

Action brought on 4 December 2008 — Commission of the European Communities v Republic of Poland

(Case C-545/08)

(2009/C 82/18)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by A. Nijenhuis and K. Mojzesowicz, acting as Agents)

Defendant: Republic of Poland

Form of order sought

- declare that, by regulating retail tariffs for broadband access services without carrying out a prior market analysis, the Republic of Poland has failed to fulfil its obligations under Articles 16 and 17 of Directive 2002/22/EC ⁽¹⁾ in conjunction with Articles 16 and 27 of Directive 2002/21/EC ⁽²⁾;
- order the Republic of Poland to pay the costs.

Pleas in law and main arguments

By regulating retail tariffs for broadband access services without carrying out a prior market analysis, the Republic of Poland has failed to fulfil its obligations under Articles 16 and 17 of Directive 2002/22/EC in conjunction with Articles 16 and 27 of Directive 2002/21/EC.

First, the obligations imposed on Telekomunikacja Polska by the President of the Urząd Komunikacji Elektronicznej, namely the requirement of submission by the undertaking of retail tariffs for broadband access services for approval by the national regulatory authority and the requirement that the tariffs are determined on the basis of the costs of providing the services, two years after the entry into force in Poland of the binding Community provisions, constitute new obligations and not the maintenance in force of existing obligations.

Second, the regulatory obligations concerning retail broadband access services imposed on Telekomunikacja Polska by the President of the Urząd Komunikacji Elektronicznej cannot, according to the Commission, be regarded as transitional measures within the meaning of Article 27 of the Framework Directive, since Article 17 of Directive 98/10/EC, mentioned in Article 27, concerns only tariffs for the use of the fixed public telephone network and fixed public telephone services.

⁽¹⁾ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ 2002 L 108, p. 51.

⁽²⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ 2002 L 108, p. 33.

Appeal brought on 9 February 2009 by Deepak Rajani (Dear!Net Online) against the judgment of the Court of First Instance (Eighth Chamber) delivered on 26 November 2008 in Case T-100/06 Deepak Rajani (Dear!Net Online) v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-559/08 P)

(2009/C 82/19)

Language of the case: English

Parties

Appellant: Deepak Rajani (Dear!Net Online) (represented by: A. Kockläuner, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Artoz-Papier AG

Form of order sought

- Set aside in whole the Decision of the Court of First Instance dated 26 November 2008, Case T-100/06.
- Order OHIM to pay the costs of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellant submits that the contested judgment should be annulled on the following grounds:

- the Court of First Instance, when rejecting the first plea in law, misinterpreted Article 43 Section 2 and Section 3 of the Community Trademark Regulation (CTMR) in conjunction with Article 4 Section 1 of the Madrid Agreement;
- the Court of First Instance, when rejecting the first plea in law, infringed Article 6 of the Treaty on the European Union (Consolidated Version) as well as Article 6 in connection with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- the Court of First Instance, when rejecting the first plea in law, infringed Article 10 of Directive 89/104 (EC) ⁽¹⁾ in conjunction with Article 1 of Directive 89/104 (EC);
- the Court of First Instance, when rejecting the second plea in law, infringed Article 79 CTMR by not taking into account that the opponent acted in bad faith;
- the Court of First Instance, when rejecting the second plea in law, wrongly viewed the trademarks at issue as confusingly similar and thus, infringed Article 8 Section 1 b) CTMR;
- the Court of First Instance, when rejecting the second plea in law, infringed Article 135 Section 4 of the Rules of Procedure of the Court of First Instance by not taking into account the supportive evidence as annexes to the court action before it;

- the Court of First Instance, when rejecting the second plea in law, infringed Articles 49 and 50 in conjunction with Article 220 of the Treaty on European Union (Consolidated Version);
- the Court of First Instance, when rejecting the second plea in law, did not take into account that OHIM misused their power.

(¹) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, p. 1).

Reference for a preliminary ruling from the Hof van beroep te Gent (Belgium) lodged on 8 January 2009 — Erotic Center BVBA v Belgian State

(Case C-3/09)

(2009/C 82/20)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Applicant: Erotic Center BVBA

Defendant: Belgian State

Question referred

Should a cubicle consisting of a lockable space where there is room for only one person and where this person can watch films on a television screen for payment, where this person personally starts the film projection by inserting a coin and has a choice of different films, and during the time paid for can continually modify his/her choice of projected films, be regarded as a 'cinema' as referred to in the Sixth Council Directive No 77/388/EEC (¹) of 17 May 1977, Annex H, Category 7 (subsequently: Annex III, No 7, of Council Directive 2006/112/EC (²) of 28 November 2006)?

(¹) Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

(²) Council Directive 2006/112/EC on the common system of value added tax (OJ 2006 L 347, p. 1).

Appeal brought on 8 January 2009 by Gerasimos Potamianos against the judgment delivered on 15 October 2008 in Case T-160/04 Potamianos v Commission

(Case C-4/09 P)

(2009/C 82/21)

Language of the case: French

Parties

Appellant: Gerasimos Potamianos (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- Annul all the provisions of the judgment of the Court of First Instance (Seventh Chamber) of 15 October 2008 in Case T-160/04 *Potamianos v Commission*, by which the Court of First Instance dismissed in its entirety the appellant's action of 26 April 2004 against the decision of the authority empowered to conclude contracts of employment (AECE) not to extend his contract as a temporary agent;
- annul the decision of the AECE not to renew his contract as a temporary agent;
- order the defendant to pay the costs at both instances.

Pleas in law and main arguments

By his appeal, the appellant relies on four pleas in support of his appeal.

In accordance with the first plea, he alleges that the interpretation of the Court of First Instance that the fact that his contract as a temporary agent was not renewed is based on reasons related to the interests of the service is incorrect. The appellant's hierarchy made a number of requests for his contract to be extended. On the contrary, objective, relevant and concordant evidence shows that the sole basis of the decision not to renew his contract was the application of the rule prohibiting aggregation of service, which imposes a maximum limit of six years on the employment of a temporary agent.

By his second plea, the appellant submits that the Court of First Instance erred in law in that it considered that he had not submitted an application for the post in question, whereas, in good time, he had requested that his contract be extended and reiterated that request on several occasions, including after publication of the vacancy notice.