Question referred

Do the provisions of Paragraph 5(1)(ii) and (iii) of the Flächenerwerbsverordnung (Land Purchase Regulations), implementing Paragraph 4(3)(i) of the Ausgleichsleistungsgesetz (Compensation Act), in the version in force until 11 July 2009, infringe Article 87 EC?

Action brought on 12 January 2010 — European Commission v Italian Republic

(Case C-19/10)

(2010/C 80/27)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: P. Oliver and S. Mortoni, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the national measures for the implementation of Article 12 of Regulation (EC) No 273/2004 ([1]) of the European Parliament and of the Council of 11 February 2004 on drug precursors, by failing to inform the Commission of those measures as required under Article 16 of that regulation, and by failing to adopt the national measures for the implementation of Article 31 of Council Regulation (EC) No 111/2005 ([2]) of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, the Italian Republic has failed to fulfil its obligations under those regulations.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Regulation No 273/2004 entered into force on 18 August 2005; Regulation No 111/2005 entered into force on 15 February 2005 and has applied since 18 August 2005. Having received no notification of the provisions that Italy was required to adopt under Article 12 of Regulation No 273/2004 and under Article 31 of Regulation No 111/2005 and, in any event, having received no information from the Italian Republic which might indicate that the necessary measures have in fact been adopted, the Commission submits that the Italian Republic has failed to adopt such measures and that it has therefore failed to fulfil its obligations under Regulation No 273/2004 and Regulation No 111/2005.

([1]) OJ 2004 L 47, p. 1.
([2]) OJ 2005 L 22, p. 1.

Appeal brought on 14 January 2010 by REWE-Zentral AG against the judgment of the Court of First Instance (Sixth Chamber) delivered on 11 November 2009 in Case T-150/08 REWE-Zentral AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), intervener: Aldi Einkauf GmbH & Co. OGH

(Case C-22/10 P)

(2010/C 80/28)

Language of the case: German

Parties

Appellant: REWE-Zentral AG (represented by: M. Kinkeldey and A. Bognár, lawyers)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Aldi Einkauf GmbH & Co. OHG

Form of order sought

The appellant claims that the Court should:

— set aside the contested decision of the Court of First Instance of 11 November 2009;

— order the defendant and respondent to pay the costs of these proceedings and the costs of the proceedings before the Court of First Instance

Pleas in law and main arguments

The present appeal is against the judgment of the Court of First Instance by which that court dismissed the appellant's action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 15 February 2008 rejecting its application for registration of the word sign CLINA. By its judgment the Court of First Instance confirmed the Board of Appeal's decision according to which there is a likelihood of confusion with the earlier Community word mark CLINAIR.

The appellant relies on one ground of appeal alleging breach of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

The Court of First Instance erred in law by not carrying out a comprehensive global assessment of all the relevant factors when it assessed the likelihood of confusion. As a result of its assumption that there is a high degree of aural and visual similarity between the signs at issue, which was in turn the result of an error of law, it held that the conceptual differences between those signs could not be counteracted, which is correspondingly likewise due to an error of law. Furthermore, the Court of First Instance did not assess the very low degree of distinctiveness of the earlier mark in a legally correct manner. The Court of First Instance therefore erred in law in its application of Article 8(1)(b) of Regulation No 40/94 and thus breached Community law.

In particular, the Court of First Instance did not sufficiently take into account the fact that the signs to be compared CLINAIR and CLINA exhibit fundamental aural and visual differences which have to be taken into account for legal reasons and that the earlier mark CLINAIR has a particular meaning, which likewise has to be taken into account for legal reasons and which the later mark completely lacks. Likewise, the Court of First Instance did not take into consideration that the element 'CLIN' has a particularly weak distinctive character and can therefore, for legal reasons, only have a minimal effect on the overall impression made by the mark CLINAIR. For that reason in turn the mere fact that there is correspondence as regards that element is not, for legal reasons, sufficient to give rise to a likelihood of confusion under Article 8(1)(b) of Regulation No 40/94, particularly as the existing aural, visual and conceptual differences are significant.

Appeal brought on 21 December 2009 by Mehmet Salih Bayramoglu against the order of the Court of First Instance (Second Chamber) delivered on 24 September 2009 in Case T-110/09: Mehmet Salih Bayramoglu v European Parliament, Council of the European Union

(Case C-28/10 P)

(2010/C 80/29)

Language of the case: English

Parties

Appellant(s): Mehmet Salih Bayramoglu (represented by: A. Riza QC)

Other parties to the proceedings: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul the Council Decision 2004/511/EC [1] on the ground that it is based on an unlawful failure to act to enable the Turkish Cypriot people to take part in European elections in violation of Article 189 of the EC Treaty read together with Articles 5 and 6 if the Treaty on European Union.

— Declare that the six MEPs notified by the RoC after 6 June 2009 returned under the present electoral arrangements do not represent the Turkish Cypriot as required by law.

Pleas in law and main arguments

The appellant maintains that the Court of First Instance was wrong when it ruled that his action was lodged out of time. In support of this argument he submits that the case law relied upon by the CFI did not involve a failure to provide for the fundamental right of participating in elections of an entire people and did not concern a decision whose legal premise was a failure to act and make provisions for elections rather than to purport to postpone the right to hold such elections.

The appellant also submits that it was not the case that he did not invoke the existence of an excusable error or force majeure when lodging his application.

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[1] 2004/511/EC:Council Decision of 10 June 2004 concerning the representation of the people of Cyprus in the European Parliament in case of a settlement of the Cyprus problem OJ L 211, p. 22

Reference for a preliminary ruling from the Cour d'appel (Luxembourg) lodged on 18 January 2010 — Heiko Koelzsch v État du Grand-Duché de Luxembourg

(Case C-29/10)

(2010/C 80/30)

Language of the case: French

Referring court

Cour d'appel