Action brought on 30 September 2008 — Agapiou Joséphidès v Commission and Education, Audiovisual and Culture Executive Agency

(Case T-439/08)

(2008/C 327/61)

Language of the case: French

Parties

Applicant: Kalliope Agapiou Joséphidès (Nicosia, Cyprus) (represented by: C. Joséphidès, lawyer)

Defendants: Commission of the European Communities and Education, Audiovisual and Culture Executive Agency

Form of order sought

— annul the decision of the Education, Audiovisual and Culture Executive Agency ('the Agency') of 1 August 2008, by which the Agency, acting under the Commission's supervision, denied the applicant access, requested by her letter of 3 March 2008, to certain documents in file No 07/0122 relating to the award of a Jean Monnet Centre of Excellence to the University of Cyprus;

— annul Commission Decision C(2007) 3749 of 8 August 2008 relating to the individual decision to award subsidies within the framework of the Lifelong Learning Programme, Jean Monnet sub-programme;

— order the Agency and the Commission to pay the applicant's costs in these proceedings.

Pleas in law and main arguments

By this action, the applicant seeks the annulment, first, of the decision of the Education, Audiovisual and Culture Executive Agency of 1 August 2008 denying her access to documents relating to the award of a Jean Monnet Centre of Excellence to the University of Cyprus and, second, of Commission Decision C(2007) 3749 of 8 August 2008 relating to an individual decision to award subsidies within the framework of the Lifelong Learning Programme, Jean Monnet sub-programme, to the extent that it recommends the award of a subsidy to the University of Cyprus for the creation of a Jean Monnet Centre of Excellence.

In support of her application for annulment of the decision of the Agency of 1 August 2008, she claims that the Agency infringed her personal right, as derived, in particular, from the principle of transparency contained in Article 1, second paragraph, and Article 6 TEU, Article 255 EC and the EU Charter of Fundamental Rights, to have access to certain documents in so far as her name was used by third parties (the University of Cyprus) in an administrative application file, with the aim of deriving benefit from it without her consent. She claims that in those circumstances, she is entitled to verify the precise content and/or the accuracy of the personal data and the aim and context of its use.

In addition, she submits that the Director of the Agency is not competent to decide on her confirmatory application for access to the documents and that its decision of 1 August 2008 was taken in violation of Regulation No 1049/2001 [1] and the Commission Rules of Procedure.

None the less, if the Court of First Instance were to consider that the Director of the Agency was competent to adopt the contested decision, the applicant claims that that decision was taken in violation of several provisions of Regulation No 1049/2001, in particular Articles 7(1), 8(1) and 15(1). According to the applicant, the Agency also misinterpreted several other provisions of the same regulation, in particular Articles 4(4), 4(5), 4(1)(b) and 4(2) and misapplied the principle of transparency and the concept of overriding public interest. The applicant also puts forward a plea alleging that the contested decision is insufficiently reasoned.

In support of her application for annulment of Commission Decision C(2007) 3749 of 8 August 2008, the applicant claims that the Commission erred in failing to verify whether the applicant had consented to her personal data appearing in the application form submitted to the Commission by the University of Cyprus. She takes the view that the Commission ought to have found a substantial irregularity in the draft submitted and revoked its decision or taken other necessary measures.

The applicant also submits that the Commission erred in its analysis of the eligibility criteria in respect of the application submitted by the University of Cyprus.

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 1 October 2008 — 1-2-3.TV v OHIM — Zweites Deutsches Fernsehen and Televersal Film- und Fernseh-Produktion (1-2-3.TV)

(Case T-440/08)

(2008/C 327/62)

Language in which the application was lodged: German

Parties

Applicant: 1-2-3.TV GmbH (Unterföhring, Germany) (represented by: V. von Bomhard, A. Renck, T. Dolde und E. Nicolás Gómez, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Zweites Deutsches Fernsehen (Mainz, Germany) and Televersal Film- und Fernseh-Produktion GmbH (Hamburg, 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 30 June 2008 (Case R 1076/2007-1); and

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark '1-2-3.TV' for services in classes 35, 38 and 41 — Application No 3 763 133

Proprietor of the mark or sign cited in the opposition proceedings: Zweites Deutsches Fernsehen and Televersal Film- und Fernseh-Produktion GmbH

Mark or sign cited in opposition: National figurative mark '1, 2 ODER 3 ZDF-ORF-SFDRS' for goods and services in classes 3, 5, 9, 12, 14, 16, 18, 21, 24, 25, 26, 27, 28, 29, 30, 32, 35, 38, 41 and 42

Decision of the Opposition Division: Opposition partly upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, there being no likelihood of confusion between the marks in opposition on account of the differing overall impression of the marks.

Action brought on 6 October 2008 — Freistaat Sachsen and Land Sachsen-Anhalt v Commission

(Case T-443/08)

(2008/C 327/63)

Language of the case: German

Parties

Applicants: Freistaat Sachsen and Land Sachsen-Anhalt (represented by: U. Soltész, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1 of the Commission's decision of 23 July 2008 pursuant to the first paragraph of Article 231 EC in so far as the Commission finds that

(a) the measure adopted by Germany in respect of capital contributions for the construction of a new southern runway and related airport infrastructure at Leipzig/Halle airport constitutes State aid for the purposes of Article 87(1) EC; and

(b) this 'State aid' amounts to EUR 350 million;

— order the Commission to pay the applicants' costs pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicants object to the findings in the first part of Article 1 of Commission Decision C (2008) 3512 final of 23 July 2008 Measure No C48/2006 (ex N227/2006) Germany DHL and Leipzig Halle Airport that the capital contributions granted by Germany to Leipzig/Halle airport represent State aid to the airport and that that aid amounts to EUR 350 million.

The applicants rely on seven pleas in law in support of their claims:

First, the applicants submit that the rules on State aid are not even applicable because the airport is not an undertaking within the meaning of those rules, so far as the expansion of regional airport infrastructure is concerned.

Second, Flughafen Leipzig/Halle GmbH is a State-owned single purpose vehicle with an organisational structure governed by private law which, accordingly, as is generally acknowledged, cannot be deemed to be a recipient of aid in so far as the State provides it with the resources required in order to perform its functions.

Third, the contested decision is inherently contradictory, in that Flughafen Leipzig/Halle GmbH is simultaneously treated in the decision both as recipient and donor of aid.

Fourth, the application of the guidelines published in 2005 ([1]) to facts which obtained before the guidelines were published is contrary to the prohibition on retroactivity, the requirement of legal certainty, the protection of legitimate expectations and the principle of equality. In the applicant's view, only the Commission's 1994 guidelines ([2]) were applicable.

In addition, the applicants state that the new guidelines are contrary to primary Community law, being factually inapplicable and inherently contradictory where regional airport operators do not have the status of an undertaking. The 2005 guidelines also made the construction of airports subject to the rules on aid, whereas, in the previous guidelines of 1994, this activity was expressly excluded from the application of the State aid rules. In view of the diametrically opposed content of the old and the new guidelines, and the non-revocation of the 1994 provisions, it is unclear how the financing of airport infrastructure is intended to be legally assessed.