

Other party to the proceedings before the Board of Appeal: The Royal Shakespeare Company (Stratford-upon-Avon, United Kingdom)

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 19 November 2009 in case R 317/2009-1; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'ROYAL SHAKESPEARE' for goods and services in classes 32, 33 and 42

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Trade mark right of the party requesting the declaration of invalidity: Community trade mark registration of the word mark 'RSC-ROYAL SHAKESPEARE COMPANY', for services in class 41; United Kingdom trade mark registration of the figurative mark 'RSC ROYAL SHAKESPEARE COMPANY', for services in class 41; non-registered trade mark 'ROYAL SHAKESPEARE COMPANY', used in the course of trade in the United Kingdom for various services.

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Annulled the decision of the Cancellation Division and, as a result, declared invalid the registered Community trade mark subject of the application for a declaration of invalidity

Pleas in law: Infringement of Article 8(5) of Council Regulation 207/2009, as the Board of Appeal wrongly concluded that the conditions for the application of the said provision have been met.

Action brought on 8 February 2010 — Victoria Sánchez v Parliament and Commission

(Case T-61/10)

(2010/C 100/86)

Language of the case: Spanish

Parties

Applicant: Fernando Marcelino Victoria Sánchez (Sevilla, Spain) (represented by: N. Domínguez Varela, lawyer)

Defendants: European Parliament and European Commission

Form of order sought

- A declaration that the failure of the European Parliament and of the Commission to respond to the application made by way of letters on 6 October 2009 is contrary to European Union law and an order for those institutions to remedy the situation.

Pleas in law and main arguments

On 28 August 2008 the applicant submitted a petition to the Committee on Petitions of the Parliament relating to an alleged corruption network in Spain in the field of social security and public health. On 3 May 2009 the President of that committee informed him that no further action would be taken as regards his petition.

On 6 December 2009 the applicant sent a letter to the European Parliament and the European Commission, pursuant to Article 265 TFEU, calling upon them to act. In that letter he requested that:

- the European Parliament annul the decision of 3 May 2009 of the President of the Committee on Petitions and investigate the circumstances in which that decision was adopted;
- the European Commission also undertake an investigation into the administration of justice in Spain.

Since he did not receive a response within the time-limit laid down to that end, the applicant brought this action for failure to act.

In support of his claims, the applicant submits that his fundamental rights have been infringed, namely his right to submit a petition, his right to equality before the law and his right to not be discriminated against. He also submits that the conditions have been met for the defendant institutions to be found to have failed to act.

Action brought on 11 February 2010 — Spain v Commission

(Case T-65/10)

(2010/C 100/87)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 9270 final of 30 November 2009 reducing the aid from the European Regional Development Fund (ERDF) to the Operational Programme for Andalusia ‘Objective 1’ (1994-1999) in Spain granted under Decision C(94) 3456 of 9 December 1994, ERDF NO 94.11.09.001, and

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action the Kingdom of Spain challenges the above mentioned decision. In support of its action, the Kingdom of Spain raises the following pleas in law:

— Infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988, ⁽¹⁾ by using the extrapolation method in the contested decision since that article does not provide for the possibility to extrapolate from the irregularities found in specific actions the irregularity of all the actions included in the Operational Programmes financed by the ERDF from. The correction applied by the Commission in the contested decision lacks a legal basis because, pursuant to the judgment in Case C-443/97 *Kingdom of Spain v Commission* [2000] ECR I-2415, the Commission’s internal guidelines of 15 October 1997 concerning net financial corrections in the context of the application of Article 24 of Council Regulation (EEC) No 4253/88 cannot produce legal effects vis-à-vis the Member States, and because Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 only provides for the reduction of aid in respect of which an

irregularity has been determined in the course of an examination. The application of corrections by extrapolation contradicts that principle.

— In the alternative, infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988, in conjunction with Article 4(3) TEU (principle of cooperation in good faith), by applying the correction by extrapolation in spite of the fact that it was not shown that the management, control and auditing system in relation to the amended contracts was insufficient, given that the managing bodies applied Spanish law which has not been declared contrary to European Union law by the Court of Justice. The Kingdom of Spain claims that the fact that the managing authorities adhere to national law, even if that may result in the Commission finding irregularities or specific infringements of European Union law, cannot serve as a basis to extrapolate the ineffectiveness of the management system where the law applied by those bodies has not been declared contrary to European Union law by the Court of Justice and the Commission has not brought an action for failure to act against the Member State pursuant to Article 258 TFEU.

— In the further alternative, infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 since the sample used for the application of the financial correction by extrapolation was not representative. The Commission composed the sample by extrapolating from a very reduced number of projects (37 out of 5 319), without taking account of all the axes of the Operational Programme, including expenses withdrawn beforehand by the Spanish authorities, by working on the basis of the declared expenses and not the aid granted and by using an IT programme which was less than 85 % reliable. For that reason, the Kingdom of Spain claims that the sample does not satisfy the requirements of representation necessary for it to be able to be used as a basis for extrapolation.

— The limitation period for proceedings under Article 3 of Council Regulation 2988/95 has expired. ⁽²⁾ Finally, the Kingdom of Spain submits that the day on which the Spanish authorities were informed of the existence of irregularities (which took place in October 2004 and for the most part concerned irregularities committed in 1997, 1998 and 1999) should constitute the starting point of the limitation period for those irregularities, in accordance with the four-year limitation period laid down in Article 3 of Regulation 2988/95.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

⁽²⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).