

The appellant claims that the Court should:

— set aside that the judgment of the Fourth Chamber of the Court of First Instance of 7 July 2004 in Case T-175/03 (Norbert Schmitt v European Agency for Reconstruction) in full.

Giving judgment itself,

— dismiss the action for annulment of the decision of the EAR of 25 February 2003 terminating the contract of the applicant at first instance as a member of the temporary staff;

— order the applicant at first instance and respondent on appeal to pay the costs of the appeal.

Pleas and main arguments:

The Court of First Instance disregarded the prohibition on ruling *ultra petita* in basing its decision on pleas and arguments that had neither been raised directly nor elaborated upon to the requisite legal standard by the applicant at first instance.

Furthermore, the Court of First Instance made an error of law in interpreting clause 4 of the temporary staff contract concluded with Mr Schmitt as limiting the Agency's right to terminate the contract to situations arising from a significant reduction in, or cessation of, the Agency's operations before the end of its mandate.

Lastly, the Court of First Instance also made an error of law in considering that the legitimate expectations of the applicant at first instance had been infringed when it is apparent from the judgment that no clear and unconditional assurance, complying and in accordance with the rules of the conditions of employment of other servants had been given to him in relation to his remaining in post until the end of the Agency's actual mandate.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 8 July 2004 in the case of Finanzamt Eisleben against Feuerbestattungsverein Halle e.V.

(Case C-430/04)

(2004/C 300/62)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) (Germany) of 8 July 2004 received at the Court Registry on 7 October 2004, for a preliminary ruling in the

case of Finanzamt Eisleben against Feuerbestattungsverein Halle e.V., on the following question:

Is a private taxable person able to rely on the second subparagraph of Article 4(5) of Council Directive 77/388/EEC⁽¹⁾ where that taxable person is in competition with a body governed by public law and asserts that the non-taxation or undertaxation of that body is unlawful?

⁽¹⁾ OJ L 145, p. 1.

Reference for a preliminary ruling by the Bundesgerichtshof by decision of that court of 29 June 2004 in the case of Massachusetts Institute of Technology

(Case C-431/04)

(2004/C 300/63)

Reference has been made to the Court of Justice of the European Communities by decision of the Bundesgerichtshof (Federal Court of Justice) (Germany) of 29 June 2004 received at the Court Registry on 7 October 2004, for a preliminary ruling in the case of Massachusetts Institute of Technology on the following questions:

1. Does the term 'combination of active ingredients of a medicinal product' within the meaning of Article 1(b) of Council Regulation 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products⁽¹⁾ mean that the components of the combination must all be active ingredients with a therapeutic effect?
2. Is there a 'combination of active ingredients of a medicinal product' also where a combination of substances comprising two components of which one component is a known substance with a therapeutic effect for a specific indication and the other component renders possible a pharmaceutical form of the medicinal product that brings about a changed efficacy of the medicinal product for this indication (in-vivo implantation with controlled release of the active ingredient to avoid toxic effects)?

⁽¹⁾ OJ L 182, p. 1.