpreted on the basis of Circular 45007/4795 of 28 July 2004 issued by the Directorate for Road Safety and the Environment, window films which are manufactured and/or sold lawfully on the market of other Member States of the European Union from being placed on vehicle windows generally, the Hellenic Republic has failed to fulfil its obligations under Articles 28 and 30 of the EC Treaty;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. Following a complaint, the Commission examined the Greek legislation which prohibits the placing of window films on vehicle windscreens and on their windows generally.

2. The Commission takes the view that that prohibition does not fall within the field of application of Directive 92/22/EEC, as amended by Directive 2001/92/EC, and must be examined in the context of Articles 28 and 30 in the absence of harmonisation at Community level.
3. That prohibition constitutes a measure having equivalent effect to a quantitative restriction on the free movement of goods that is contrary to Article 28 EC, given that it constitutes in practice an obstacle to trade in Greece in such films which are lawfully manufactured and in circulation in other Member States.
4. The Commission also observes that the Greek authorities have not succeeded in adducing sufficient evidence as to the justification for the measure and as to the simultaneous observance of proportionality.
5. More specifically, it has not been proved that criteria exist for establishing, on the carrying out of checks, whether the films in question meet certain minimum conditions, in accordance with the submissions of the Greek authorities.
6. Consequently, the Commission considers that the legislation in question constitutes an infringement of Article 28 EC that cannot be justified on the basis of Article 30 EC or by overriding reasons relating to the public interest within the meaning of the Court of Justice's case-law.

Action brought on 10 December 2007 — Commission of the European Communities v Hellenic Republic

(Case C-548/07)

(2008/C 22/68)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and M. van Beek)

Defendant: Hellenic Republic

Form of order sought

— declare that the Hellenic Republic has failed to fulfil its obligations under Directive 96/34/EC (¹) on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and, more specifically, under Clauses 1(2), 2(1), 2(3)(b), 2(3)(e) and (f), 2(4) and 2(6) of the agreement annexed to that directive;

— order the Hellenic Republic to pay the costs.