b) Applying an incorrect and impossible burden of proof on Non-Governmental Organisations ('NGOs') bringing challenges under Articles 10 and 12 of the Aarhus Regulation on behalf of the environment.

c) Failing to recognise that the Guidance issued by EFSA in accordance with its legal obligations give rise to a legitimate expectation that it will be complied with.

d) Determining that the two-stage safety assessment required by the GM Regulation (and EFSA's Guidance) did not need to be complied with. Instead, the first stage only, the comparison of the genetically modified crop and its comparators, could be (and was in this case) sufficient to satisfy the obligations set out by the GM Regulation.

e) Relying upon Regulation (EC) No 396/2005 ([4]) ('the Pesticide Regulation') in dismissing certain elements of the Appellants' challenge to the failure to investigate adequately the potential toxicity of the Soybean and to monitor post authorisation the impact of the Soybean.

([1]) Commission Implementing Decision of 28 June 2012 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean MON 87701 × MON 89788 (MON-87701-2 × MON-89788-1) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (PB 2012, L 171, p. 13).

([2]) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003, L 268, p. 1).

([3]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006, L 264, p. 13).

([4]) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ 2005, L 70, p. 1).

Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 20 February 2017 — Secretary of State for the Home Department v Rozanne Banger

(Case C-89/17)

(2017/C 129/09)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: Rozanne Banger

Questions referred

1. Do the principles contained in the decision in Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department (Case C-370/90) [1992] operate so as to require a Member State to issue or, alternatively, facilitate the provision of a residence authorisation to the non-Union unmarried partner of a EU citizen who, having exercised his Treaty right of freedom of movement to work in a second Member State, returns with such partner to the Member State of his nationality?

2. Alternatively, is there a requirement to issue or, alternatively, facilitate the provision of such residence authorisation by virtue of European Parliament and Council Directive 2004/38/EC ([1]) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Directive')?

3. Where a decision to refuse a residence authorisation is not founded on an extensive examination of the personal circumstances of the Applicant and is not justified by adequate or sufficient reasons is such decision unlawful as being in breach of Article 3(2) of the Citizens Directive?

4. Is a rule of national law which precludes an appeal to a court or tribunal against a decision of the executive refusing to issue a residence card to a person claiming to be an extended family member compatible with the Directive?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJ 2004, L 158, p. 77

Appeal brought on 20 February 2017 by Cellnex Telecom S.A., formerly Abertis Telecom S.A. against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Joined Cases T-37/15 and T-38/15, Abertis Telecom Terrestre S.A. and Telecom Castilla-La Mancha, S.A. v European Commission

(Case C-91/17 P)

(2017/C 129/10)

Language of the case: Spanish

Parties

Appellant: Cellnex Telecom S.A., formerly Abertis Telecom S.A (represented by: J. Buendía Sierra and A. Lamadrid de Pablo, lawyers)

Other parties to the proceedings: European Commission and SES Astra

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— give final judgment on the action for annulment and annul the Commission's decision; and

— order the European Commission and SES Astra to pay the costs.

Pleas in law and main arguments

In the judgment under appeal, the General Court confirms a Commission decision on State aid concerning various measures adopted by the public authorities of the Spanish Autonomous Community of Castilla-La Mancha in order to ensure that the digital terrestrial television (DTT) signal reaches remote and less urbanised areas of the territory, in which only 2,5 % of the population live. In that decision, the Commission recognised that, in material terms, the market would not offer that service in the absence of public intervention. Nevertheless, it questioned whether the activity was classified as a service of general economic interest (SGEI) in the Spanish legislation, stating that, from a formal perspective, that activity had not been 'clearly' defined and commissioned by the public authorities. The Commission also stated that, in any event, those authorities were not empowered to opt for a certain technology when they organised the SGEI.

In support of its appeal, the appellant relies on two grounds of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Articles 14, 106(2) and 107(1) TFEU and of Protocol No 26 annexed to the TFEU on Services of General Interest.