

Appeal lodged on 28 April 2011 by Oscar Orlando Arango Jaramillo a.o. against the Order of the Civil Service Tribunal of 4 February 2011 in Case F-34/10 Arango Jaramillo and Others v EIB

(Case T-234/11 P)

(2011/C 211/58)

Language of the case: French

Parties

Applicants: Oscar Orlando Arango Jaramillo (Luxembourg, Luxembourg), Maria Esther Badiola (Luxembourg), Marcella Bellucci (Luxembourg), Stefan Bidiuc (Grevenmacher, Luxembourg), Raffaella Calvi (Schuttrange, Luxembourg), Maria José Cerrato (Luxembourg), Sara Confortola (Verona, Italy), Carlos D'Anglade (Luxembourg), Nuno Da Fonseca Pestana Ascenso Pires (Luxembourg), Andrew Davie (Medernach, Luxembourg), Marta De Sousa e Costa Correia (Itzig, Luxembourg), Nausica Di Rienzo (Luxembourg), José Manuel Fernandez Riveiro (Sandweiler, Luxembourg), Eric Gällstad (Rameldange, Luxembourg), Andres Gavira Etzel (Luxembourg), Igor Greindl (Canach, Luxembourg), José Doramas Jorge Calderon (Luxembourg), Monica Lledo Moreno (Sandweiler), Antonio Lorenzo Ucha (Luxembourg), Juan Antonio Magaña-Campos (Luxembourg), Petia Manolova (Bereldange, Luxembourg), Ferran Minguella Minguella (Gonderange, Luxembourg), Barbara Mulder-Bahovec (Luxembourg), István Papp (Luxembourg), Stephen Richards (Blaschette, Luxembourg), Lourdes Rodriguez Castellanos (Sandweiler), Daniela Sacchi (Mondorf-les-Bains, Luxembourg), Maria Teresa Sousa Coutinho da Silveira Ramos (Almargem do Bispo, Portugal), Isabelle Stoffel (Mondorf-les-Bains), Fernando Torija (Luxembourg), Maria del Pilar Vargas Casasola (Luxembourg), Carolina Vento Sánchez (Luxembourg), Pé Verhoeven (Brussels, Belgium), Sabina Zajc (Contern, Luxembourg); and Peter Zajc (Contern) (represented by B. Cortese and C. Cortese, lawyers)

Other party to the proceedings: European Investment Bank

Forms of order sought

The appellants claim that the Court should:

- annul the order subject to appeal, dismiss the objection of inadmissibility raised by the EIB in Case F-34/10, and refer the matter back to the Civil Service Tribunal for it to rule on the substance and on costs in accordance with the forms of order sought by the appellants at first instance;
- in the alternative, having regard to the novelty of the legal questions raised by this appeal, allocate the costs between the parties as fairness requires.

Pleas in law and main arguments

In support of their appeal, the appellants rely on three pleas in law.

1. First plea, divided into three limbs, claiming an error of law in the determination of the reasonable period applicable to

the making of the application in the disputes between the EIB and its staff.

- In the first limb, the appellants accuse the Civil Service Tribunal of giving incorrect scope to the case-law concerning the time-limits for EIB staff bringing an action, by abandoning de facto the rule that action must be brought within a reasonable period, which is by nature flexible and open to the balancing of the specific interests at stake, and substituting a strictly-applied and generalised time-limit of three months.

- In the second limb, the appellants argue that, with regard to disputes between the EIB and its staff, no time-limit is laid down by the relevant provisions, whereas the Civil Service Tribunal applied by analogy the period of three months and ten days laid down by Article 91 of the Staff Regulations and Article 100(3) of the Rules of Procedure.

- In the third limb, the appellants claim infringement of the principle of proportionality and their right to effective legal protection in so far as the Civil Service Tribunal described as unreasonable the time-limit observed by the appellants, which had a few seconds of difference by comparison with the reference time-limits applicable in relations under the Staff Regulations.

2. Second plea, raised in the alternative and claiming error of law in the interpretation of the procedural rules applicable, read in the light of the principle of the unforeseen occurrence.
3. Third plea, raised in the alternative and alleging distortion of the evidence for proving the existence of an unforeseen occurrence and an infringement of the rules concerning the investigation and the organisation of the procedure.

Action brought on 9 May 2011 — Kaltenbach & Voigt v OHIM (3D eXam)

(Case T-242/11)

(2011/C 211/59)

Language of the case: English

Parties

Applicant: Kaltenbach & Voigt GmbH (Biberach an der Riß, Germany) (represented by: M. Graf, lawyer)

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

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 March 2011 in case R 2361/2010-2;

- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark in words '3D eXam' for goods in class 10

Decision of the Examiner: Refused the protection of the international registration to the European Union pursuant to Article 7(1)(b), (c) and Article 2 CTMR

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009 and the failure to take into account prior national registrations/grants of protection, as the International registration at issue: (i) is not purely descriptive, and; (ii) exhibits distinctiveness as the relevant public will consider the sign '3D eXam' as an indication of trade origin.

Action brought on 12 May 2011 — International Engine Intellectual Property Company v OHIM (PURE POWER)

(Case T-248/11)

(2011/C 211/60)

Language of the case: English

Parties

Applicant: International Engine Intellectual Property Company, LLC (Warrenville, United States) (represented by: C. Thomas and B. Reiter, lawyers)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 February 2011 in case R 2310/2010-2;

— Order the defendant to pay the costs of the proceedings;

— Set a date for an oral hearing for the case that findings of the General Court are not possible without an oral hearing.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'PURE POWER' for goods in class 12

Decision of the Trade Marks Department: Refused the application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b), (c) and 7(2) of Council Regulation No 207/2009 as well as the 'general principles of trademark law', as the Board of Appeal found that the

mark applied for was of descriptive character for the goods in respect of which registration was sought and devoid of any distinctiveness.

Action brought on 20 May 2011 — Fellah v Council

(Case T-255/11)

(2011/C 211/61)

Language of the case: French

Parties

Applicant: Zakaria Fellah (New York, USA) (represented by: G. Collard, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— hold that, in relation to the applicant, Mr Zakaria Fellah, Council Regulation (EU) No 330/2011 of 6 April 2011 and Council Decision 2011/221/CFSP of 6 April 2011, published on 7 April 2011 in the Official Journal of the European Union, are factually unfounded;

— in consequence:

— annul Council Regulation (EU) No 330/2011 of 6 April 2011 and Council Decision 2011/221/CFSP of 6 April 2011;

— in the alternative, order that the name of Mr Zakaria Fellah be removed from the lists annexed to the said regulation and the said decision.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of the duty to state reasons, inasmuch as the grounds for including the name of the applicant in the list of persons and bodies to which restrictive measures apply were stereotyped, without mention of any precise factual element allowing the relevance of the inclusion of that name to be assessed.

2. Second plea in law, alleging manifest error of assessment, in so far as:

— the applicant is accused of financing the administration of Mr L. Gbagbo, whereas, first, the applicant essentially carried out his functions with Mr L. Gbagbo at a time when the latter was recognised as legitimate head of state by the international community, and, second, the applicant did not have resources allowing him to finance the administration of Mr L. Gbagbo;