

**Action brought on 5 February 2001 by Carmine Salvatore Tralli against the European Central Bank**

(Case T-27/01)

(2001/C 134/53)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 5 February 2001 by Carmine Salvatore Tralli, of Nidderau (Germany), represented by Norbert Pflüger, Regina Steiner and Silvia Mittländer, Rechtsanwälte, with an address for service in Luxembourg.

The applicant claims that the Court should:

- (1) annul the defendant's decision, contained in a document dated 29 January 2001, rejecting the applicant's complaint;
- (2) annul the unilateral extension of the applicant's probationary period;
- (3) order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments are analogous to those advanced in Case T-373/00 Tralli v ECB (not yet published).

**Action brought on 12 February 2001 by Kirch Media GmbH & Co KgaA and Kirchmedia WM AG against the Commission of the European Communities**

(Case T-33/01)

(2001/C 134/54)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 February 2001 by Kirch Media GmbH & Co KgaA, a company incorporated under Germany law and Kirchmedia WM AG, a company incorporated under Swiss law, represented by Professor Carl Otto Lenz, Andreas Bardong and Edward William Batchelor, of Baker & McKenzie, London (UK).

The applicants claim that the Court should:

- annul, in whole or in part, the Commission's decision under Article 3(a) of Directive 89/552/EEC (as amended) that measures taken by the United Kingdom to ensure that broadcasters within its jurisdiction do not broadcast events of major importance for society on an exclusive basis are compatible with Community law, and communicating the UK measures to the other Member States so as to oblige them to ensure that broadcasters within their respective jurisdictions comply with the UK measures;
- declare under Article 241 EC that Article 3(a) TWF Directive, in whole or in part, is inapplicable and cannot serve as a basis for the Commission's decision; and
- order the Commission to pay all the costs of the proceedings.

*Pleas in law and main arguments*

The present application requests the annulment of the decision of the Commission of or around 18 November 2000 under Article 3(a) of Directive 89/552, of 3 October 1989, on the coordination of certain provisions laid down by law, regulation or administrative Action in Member States concerning the pursuit of television broadcasting activities<sup>(1)</sup> (the Directive). In that decision the Commission found compatible with Community Law United Kingdom (UK) measures prohibiting broadcasters from broadcasting certain listed sporting events in a way that deprived a substantial proportion of the UK from viewing them and communicated the UK measures to the other Member States in order to ensure that broadcasters within their respective jurisdictions comply with the UK measures.

In support of their claims, the applicants submit that the decision infringes:

- the principle of proportionality,
- the applicants' right to property by fundamentally affecting its ability to dispose of its World Cup rights, thereby affecting their value,
- the applicants' freedom to carry on an economic activity by affecting their ability to undertake their business in the managing, marketing and sale of the World Cup rights,
- the principle of the protection of legitimate expectations and the principle of non-retroactivity by applying measures to rights which the applicants purchased before the entry into force of the UK measures or Article 3(a) of the Directive,

- the principle of equality by applying measures to the applicants that discriminate, without justification, between holders of rights who are broadcasters and holders who are not,
- Article 3(a)2 of the Directive
  - by concluding that the UK measures are compatible with Community law as regards the procedures adopted by the UK in drawing up and consulting on the UK measures.
  - by concluding that the UK measures are compatible with Community law, in that the measures infringe general principles of Community Law, Articles 43 and 48 EC, the principle of free competition within the internal market, discrimination on grounds of nationality and infringement of the right to freedom of expression,
  - by excluding from its assessment of the UK measures the provisions of the Broadcasting Act 1996 (sections 99 and 100) relating to the prohibition of exclusivity and of mandatory licensing provisions.

The applicants further submit that Article 3(a) of the Directive is inapplicable under Article 241 EC as was introduced by means of an unlawful legislative procedure and has no legal basis.

Finally, the applicants submit that, in adopting the contested decision, the Commission infringed essential procedural safeguards by failing to adopt it in accordance with its internal rules of procedure and by failing in its duty to state reasons under Article 253 EC.

(<sup>1</sup>) OJ L 298, 17.10.1989, p. 23.

**Action brought on 23 February 2001 by Rafael Pérez Escolar against Commission of the European Communities**

(Case T-41/01)

(2001/C 134/55)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 February 2001 by Rafael Pérez Escolar, residing in Madrid, represented by Fernando Moreno Pardo.

The applicant claims that the Court should:

- declare that the Commission has failed to fulfil its obligations under the EC Treaty by failing to adopt any decision whatever regarding the complaint made by the applicant on 23 February 1999, relating to the State aid granted by the Spanish authorities to Banco Español de Crédito SA; and
- order the defendant to pay all the costs.

*Pleas in law and main arguments*

The applicant states that, on 23 February 1999, he lodged a complaint with the Competition Commissioner, claiming that a number of financial measures had been adopted by the Spanish authorities in favour of Banco Español de Crédito and Banco de Santander, which in his view amounted to State aid. Such aid, despite having been granted in 1994, was not fully analysed by the Commission at the time.

That complaint was followed by the submission of a number of documents and even a meeting between the applicant and the relevant Commission services. Despite all the information and documents provide by the applicant in relation to the measures complained of, those services took no action whatsoever vis-à-vis the Spanish authorities. On 6 November 2000, the applicant, taking the view that, despite the complexity of the case, the Commission had had more than a reasonable period in which to adopt a position with regard to the complaint made more than two years previously, lodged a document formally requesting that a decision be adopted by the Commission. Since that request, the period prescribed by Article 232 EC has more than expired without the Commission having defined its position.

The applicant claims that the Commission was under an obligation to adopt a decision on the complaint either declaring that the measures complained of do not constitute State aid within the meaning of Article 87 EC or that they must be characterised as such but are compatible with the common market, or by initiating the formal investigation procedure provided for in Article 88(2) EC. The applicant takes the view, accordingly, that the Commission has failed to fulfil its obligations under the EC Treaty.