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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Second Chamber)

of 15 December 2005

in Case C-66/02: Italian Republic v Commission of the European Communities [1]

(Application for annulment — State aid — Decision 2002/581/EC — Tax advantages granted to banks — Statement of reasons for a decision — Categorisation as State aid — Conditions — Compatibility with the common market — Conditions — Important project of common European interest — Development of certain activities)

(2006/C 48/01)

(Language of the case: Italian)

In Case C-66/02, Italian Republic (Agents: initially U. Leanza, and subsequently I. M. Braguglia; Lawyer: M. Fiorilli) v Commission of the European Communities (Agents: V. Di Bucci and R. Lyal) — action for annulment under Article 230 EC, brought on 21 February 2002 — the Court (Second Chamber), composed of C. W. A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, G. Arestis and J. Klučka, Judges; C. Stix-Hackl, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 15 December 2005, in which it:

1. *Dismisses the action;*

2. *Orders the Italian Republic to pay the costs.*

[1] OJ C 109 of 04.05.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 15 December 2005

in Case C-86/03: Hellenic Republic v Commission of the European Communities [1]

(Action for annulment — Commission's refusal to authorise the use of heavy fuel oils with a maximum sulphur content of 3 % by mass in part of Greek territory — Directive 1999/32/EC — Sulphur content of certain combustible liquids)

(2006/C 48/02)

(Language of the case: Greek)

In Case C-86/03 Hellenic Republic (Agent: P. Mylonopoulos and A. Samoni-Rantou) v Commission of the European Communities (Agent: M. Konstantinidis and G. Valero Jordana) supported by: Council of the European Union (Agents: Kyriakopoulou and B. Hoff-Nielsen) — action for annulment under Article 230 EC, brought on 26 February 2003, — the Court (First Chamber), composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, gave a judgment on 15 December 2005, in which it:

1 *Dismisses the action;*

2. *Orders the Hellenic Republic to pay the costs;*

3 *Orders the Council of the European Union to bear its own costs.*

[1] OJ C 112 of 10.05.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-94/03: Commission of the European Communities v Council of the European Union [1]

(Action for annulment — Council Decision 2003/106/EC concerning the approval of the Rotterdam Convention — Prior Informed Consent Procedure — Hazardous chemicals and pesticides in international trade — Choice of legal basis — Articles 133 EC and 175 EC)

(2006/C 48/03)

(Language of the case: English)

In Case C-94/03, Commission of the European Communities (Agents: G. zur Hausen, L. Ström van Lier and E. Righini) v Council of the European Union (Agents: B. Hoff-Nielsen, M. Sims-Robertson, and K. Michoel), supported by French Republic (Agents: G. de Bergues, F. Alabrune and E. Puisais), Kingdom of the Netherlands (Agents: H.G. Sevenster, S. Terstal and N.A.J. Bel), Republic of Austria (Agent: E. Riedl), Republic of Finland (Agent: T. Pynnä), United Kingdom of Great Britain and Northern Ireland (Agent: R. Caudwell, and A. Dashwood, Barrister) European Parliament (Agents: C. Pennera, M. Moore, and K. Bradley) — Action for annulment under Article 230 EC, brought on 28 February 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, J. Makarczyk, C. Gulmann, P. Kūris and J. Klučka, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 10 January 2006, in which it:

1. *Annuls Council Decision 2003/106/EC of 19 December 2002 concerning the approval, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade;*

2. *Orders the Commission of the European Communities and the Council of the European Union to bear their own costs;*

3. *Orders the French Republic, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.*

[1] OJ C 101 of 26.04.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-98/03: Commission of the European Communities v Federal Republic of Germany [1]

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Assessment of the implications of certain projects on a protected site — Protection of species)

(2006/C 48/04)

(Language of the case: German)

In Case C-98/03 Commission of the European Communities (Agent: U. Wölker) v Federal Republic of Germany (Agents: M. Lumma and C. Schulze-Bahr) — action under Article 226 EC for failure to fulfil obligations, brought on 28 February 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Silva de Lapuerta, P. Kūris and G. Arestis, Judges; A. Tizzano, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 10 January 2006, the operative part of which is as follows:

1. *By failing, in respect of certain projects carried out outside special areas of conservation within the meaning of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, to require compulsory assessment of the impact on the site, in accordance with Article 6(3) and (4) of that directive, whether or not such projects are capable of significantly affecting a special area of conservation;*

   — *by authorising emissions in a special area of conservation, irrespective of whether they are likely to have a significant effect on that area;*

   — *by derogating from the scope of the provisions concerning the protection of species in the case of certain non-deliberate effects on protected animals;*

   — *by failing to ensure compliance with the criteria for derogation set out in Article 16 of Directive 92/43 in the case of certain activities compatible with the conservation of the area;*

   — *by retaining provisions on the application of pesticides which do not take sufficient account of the protection of species;*

   — *by failing to ensure that legislation on fishing contains adequate bans on catches,*

the Federal Republic of Germany has failed to fulfil its obligations under Article 6(3) and Articles 12, 13 and 16 of Directive 92/43.

2. *Orders the Federal Republic of Germany to pay the costs.*

(1) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-178/03: Commission of the European Communities v European Parliament and Council of the European Union (1)

(Action for annulment — Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals — Choice of legal basis — Articles 133 EC and 175 EC)

(2006/C 48/05)

(Language of the case: English)

In Case C-178/03, action for annulment under Article 230 EC, brought on 24 April 2003, Commission of the European Communities (Agent: G.zur Hausen, L. Strom van Lier and E. Righini) v European Parliament (Agents: C. Pennera and M. Moore and K. Bradley) and Council of the European Union (Agents: B. Hoff-Nielsen and M. Sims-Robertson, and K. Michoel),.supported by:French Republic (Agents: G. de Bergues, F. Alabrune and E. Puisais), Republic of Finland (Agent: T. Pynnä,), United Kingdom of Great Britain and Northern Ireland (Agent: R. Caudwell, and A. Dashwood) — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, C. Gulmann, P. Kūris and J. Klučka, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 10 January 2006, in which it:

1. *Annuls Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals;*

2. *Maintains the effects of that regulation until the adoption, within a reasonable period, of a new regulation founded on appropriate legal bases;*

3. *Orders the Commission of European Communities, the European Parliament and the Council of the European Union to bear their own costs;*

4. *Orders the French Republic, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

(1) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 December 2005

in Case C-344/03: Commission of the European Communities v Republic of Finland (1)

(Directive 79/409/EEC — Conservation of wild birds — Spring hunting of certain aquatic birds)

(2006/C 48/06)

(Language of the case: Finnish)

In Case C-344/03, Commission of the European Communities (Agents: G. Valero Jordana and P. Aalto) v Republic of Finland (Agent: T. Pynnä) — action under Article 226 EC for failure to fulfil obligations, brought on 1 August 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, G. Arestis and J. Klučka, Judges; D. Ruiz-Jarabo Colomer, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 15 December 2005, in which it:

1. *Declares that, since it has failed to establish that, in the context of the spring hunting of aquatic birds in mainland Finland and the province of Åland:*

   — *the condition laid down in Article 9(1)(c) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, for the purpose of a derogation, that there be no satisfactory solution other than spring hunting, was fulfilled in respect of eider, goldeneye, red-breasted merganser, goosander, velvet scoter and tufted duck; and that*

— *the condition laid down in that same provision for the purpose of a derogation, relating to the fact that hunting must concern only the taking of birds in small numbers, was fulfilled in respect of eider, goosander, red-breasted merganser and velvet scoter;*

the Republic of Finland has failed to fulfil its obligations under that directive;

2. *Dismisses the remainder of the action;*

3. *Orders the Republic of Finland to pay the costs.*

([1]) OJ C 226 of 20.09.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 10 January 2006

in Case C-402/03: Reference for a preliminary ruling from the Vestre Landsret in Skov Æg v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen, Michael Due Nielsen ([1])

(Directive 85/374/EEC — Liability for defective products — Liability of the supplier of a defective product)

(2006/C 48/07)

(Language of the case: Danish)

In Case C-402/03: reference for a preliminary ruling under Article 234 EC from the Vestre Landsret (Denmark), made by decision of 26 September 2003, received at the Court on 29 September 2003, in the proceedings between Skov Æg and Bilka Lavprisvarehus A/S and between Bilka Lavprisvarehus A/S and Jette Mikkelsen, Michael Due Nielsen — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, C. Gulmann, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, P. Kūris, E. Juhász and G. Arestis, Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 10 January 2006, in which it ruled:

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted as:

— *precluding a national rule under which the supplier is answerable, beyond the cases listed exhaustively in Article 3(3) of the directive, for the no-fault liability which the directive establishes and imposes on the producer;*

— *not precluding a national rule under which the supplier is answerable without restriction for the producer's fault-based liability.*

([1]) OJ C 304 of 13.12.2003.

Judgment of the Court

(First Chamber)

of 15 December 2005

in Case C-26/04: Commission of the European Communities v Kingdom of Spain ([1])

(Failure of a Member State to fulfil obligations — Directive 76/160/EEC — Quality of bathing waters — Designation as bathing areas — Directive 79/923/EEC — Quality of shellfish waters — Establishment of a pollution reduction programme)

(2006/C 48/08)

(Language of the case: Spanish)

In Case C-26/04, action under Article 226 EC for failure to fulfil obligations, brought on 27 January 2004, **Commission of the European Communities** (Agent: M.G.Valero Jordana) v **Kingdom of Spain** (Agent: M.E. Braquehais Conesa) — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Schiemann, N. Colneric, J.N. Cunha Rodrigues (Rapporteur) and E. Levits, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 15 December 2005, in which it:

1. *Declares that, by failing to adopt a pollution reduction programme for the shellfish waters of the Ría de Vigo, the Kingdom of Spain has failed to fulfil its obligations under Article 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters;*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission of the European Communities and the Kingdom of Spain to bear their own costs.*

([1]) OJ C 71 of 20.03.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-147/04 (Reference for a preliminary ruling from the Conseil d'État) De Groot en Slot Allium BV, Bejo Zaden BV v Ministre de l'Economie, des Finances et de l'Industrie, Ministre de l'Agriculture, de l'Alimentation, de la Pêche et des Affaires rurales [1]

(Directive 70/458/EEC — Marketing of vegetable seed — Article 2 — Directive 92/33/EEC — Marketing of vegetable propagating and planting material, other than seed — Annex II — Common catalogue of vegetable species — National legislation permitting only varieties of shallots produced by vegetative propagation to be marketed as 'shallots' — Article 28 EC — Consumer protection)

(2006/C 48/09)

(Language of the case: French)

In Case C-147/04: reference for a preliminary ruling under Article 234 EC from the Conseil d'Etat (France), made by decision of 4 February 2004, received at the Court on 22 March 2004, in the proceedings De Groot en Slot Allium BV, Bejo Zaden BV against Ministre de l'Economie, des Finances et de l'Industrie, Ministre de l'Agriculture, de l'Alimentation, de la Pêche et des Affaires rurales, intervener: Comité économique agricole régional fruits et légumes de la Région Bretagne (Cerafel), the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, C. Gulmann, G. Arestis (Rapporteur) and J. Klučka, Judges; D. Ruiz-Jarabo Colomer, Advocate General, K. Sztranc, Administrator, for the Registrar, gave a judgment on 10 January 2006, the operative part of which is as follows:

Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed, as amended by Council Directive 88/380/EEC of 13 December 1988, precludes the entry of the varieties 'Ambition' and 'Matador' in the common catalogue in the section relating to shallots grown from seed.

Article 28 EC precludes national legislation, such as the Order of 17 May 1990 on trade in shallots, which allows only vegetables produced by vegetative propagation to be marketed as 'shallots' and excludes those grown from seed produced and marketed under that name in other Member States.

[1] OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 15 December 2005

in Joined Cases C-151/04 and C-152/04; Reference for a preliminary ruling from the Tribunal de Police de Neufchâteau in the criminal proceedings against Claude Nadin, Nadin-Lux SA and Jean-Pascal Durré [1]

(Free movement of persons and services — Concept of 'worker' — Condition of a relationship of subordination — Motor vehicle — Made available to the worker by the employer — Vehicle registered abroad — Employer established in another Member State — Registration and taxation of the motor vehicle)

(2006/C 48/10)

(Language of the case: French)

In Joined Cases C-151/04 and C-152/04: reference for a preliminary ruling under Article 234 EC from the Tribunal de Police de Neufchâteau (Belgium), made by decision of 16 January 2004, received at the Court on 25 March 2004, in the criminal proceedings against Claude Nadin, Nadin-Lux SA (C-151/04) and Jean-Pascal Durré (C-152/04) — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Schiemann, N. Colneric (Rapporteur), J.N. Cunha Rodrigues and E. Levits, Judges; F.G. Jacobs, Advocate General, K. Sztranc, Administrator, for the Registrar, has given a judgment on 15 December 2005, the operative part of which is as follows:

It is contrary to Article 43 EC for the domestic legislation of one Member State, such as the legislation at issue in the cases in the main proceedings, to require a self-employed worker residing in that Member State to register there a company vehicle made available to him by the company for which he works, established in another Member State, when it is not intended that that vehicle should be used essentially in the first Member State on a permanent basis and it is not, in fact, used in that manner.

[1] OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-222/04: Reference for a preliminary ruling from the Corte suprema di cassazione in Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA, Fondazione Cassa di Risparmio di San Miniato, Cassa di Risparmio di San Miniato SpA [1]

(State aid — Articles 87 EC and 88 EC — Banks — Banking foundations — Meaning of 'undertaking' — Relief from direct tax on dividends received by banking foundations — Categorisation as State aid — Compatibility with the common market — Commission Decision 2003/146/EC — Determination of validity — Inadmissibility — Articles 12 EC, 43 EC and 56 EC — Principle of non-discrimination — Freedom of establishment — Free movement of capital)

(2006/C 48/11)

(Language of the case: Italian)

In Case C-222/04: reference for a preliminary ruling under Article 234 EC from the Corte suprema di cassazione (Italy), made by decision of 23 March 2004, received at the Court on 28 May 2004, in the proceedings between Ministero dell'Economia e delle Finanze and Cassa di Risparmio di Firenze SpA, Fondazione Cassa di Risparmio di San Miniato, Cassa di Risparmio di San Miniato SpA — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, R. Silva de Lapuerta and G. Arestis, Judges; F.G. Jacobs, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 10 January 2006, in which it ruled:

1. *A legal person such as that in question in the main proceedings can, after an examination which it is for the national court to conduct, on account of the regime applicable to the period concerned, be treated as an 'undertaking' within the meaning of Article 87(1) EC, and, as such, subject at that period to the Community rules relating to State aid.*

2. *An exemption from retention on dividends such as that in question in the main proceedings can, after an examination which it is for the national court to conduct, be categorised as State aid within the meaning of Article 87(1) EC.*

[1] OJ C 190 of 24.07.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 15 December 2005

in Joined Cases C-232/04 and C-233/04, Reference for a preliminary ruling from the Arbeitsgericht Düsseldorf Nurten Güney-Görres, Gul Demir v Securicor Aviation (Germany) Ltd, Kötter Aviation Security GmbH & Co. KG [1]

(Directive 2001/23/CE — Article 1 — Transfer of undertaking or business — Safeguarding of employees' rights — Scope)

(2006/C 48/12)

(Language of the case: German)

In Joined Cases C-232/04 and C-233/04: reference for a preliminary ruling under Article 234 EC from the Arbeitsgericht Düsseldorf (Germany), made by decision of 5 May 2004, received at the Court on 3 June 2004, in the proceedings between Nurten Güney-Görres (C-232/04), Gul Demir (C-233/04) and Securicor Aviation (Germany) Ltd, Kötter Aviation Security GmbH & Co. KG — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet, S. von Bahr, A. Borg Barthet (Rapporteur) and U. Lõhmus, Judges; M. Poiares Maduro, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 15 December 2005, the operative part of which is as follows:

Article 1 of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, must be interpreted as meaning that in examining whether there is a transfer of an undertaking or business within the meaning of that article, in the context of a fresh award of a contract and having regard to all the facts, the transfer of the assets for independent commercial use is not an essential criterion for a finding that there was a transfer of those assets from the original contractor to the new contractor.

[1] OJ C 228 of 11.09.2004.
OJ C 201 of 07.08.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 December 2005

in Case C-252/04: Commission of the European Communities v Hellenic Republic ([1])

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Electronic communications networks and services — Universal Service — Failure to transpose within the period prescribed)

(2006/C 48/13)

(Language of the case: Greek)

In Case C-252/04 Commission of the European Communities (Agents: G. Zavvos and M. Shotter) v Hellenic Republic (Agent: N. Dafniou) — ACTION for a declaration of failure to fulfil obligations pursuant to Article 226 EC, brought on 14 June 2004 — the Court (Fifth Chamber), composed of J. Makarczyk, President of the Chamber, R. Silva de Lapuerta and P. Kūris (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 15 December 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/22/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), the Hellenic Republic has failed to fulfil its obligations under that directive.*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 201, 7.8.2004.

JUDGMENT OF THE COURT

(Grand Chamber)

of 10 January 2006

in Case C-302/04, Reference for a preliminary ruling from the Szombathelyi Városi Bíróság Ynos kft v János Varga ([1])

(Article 234 EC — Directive 93/13/EEC — Consumers — Unfair terms — National legislation adapted to comply with the directive after conclusion by a non-member State of an association agreement with the European Communities and before that State acceded to the European Union — Lack of jurisdiction of the Court)

(2006/C 48/14)

(Language of the case: Hungarian)

In Case C-302/04; reference for a preliminary ruling under Article 234 EC from the Szombathelyi Városi Bíróság (Hungary), made by decision of 10 June 2004, received at the Court on 14 July 2004, in the proceedings between Ynos kft and János Varga — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, C. Gulmann, A. La Pergola, K. Lenaerts, P. Kūris, E. Juhász, G. Arestis, M. Ilešič (Rapporteur) and A. Ó Caoimh, Judges; A. Tizzano, Advocate General; B. Fülöp, Administrator, for the Registrar, gave a judgment on 10 January 2006, the operative part of which is as follows:

In circumstances such as those of the dispute in the main proceedings, the facts of which occurred prior to the accession of a State to the European Union, the Court of Justice does not have jurisdiction to answer the first and second questions.

([1]) OJ C 251 of 09.10.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 1 December 2005

in Case C-309/04 Reference for a preliminary ruling from the Bundesfinanzhof Fleisch-Winter GmbH & Co. KG v Hauptzollamt Hamburg-Jonas ([1])

(Export refunds — Condition for grant — Beef and veal — Regulation (EEC) No 3665/87 — Bovine spongiform encephalopathy — Export ban — Sound and fair marketable quality — Export declaration — National application for a payment — Sanction)

(2006/C 48/15)

(Language of the case: German)

In Case C-309/04: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by Decision of 20 April 2004, received at the Court on 21 July 2004, in the proceedings pending before that court between Fleisch-Winter GmbH & Co. KG and Hauptzollamt Hamburg-Jonas — the Court: (First Chamber) composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues, E. Juhász and E. Levits, Judges; P. Léger, Advocate General, K. Sztranc, Registrar, gave a judgment on 1 December 2005, the operative part of which is as follows:

1. *Article 13 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 must be interpreted as meaning that it precludes beef that is subject to a ban, laid down by Community law, on export from one Member State to other Member States and non-member countries from being regarded as being of 'sound and fair marketable quality' for the purpose of the payment of refunds, and that the exporter must show that the exported product does not originate in a Member State from which exports are banned, where the national administration has evidence that the product is subject to an export ban.*

2. *The assurance in a national request for payment that a product is of 'sound and fair marketable quality', within the meaning of the first sentence of Article 13 of Regulation No 3665/87, as amended by Regulation No 2945/94, is not part of the information provided pursuant to the combined provisions of the second subparagraph of Article 11(1) and Article 3 of that regulation. However, it may be regarded by the national court as evidence for the purpose of determining the exporter's position.*

([1]) OJ C 239 of 25.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 24 November 2005

in Case C-331/04 Reference for a preliminary ruling from the Consiglio di Stato: ATI EAC Srl e Viaggi di Maio Snc and Others v ACTV Venezia SpA and Others ([1])

(Public service contracts — Directives 92/50/EEC and 93/38/EEC — Award criteria — The economically most advantageous tender — Observance of award criteria set out in the contract documents or the contract notice — Establishment of subheadings for one of the award criteria in the contract documents or the contract notice — Decision to apply weighting — Principles of equal treatment of tenderers and transparency)

(2006/C 48/16)

(Language of the case: Italian)

In Case C-331/04: REFERENCE for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by Decision of 6 April 2004, received at the Court on 29 July 2004, in the proceedings pending before that court between ATI EAC Srl e Viaggi di Maio Snc and Others v ACTV Venezia SpA and Others — the Court: (Second Chamber) composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, G. Arestis and J. Klučka, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 24 November 2005, the operative part of which is as follows:

Article 36 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts and Article 34 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors must be interpreted as meaning that Community law does not preclude a jury from attaching specific weight to the subheadings of an award criterion which are defined in advance, by dividing among those headings the points awarded for that criterion by the contracting authority when the contract documents or the contract notice were prepared, provided that that decision:

— *does not alter the criteria for the award of the contract set out in the contract documents or the contract notice;*

— *does not contain elements which, if they had been known at the time the tenders were prepared, could have affected that preparation;*

— *was not adopted on the basis of matters likely to give rise to discrimination against one of the tenderers.*

([1]) OJ C 239 of 25.09.2004.

3. *Orders each of the parties to bear its or her own costs relating to the present proceedings and to those brought before the Court of First Instance of the European Communities.*

([1]) OJ C 251, 9.10.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 10 January 2006

in Case C-373/04 P: Commission of the European Communities v Mercedes Alvarez Moreno ([1])

(Appeal — Officials — Member of the auxiliary staff — Conference interpreter — Action — Request pursuant to Article 90(1) of the Staff Regulations — Measure adversely affecting a person — Definition)

(2006/C 48/17)

(Language of the case: French)

In Case C-373/04 P, appeal pursuant to Article 56 of the Statute of the Court of Justice lodged on 27 August 2004 by the Commission of the European Communities (Agents: D. Martin and F. Clotuche-Duvieusart), the other party to the proceedings being Mercedes Alvarez Moreno residing in Berlin (Germany) (Lawyers: G. Vandersanden and L. Levi) — the Court (Second Chamber), composed of C. W. A. Timmermans, President of the Chamber, J. Makarczyk, C. Gulmann, G. Arestis (Rapporteur) and J. Klučka, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 10 January 2006, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 10 June 2004 in Joined Cases T-153/01 and T-323/01 Alvarez Moreno v Commission in so far as it declared that the action for annulment of the letter of Mr Walker of 23 February 2001 was admissible and ordered the Commission of the European Communities to pay the whole of the costs relating to the action in Case T-323/01;*

2. *In Case T-323/01, dismisses the action for annulment of, first, the letter of Mr Walker of 23 February 2001 and, second, the decision of the Commission of the European Communities of 7 September 2001, rejecting Mrs Alvarez Moreno's complaint;*

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 December 2005

in Case C-33/05: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/60/EC — Community action in the field of water policy — Failure to transpose within the period prescribed)

(2006/C 48/18)

(Language of the case: French)

In Case C-33/05 Commission of the European Communities (Agents: J. Hottiaux and S. Pardo Quintillán) v Kingdom of Belgium (Agent: M. Wimmer) — ACTION for a declaration of failure to fulfil obligations pursuant to Article 226 EC, brought on 31 January 2005 — the Court (Sixth Chamber), composed of J. Malenovský, President of the Chamber, J.-P. Puissochet and A. Ó. Caoimh (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 15 December 2005, in which it:

1. *Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as regards the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under that directive.*

2. *Orders the Kingdom of Belgium to pay the costs.*

([1]) OJ C 82, 2.4.2005.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 15 December 2005

in Case C-96/05: Commission of the European Communities v Hellenic Republic [1]

(Failure of a Member State to fulfil obligations — Directive 2001/65/EC — Annual and consolidated accounts of certain types of companies — Failure to transpose within the period prescribed)

(2006/C 48/19)

(Language of the case: Greek)

In Case C-96/05 Commission of the European Communities (Agents: G. Braun and G. Zavvos) v Hellenic Republic (Agent: N. Dafniou) — ACTION for a declaration of failure to fulfil obligations pursuant to Article 226 EC, brought on 21 February 2005 — the Court (Fourth Chamber), composed of K. Schiemann, President of the Chamber, M. Ilešič (Rapporteur) and E. Levits, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 15 December 2005, in which it:

1. *Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, the Hellenic Republic has failed to fulfil its obligations under that directive.*

2. *Orders the Hellenic Republic to pay the costs.*

[1] OJ C 93, 16.04.2005.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 December 2005

in Case C-144/05: Commission of the European Communities v Kingdom of Belgium [1]

(Failure of a Member State to fulfil obligations — Directive 2002/59/EC — Failure to transpose within the period prescribed)

(2006/C 48/20)

(Language of the case: Dutch)

In Case C-144/05 Commission of the European Communities (Agents: K. Simonsson and W. Wils) v Kingdom of Belgium (Agent: M. Wimmer) — ACTION for a declaration of failure to fulfil obligations pursuant to Article 226 EC, brought on 30 March 2005– the Court (Fifth Chamber), composed of J. Makarczyk, President of the Chamber, R. Silva de Lapuerta and J. Klučka (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 15 December 2005, in which it:

1. *Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, the Kingdom of Belgium has failed to fulfil its obligations under that Directive.*

2. *Orders the Kingdom of Belgium to pay the costs.*

[1] OJ C 143, 11.6.2005.

Reference for a preliminary ruling from the Court of Cassation, Belgium, by order of that court of 6 September 2005 in the criminal proceedings against Norma Kraaijenbrink

(Case C-367/05)

(2006/C 48/21)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Court of Cassation, Belgium, of 6 September 2005, received at the Court Registry on 29 September 2005, in the criminal proceedings against Norma Kraaijenbrink on the following questions:

1. 'Must Article 54 of the Schengen [1] implementing agreement of 19 June 1990, read with Article 71 of that agreement be construed as meaning that the criminal offences of acquiring or having available in the Netherlands or transferring from there sums of money in foreign currencies originating from the trade in narcotics (offences which were prosecuted and in respect of which a conviction was obtained in the Netherlands for receiving and handling in breach of Article 416 of the Criminal Code), which differ from the criminal offences consisting in the exchanging at exchange bureaus in Belgium of the relevant sums of money from the trade in narcotics received in the Netherlands

(prosecuted in Belgium as the offence of receiving and handling and performing other acts in regard to goods resulting from crime, in breach of Article 505 of the Criminal Code), are to be regarded as the "same acts" for the purposes of Article 54 aforesaid where the courts establish that they share a common intention and thus legally constitute a single act?'

2. If Question 1 is answered affirmatively:

'Must the expression "may not be prosecuted … for the same acts" in Article 54 of the Convention implementing the Schengen Agreement be interpreted as meaning that the "same acts" may also be constituted by different acts sharing the same intention, and thus constituting a single act, which would mean that a defendant can no longer be prosecuted for the offence of money-laundering in Belgium once he has been duly convicted in the Netherlands of other offences committed with the same intention, regardless of any other offences committed during the same period but which became known or in respect of which prosecutions were brought in Belgium only after the date of the definitive foreign judgment or, in such a case, must that expression be interpreted as meaning that the court determining the merits may enter a conviction in respect of these other acts on a subsidiary basis, taking into account the sentences already imposed, unless it considers that those other sentences in its view constitute sufficient punishment of all the offences, and ensuring that the totality of the penalties imposed may not exceed the maximum of the severest penalty?'

(1) OJ 2000, L 239, p. 19.

Action brought on 18.11.2005 by Commission against the The United Kingdom of Great Britain and Northern Ireland

(Case C-405/05)

(2006/C 48/22)

(Language of the case: English)

An action against the The United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 18.11.2005 by the Commission, represented by Sara Pardo Quintillan, Xavier Lewis and Hubert van Vliet, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that in failing to ensure that adequate treatment is provided for urban waste waters from the agglomerations of Bangor, Brighton, Broadstairs, Carrickfergus, Coleraine, Donaghadee, Larne, Lerwick, Londonderry, Margate, Newtonabbey, Omagh and Portrush at the latest by 31 December 2000, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4 paragraphs 1 and 3 of Council Directive 91/271/EEC (1).

2. order The United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The Commission is of the view that the failure by the United Kingdom of Great Britain and Northern Ireland to ensure adequate treatment is provided for the entirety of the waste water discharges produced in the agglomerations of Bangor, Broadstairs, Carrickfergus, Coleraine, Londonderry, Larne, Lerwick, Margate, Newtonabbey, Omagh, Brighton, Portrush, Donaghdee and Bideford/ Northam is in breach of Article 4, paragraphs 1 and 3, of the directive. Furthermore, the failure to control substantial new developments in the agglomerations of Portrush, Newtonabbey, Bangor, Londonderry and Larne or to ensure that their approval is accompanied by mitigating measures is exacerbating the breaches of the aforementioned articles of the Directive in these five agglomerations.

(1) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment OJ L 135, 30.05.1991 P. 40 - 52

Appeal brought on 23 November 2005 by Ahmed Yusuf and Al Barakaat International Foundation against the judgment of the Court of First Instance (Second Chamber (Extended Composition)) of 21 September 2005 in Case T-306/01 Ahmed Yusuf and Al Barakaat International Foundation v the Council of the European Union and Commission of the European Communities

(Case C-415/05 P)

(2006/C 48/23)

(Language of the case: Swedish)

An appeal against the judgment of the Court of First Instance (Second Chamber (Extended Composition)) of 21 September 2005 in Case T-306/01 Ahmed Yusuf and Al Barakaat International Foundation v the Council of the European Union and Commission of the European Communities was brought before the Court of Justice of the European Communities on 23 November 2005 by Ahmed Yusuf and Al Barakaat International Foundation, Spånga (Sweden), represented by Leif Silbersky and Thomas Olsson, lawyers.

The appellants claim that the Court should:

1. set aside the judgment of the Court of First Instance of 21 September 2005 in Case T-306/01,

2. annul Regulation (EC) No 881/2002,

3. order the Council of the European Union and the Commission of the European Communities to pay the costs of the actions before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The applicants submit that the Court of First Instance erred in finding that the Council was competent to adopt Regulation (EC) No 881/2002 on the basis of Articles 60 EC, 301 EC and 308 EC. In addition, they submit as follows:

The Court of First Instance erred in finding that Regulation (EC) No 881/2002 fulfils the requirement under Article 249 EC that it be of general application.

The Court of First Instance wrongly limited its assessment of whether the applicants' fundamental rights had been infringed by Regulation (EC) No 881/2002 merely to considering the question whether the Security Council resolution is compatible with the superior rules of international law falling within the ambit of jus cogens. The Court of First Instance has not assessed whether the regulation was valid in accordance with Community law or whether the Security Council resolution was implemented pursuant to Community law and national laws.

The Court of First Instance erred in finding that neither the applicants' rights of defence nor right to an effective legal remedy were infringed by Regulation (EC) No 881/2002.

Appeal brought on 25 November 2005 by Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristobal Gallego Martínez, Benito García Burgos and Antonio Parras Rosa against the judgment of the Court of First Instance (Third Chamber) of 8 September 2005 in Joined Cases T-295/04 to T-297/04: Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristobal Gallego Martínez, Benito García Burgos and Antonio Parras Rosa v Council of the European Union

(Case C-418/05 P)

(2006/C 48/24)

(Language of the case: Spanish)

An appeal against the judgment of the Court of First Instance (Third Chamber) of 8 September 2005 in Joined Cases T-295/04 to T-297/04: Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristobal Gallego Martínez, Benito García Burgos and Antonio Parras Rosa v Council of the European Union was brought before the Court of Justice of the European Communities on 25 November 2005 by Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristobal Gallego Martínez, Benito García Burgos and Antonio Parras Rosa, represented by J.F. Vásquez Medina, lawyer.

The appellants claim that the Court should:

(1) Annul the judgment of the Court of First Instance of 8 September 2005 in its entirety on the ground that it infringes Community law (Article 173 of the EEC Treaty;

(2) Grant in their entirety the forms of order sought at first instance relating to the merits of the case in order to comply with Community law;

(3) Order the respondent to pay the costs.

Pleas in law and main arguments

— Infringement of Article 173 of the EEC Treaty

The appellants claim to have *locus standi* to bring appeals since they are clearly and entirely different from other olive oil producers by reason of the particular legal situation which affects them.

All the appellants are owners of olive groves planted in 1998, and all had an olive production of 0 Kg of olives in the 1999 marketing year. Those circumstances are particular to them and distinguish them from the rest of the olive sector.

Appeal brought on 28 November 2005 by Ricosmos B.V. against the judgment delivered by the Court of First Instance of the European Communities (First Chamber) on 13 September 2005 in Case T-53/02 Ricosmos v Commission of the European Communities

(Case C-420/05 P)

(2006/C 48/25)

(Language of the case: Dutch)

An appeal was brought before the Court of Justice of the European Communities on 28 November 2005 by Ricosmos B.V., represented by J.J.M. Hertoghs and J.H. Peek, of the law firm Hertoghs Advocaten-Belastingkundigen, Parkstraat 8, (4818 SK) Breda, Netherlands, against the judgment of the Court of First Instance of the European Communities (First Chamber) of 13 September 2005 in Case T-53/02 *Ricosmos B.V.* v *Commission of the European Communities*.

The appellant claims that the Court should:

— declare the present appeal to be admissible and well founded;

— set aside the judgment delivered by the Court of First Instance on 13 September 2005;

— grant the application made at first instance for the annulment of Commission Decision REM 09/00 of 16 November 2001 stating that remission of import duties in favour of the present appellant was not justified;

— alternatively, remit the case to the Court of First Instance for further consideration;

— order the Commission to pay the costs of the present proceedings and of those at first instance.

Pleas in law and main arguments

In support of its appeal against the aforementioned judgment, the appellant makes the following submissions:

1. The appellant takes the view that the Court of First Instance proceeded on the basis of an incorrect, or at any rate unduly restricted, interpretation of, in particular, Articles 905 to 909 of the regulation implementing the Community Customs Code [1] with regard to the procedure for the repayment and/or remission of customs duties. The principle of legal certainty requires that the legal situation of Ricosmos should have been foreseeable in this particular case. Ricosmos takes the view that, because of suspensions of the proceedings of which it was not informed, that was not the case here. The Court of First Instance also proceeded incorrectly on the basis of an overly restricted view of the rights of the defence, reflected in its excessively circumscribed interpretation of the right to timeous and full access to the case files (both that of the national customs authorities and that of the Commission):

2. The appellant considers that the decision of the Court of First Instance is also at variance with Community law. It takes the view that the principle of legal certainty also implies that the criteria for determining that there was no obvious negligence must be clear and readily identifiable. It is precisely because of the considerable flexibility of the term 'obvious negligence' that those criteria ought in principle to be construed restrictively and individually. The negligence must be evident and essential and must also be in a clear causal relationship with the special situation which has been established. In this case, the Court of First Instance wrongly attached in this regard no, or not enough, weight to the complexity of the legislation and to the significant professional experience of the appellant, and also misconstrued a number of obligations on the appellant, or at any rate appraised them in an overly formalistic manner;

3. The appellant is also of the view that the Commission infringed the principle of proportionality and that the Court of First Instance also attached no, or at any rate insufficient, weight to new facts which suggested that the customs duties charged ought to have been cancelled;

4. In conclusion, the appellant expresses the view that the establishment by the Court of First Instance of the facts underlying the dispute was in part erroneous or in any event incomplete.

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[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Action brought on 28 November 2005 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-422/05)

(2006/C 48/26)

(Language of the case: French)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 28 November 2005 by the Commission of the European Communities, represented by Frank Benyon and Mikko Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. Declare that, by adopting the Royal Decree of 14 April 2002 regulating night flights of certain types of civil subsonic jet aircraft, the Kingdom of Belgium has failed to fulfil its obligations under Directive 2002/30/EC [1] and under the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC;

2. Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Decree specifies certain types of aircraft which cannot operate in Belgian airports between 11 pm and 6 am. As it is based on the by-pass ratio, the Royal Decree takes a different approach to that of Directive 2002/30/EC, which is based on a certification procedure. This approach corresponds to that taken in Regulation (EC) No 925/1999, which was repealed by Directive 2002/30/EC.

According to Article 16 of Directive 2002/30/EC, which entered into force on 28 March 2002, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 28 September 2003 at the latest. The Royal Decree was adopted before the deadline for transposition of the Directive. The Commission cites the case-law of the Court of Justice according to which it follows from Articles 10 EC and 249 EC in conjunction with a directive itself that, during the period allowed for transposition, Member States must refrain from taking any measures liable seriously to compromise the result prescribed by the directive in question in question. By taking an approach involving operating restrictions aimed at the withdrawal of recertified civil subsonic jet aircrafts, which is completely different from that taken by the Directive, the Royal Decree seriously compromises the result prescribed by the Directive.

([1]) OJ L 85, 28.3.2002, p. 40.

Action brought on 29 November 2005 by the Commission of the European Communities against the French Republic

(Case C-423/05)

(2006/C 48/27)

(Language of the case: French)

An action against the French Republic was brought before the Court of Justice of the European Communities on 29 November 2005 by the Commission of the European Communities, represented by A. Caerios and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by failing to take all necessary measures:

   — to ensure that waste is recovered or disposed of without endangering human health or the environment and to prohibit the abandonment, dumping or uncontrolled disposal of waste;

   — to ensure that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out disposal or recovery operations, or recovers or disposes of it himself, in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste; ([1])

   — to ensure that establishments and undertakings which carry out disposal operate with a permit issued by the competent authorities;

   — to ensure in relation to landfill sites which had been granted a permit or were already in operation when Council Directive 99/31/EC of 26 April 1999 on the landfill of waste ([2]) was to be transposed into national law, namely on 16 July 2001, that landfill operators prepared and presented to the competent authorities, for their approval, prior to 16 July 2002 a conditioning plan for the site, including particulars relating to the conditions of the permit and any corrective measures the operator considered would be needed, and that, following the presentation of conditioning plans, the competent authorities take a definite decision on whether operations may continue, taking all necessary measures to close down as soon as possible sites which have not been granted a permit to continue to operate or authorising the necessary work and laying down a transitional period for the completion of the plan,

   the French Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442/EEC, as amended by Directive 91/156/EEC, ([3]) and Article 14(a), (b) and (c) of Directive 99/31/EC.

2. order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that, by permitting a very large number of unlawful and unsupervised landfill sites to operate in France, and by failing to take all necessary measures to ensure that waste is disposed of without endangering human health and harming the environment, the French Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Council Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC. The French authorities do not dispute that they have breached these obligations; they do dispute, however, the number of unlawful landfill sites indicated by the Commission and claim that their impact on the environment is slight since the unauthorised landfill sites take only green waste, rubble and bulky waste.

The French authorities did not provide adequate information for it to be possible to assess whether its permit system complies with the requirements of Article 9 of Directive 75/442/EEC: no permit is required for tips covering an area of less than 100 m^2 with a height of less than 2m or for the recovery of waste on such tips. The French authorities' interpretation that only landfill sites operated by municipal authorities without a permit are unlawful sites is incorrect since an individual may also operate a landfill site without a permit.

On the basis of the information provided to it, the Commission can only assume that, contrary to the requirements under Article 14 of Directive 99/31/EC, establishments and undertakings carrying out waste disposal operations without being subject to a permit did not, prior to 16 July 2002, prepare or present to the competent authorities, for their approval, a conditioning plan for each unlawful or unsupervised landfill site. Any landfill site that cannot be adapted to the requirements of that directive must be closed down immediately. Operating an unlawful landfill without a conditioning plan and without a permit constitutes an infringement of Article 14 of Directive 99/31/EC.

(1) OJ L 194, of 25.07.1975, p. 39.
(2) OJ L 182, of 16.07.1999, p. 1.
(3) OJ L 78, of 26.03.1991, p. 32.

Action brought on 29 November 2005 by the Commission against Ireland

(Case C-425/05)

(2006/C 48/28)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 29.11.2005 by the Commission, represented by Mr. Ulrich Wölker and Mr. Michael Shotter, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to provide the information on methyl bromide referred to in Article 4(2)(iii), the information on halons referred to in Articles 4(4)(iv) and 5(3) and the information on the schedules and results of random checks on the import of controlled substances referred to in Article 20(3) of Regulation (EC) No 2037/2000 (1) of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer, Ireland has failed to fulfil its obligations under Articles 4(2)(iii), 4(4)(iv), 5(3) and 20(3) of the Regualtion;

2. order Ireland to pay the costs.

Pleas in law and main arguments

Articles 4(2)(iii), 4(4)(iv), 5(3) and 20(3) of the Regulation provide for the submission of information to the Commission in relation to the main issues covered by the Regulation. The communication of this information — i.e. annual information concerning methyl bromide and halons, together with information on the schedules and results of random checks on imports of controlled substances — is essential for the achievement of the objectives set by the Regulation and for the implementation of the engagements taken by the European Community according to the Vienna Convention for the Protection of the Ozone Layer and the obligations arising from the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the Community is party after Council Decision 88/540/EEC (2).

To date Ireland has not communicated to the Commission the requisite information pursuant to the aforementioned articles of the Regulation.

(1) Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer. OJ L 244 , 29.09.2000, p. 1-24.
(2) OJ L 297, 31.10.1998, p. 8

Appeal brought on 7 December 2005 by Land Oberösterreich against the judgment delivered on 5 October 2005 by the Court of First Instance of the European Communities (Fourth Chamber) in Joined Cases T-366/03 and T-235/04

(Case C-439/05 P)

(2006/C 48/29)

(Language of the case: German)

An appeal against the judgment delivered on 5 October 2005 by the Court of First Instance of the European Communities (Fourth Chamber) in Joined Cases T-366/03 and T-235/04 was brought before the Court of Justice of the European Communities on 7 December 2005 by Land Oberösterreich (the Land of Upper Austria), represented by Franz Mittendorfer, Rechtsanwalt, established in Europaplatz 7, A-4020 Linz.

The appellant claims that the Court should:

— Set aside the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 5 October 2005 in Joined Cases T-366/03 and T-235/04 between Land Oberösterreich and Republic of Austria, as applicant, against the Commission of the European Communities, as defendant, (1) due to a declaration of invalidity of Commission Decision 2003/653/EC of 2 September 2003 relating to national provisions on banning the use of genetically modified organisms in the region of Upper Austria notified by the Republic of Austria pursuant to Article 95(5) of the EC Treaty; (2)

— Declare that Commission decision invalid, or in the alternative, refer the case back to the Court of First Instance for judgment;

— Order the Commission to bear the costs of the appeal.

Pleas in law and main arguments

Land Oberösterreich pleads that the Court of First Instance both infringed Community law and committed a procedural irregularity.

In relation to the examination of the plea in law alleging 'infringement of the Treaty' the contested judgment dealt only with the factual elements relating to the 'specific problem'; the remaining factual elements of Article 95(5) EC were not examined at all. However, the Court of First Instance also did not — in spite of extensive submissions made by the appellant which were supported by concrete figures — deal with the question of the specific problem in the detailed manner deserved given its importance to the outcome of the case. The Court of First Instance failed to take into account the fact that the specific problem in the unenforceability of traditional co-existence measures exists as a result of the distinctive small-scale structure of agriculture in Oberösterreich which has an unusually high proportion of biologically farmed areas. Failure to carry out an adequate assessment with the relevant information supplied constitutes, in the appellant's opinion, an infringement of the Court of First Instance's duty to give the reasons upon which its judgments are based, which in turn amounts to a procedural irregularity.

The Commission adopted its decision without giving Land Oberösterreich or the Republic of Austria the opportunity to comment on the single item of procedural evidence, namely the opinion of the European Food Safety Authority. In the contested judgment the Court of First Instance concluded that the Court of Justice's considerations in relation to Article 95(4) EC, by which it denied the validity of the basic principle of the adversarial procedure for the procedure under Article 95(4) EC, are simply transferable to the procedure under Article 95(5) EC. The appellant disagrees with that view of the law. The fact must not be overlooked that the judgments of the Court of Justice cited in the contested judgment were made on the basis of Article 100a of the EC Treaty, which was then in force and which did not yet differentiate between the retention of existing, and the introduction of new, provisions of the Member States. Land Oberösterreich also claims that the right to be heard is a fundamental principle of legal procedure the validity of which should not be restricted unnecessarily, even on grounds of procedural economy. The contested Commission decision ought to have been annulled for that reason alone.

([1]) OJ 2005 C 296 of 26.11.2005.
([2]) OJ 2003 L 230, p. 34.

Reference for a preliminary ruling from the Tribunal de Première Instance de Bruxelles by judgment of that court of 7 December 2005 in Crown Prosecutor — Parties claiming damages: L'Union des Dentistes et Stomatologistes de Belgique U.P:R. and Jean Totolidis v Ioannis Doulamis

(Case C-446/05)

(2006/C 48/30)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Première Instance de Bruxelles (Court of First Instance Brussels) of 7 December 2005, received at the Court Registry on 14 December 2005, for a preliminary ruling in the proceedings between the Crown Prosecutor — Parties claiming damages: L'Union des Dentistes et Stomatologistes de Belgique U.P.R. (The Belgian Association of Dentists and Stomatologists) and Jean Totolidis and Ioannis Doulamis on the following question:

Must Article 81 EC, read in conjunction with Article 3(1)(g) EC and the second paragraph of Article 10 EC, be interpreted as precluding a national law — in the present case the Law of 15 April 1958 on advertising in dental care matters — which prohibits (any person or) dental care providers, in the context of professional services or a dental surgery, from engaging in advertising of any kind, whether directly or indirectly, in the dental care sector?

Reference for a preliminary ruling from the Cour d'appel de Paris by judgment of that court of 18 November 2005 in Thomson Multimedia Sales Europe SA v Administration des Douanes et Droits Indirects

(Case C-447/05)

(2006/C 48/31)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Paris (Paris Court of Appeal) of 18 November 2005, received at the Court Registry on 16 December 2005, for a preliminary ruling in the proceedings between Thomson Multimedia Sales Europe SA and Administration des Douanes et Droits Indirects on the following question:

'Is Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 ([1]) invalid as being contrary to Article 24 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]) in that it has the result that a television receiver manufactured in Poland in the circumstances described in the proceedings is held to be of Korean origin?'

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).

([2]) OJ L 302, p. 1.

Reference for a preliminary ruling from the Cour d'appel de Paris by judgment of that court of 18 November 2005 in Vestel France SA v Administration des Douanes et Droits Indirects

(Case C-448/05)

(2006/C 48/32)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Paris (Paris Court of Appeal) of 18 November 2005, received at the Court Registry on 16 December 2005, for a preliminary ruling in the proceedings between Vestel France SA and Administration des Douanes et Droits Indirects on the following question:

'Is Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 ([1]) invalid as being contrary to Article 24 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]) in that it has the result that a television receiver manufactured in Turkey in the circumstances described in the proceedings is held to be of Chinese origin?'

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).

([2]) OJ L 302, p. 1.

Action brought on 19 December 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-452/05)

(2006/C 48/33)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 19 December 2005 by the Commission of the European Communities, represented by S. Pardo Quintillán and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, as it is not able to ensure that the minimum percentage of reduction of the overall load entering all treatment plants is at least 75 % for total phosphorus and at least 75 % for total nitrogen, the Grand Duchy of Luxembourg has failed to fulfil its obligations by reason of a misapplication of Article 5(4) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ([1]);

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

Luxembourg stated in 1999 that, instead of applying more stringent treatment to all the treatment plants within its territory, it was choosing to rely on Article 5(4), which amounts to making an overall assessment of the level of reduction in nitrogen and phosphorus as regards all the agglomerations in Luxembourg.

However, according to the most recent information received from Luxembourg concerning the overall percentage of reduction of the load entering all treatment plants, the conditions for application of Article 5(4) have not been fulfilled.

Therefore, the Commission is obliged to conclude that the Luxembourg authorities have failed to establish that the minimum percentage of reduction of the overall load of nitrogen and phosphorus is at least 75 % as regards each of the two parameters; consequently, the conditions for application of Article 5(4) have not been satisfied.

([1]) OJ 1991 L 135, p. 40.

Action brought on 23 December 2005 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-459/05)

(2006/C 48/34)

(Language of the case: French)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 23 December 2005 by the Commission of the European Communities, represented by H. Stovlbaek and D. Maidani, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by failing to bring into force all the laws, regulations and administrative provisions necessary to comply with Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor [1], or, in any event, by failing to notify the Commission of such measures, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2. order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

Article 16(1) of Directive 2001/19 provides that Member States are to bring into force the provisions necessary to comply with that directive no later than 1 January 2003 and forthwith inform the Commission thereof.

The Commission observes that the Kingdom of Belgium has still not taken the measures necessary for that purpose or, in any event, has failed to notify the Commission of such measures.

[1] OJ 2001 L 206, p. 1.

Action brought on 23 December 2005 by the Commission of the European Communities against the Kingdom of Denmark

(Case C-461/05)

(2006/C 48/35)

(Language of the case: Danish)

An action against the Kingdom of Denmark was brought before the Court of Justice of the European Communities on 23 December 2005 by the Commission of the European Communities, represented by G. Wilms and H.C. Støvlbæk, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by refusing to calculate and pay own resources which were not collected by reason of the duty-free importation of military equipment, and by refusing to pay default interest on the own resources which Denmark failed to make available to the Commission, the Kingdom of Denmark has failed to fulfil its obligations under Articles 2, 9, 10 and 11 of Regulation No 1552/89 for the period up to 31 May 2000 and under those articles of Regulation No 1150/2000 in respect of the period after that date;

2. order the defendant to pay the costs.

Pleas in law and main arguments

The Commission takes the view that Denmark has failed to fulfil its obligations under Articles 2, 9, 10 and 11 of Regulation (EEC, Euratom) No 1552/89 up to and including 31 May 2000 and under Articles 2, 9, 10 and 11 of Regulation (EC, Euratom) No 1150/2000 from 1 June 2000 to 31 December 2002 by reason of its failure to pay own resources in respect of the importation of military equipment.

This breach of the Treaty continued until Regulation (EC) No 150/2003 entered into force, that is to say, until 1 January 2003. Under that regulation duty on imports of certain types of military equipment may, subject to specified conditions, be suspended from that date.

In the Commission's view, a Member State which has set aside the Community-law rules on duty, resulting in a loss of own resources, is under an obligation to pay to the Community an amount corresponding to that loss. Default interest may also have to be added to that amount pursuant to Article 11 of Regulation (EEC, Euratom) No 1552/89 and Regulation (EC, Euratom) No 1150/2000.

The Danish authorities ought, under Articles 2, 9, 10 and 11 of Regulation (EEC, Euratom) No 1552/89 and Regulation (EC, Euratom) No 1150/2000, to have calculated and entered in their accounts the amounts relating to the imports in question within the prescribed period, in accordance with Article 217(1) of the Community Customs Code, and made those amounts available to the Commission.

The Commission finds that Denmark, although requested to do so, failed to carry out the calculations necessary to establish those amounts, which were not paid as own resources to the Community by reason of the Treaty infringement in question dating from the 1998 accounting year.

The Commission also finds that the amounts corresponding to the customs debt in question were not made available to the Commission before 31 March 2002.

The Commission accordingly finds that, by not establishing its own resources in respect of imports of military equipment and making those resources available to the Commission, Denmark has failed to fulfil its obligations under Articles 2, 9, 10 and 11 of Regulation (EEC, Euratom) No 1552/89 and of Regulation (EC, Euratom) No 1150/2000.

Action brought on 22 December 2005 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-463/05)

(2006/C 48/36)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 22 December 2005 by the Commission of the European Communities, represented by Dominique Maidani and Wouter Wils, acting as Agents.

The Commission claims that the Court should:

1. declare that, by not adopting the laws, regulations and administrative provisions necessary to give effect to Directive 2002/47/EC [1] of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, or in any event by not informing the Commission of those measures, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

2. order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

Article 11 of Directive 2002/47 imposed an obligation on Member States to bring into force the provisions necessary to comply with that directive by 27 December 2003 at the latest and immediately to inform the Commission of those provisions.

The Commission finds that the Kingdom of the Netherlands has not yet adopted those measures or in any event has not notified it of them.

[1] OJ 2002 L 168, p. 43.

Appeal brought on 4 January 2006 by Groupe Danone against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 25 October 2005 in Case T-38/02: Groupe Danone v Commission of the European Communities

(Case C-3/06 P)

(2006/C 48/37)

(Language of the case: French)

An appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 25 October 2005 in Case T-38/02 *Groupe Danone* v *Commission of the European Communities* was brought before the Court of Justice of the European Communities on 4 January 2006 by Groupe Danone, represented by A. Winckler and S. Sorinas, avocats.

The appellant claims that the Court should:

— set aside in part, on the basis of Article 225(1) EC and Article 61 of the Statute, the judgment given by the Court of First Instance on 25 October 2005 in Case T-38/02 *Groupe Danone* v *Commission of the European Communities* in so far as (i) it dismisses the plea that there was no basis for taking into account the applicant's repeated infringement as an aggravating circumstance and (ii) it varies the method of calculation used by the Commission for the fine imposed;

— grant the forms of order sought by Groupe Danone at first instance in relation to the plea that there was no basis for taking into account the applicant's repeated infringement as an aggravating circumstance and, consequently, on the basis of Article 229 EC and Article 17 of Regulation No 17 [1], reduce the fine imposed by the Commission;

— reduce, on the basis of Article 229 EC and Article 17 of Regulation No 17, the amount of the fine pro rata to the decrease in the reduction for attenuating circumstances decided on by the Court of First Instance;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the present appeal, the appellant raises five pleas to have the judgment under appeal set aside in part. Those pleas are based, firstly, on an incorrect interpretation by the Court of First Instance of the concept of 'repeated infringement' and, secondly, on the manifest unlawfulness of the amendment of the method of calculation of the fine which led to a decrease in the reduction of the fine granted for attenuating circumstances and, accordingly, an increase in the amount of the fine by comparison with that which would have been applicable had the Court of First Instance reduced the increase for aggravating circumstances from 50 % to 40 % without amending the method of calculation of the fine used by the Commission.

In support of its arguments in relation to the incorrect interpretation of the concept of repeated infringement, the appellant relies on three separate pleas.

— By the first plea, the appellant maintains that the Court of First Instance failed to take account of the principle that offences and penalties must be defined by law and its corollary, the principle of non-retroactivity of more severe criminal laws, by confirming the increase in the appellant's fine for the aggravating circumstance of repeated infringement, in the absence of a clear and sufficiently foreseeable legal basis.

— By its second plea, the appellant maintains that the Court of First Instance incorrectly applied the principle of legal certainty by refusing to limit in time the application of repeated infringement, contrary to the case-law of the Court of Justice.

— Finally, by its third plea, the appellant maintains that the judgment is vitiated by a contradiction in the grounds amounting to a defect in the statement of grounds in relation to the assessment of the link between repeated infringement and the need to ensure that fines be sufficiently deterrent.

The appellant raises two further pleas in support of its argument in relation to the manifestly unlawful nature of the increase in the amount of the fine decided on by the Court of First Instance following the change in the weighting applied for extenuating circumstances. The main plea relates to misuse of power, lack of jurisdiction and infringement of Articles 229 EC and 230 EC on the part of the Court of First Instance. That plea is divided into two parts.

— The first part is based on the fact that the Court of First Instance failed to observe the limits of its jurisdiction under Articles 229 EC and 230 EC by varying the Commission's decision in relation to the method of calculation of the fine.

— In the second part, the appellant complains that the Court of First Instance ruled *ultra petita* in amending the percentage reduction applied for attenuating circumstances and, consequently, increasing the amount of the fine imposed on the appellant.

In the alternative, the appellant puts forward a second plea based on infringement of the rights of the defence and the principle of non-retroactivity of penalties. By failing to allow discussion on its intention to amend the method of calculation of the fine and increase the amount of the fine, the Court of First Instance acted in breach of a fundamental principle of Community law with a real impact on the ability of the appellant to defend itself. The Court of First Instance also retroactively applied to the 'Belgian Beer' decision of 2001 case-law dating from 2003, clarifying the method of applying the weighting for attenuating circumstances in the method of calculation of the fine.

([1]) Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-62, p. 87).

Appeal brought on 4 January 2006 by J. Ouariachi against the order of the Court of First Instance (Fifth Chamber) of 26 October 2005 in Case T-124/04: J. Ouariachi v Commission of the European Communities

(Case C-4/06 P)

(2006/C 48/38)

(Language of the case: French)

An appeal against the order of the Court of First Instance (Fifth Chamber) of 26 October 2005 in Case T-124/04 *J. Ouariachi* v *Commission of the European Communities* was brought before the Court of Justice of the European Communities on 4 January 2006 by J. Ouariachi, Rabat (Morocco), represented by L. Dupong, avocat.

The appellant claims that the Court should:

— annul the contested decision and, in so doing:

  — order all measures of inquiry necessary to establish the falsification by Mr Louis Charles of certain documents, his general conduct in connection with the abduction of the appellant's children and the connection between the falsification and the issue of visas to the appellant's children by the Sudanese authorities which made their abduction possible, including;

  — Mr Louis Charles' personal appearance before the Court;

— a request that information be provided by the European Union Delegation in Khartoum;

— a request for production of the file lodged by Mrs Ronda with the Sudanese Consulate in Rabat in order to obtain a visa for herself and her children;

— all other measures necessary to establish the facts;

— declare that the application is admissible and well-founded;

— order the respondent to pay the appellant a total lump sum indemnity of EUR 100 000 by way of compensation for the damage suffered by him;

— order the respondent to pay all the costs.

Pleas in law and main arguments

The appellant, who has dual Spanish and Moroccan nationality, seeks compensation for damage (assessed at EUR 100 000) caused by Mr. L. Charles, former expert with the European Union Delegation in Khartoum (Sudan), as a result of unlawful acts committed in the performance of his duties and, especially, the production of false documents: a false official invitation from the European Union Delegation in Khartoum enabling the appellant's ex-wife and children to be issued with a visa by the Sudanese Consulate in Rabat (Morocco), which was instrumental in the international abduction of the appellant's children.

The appellant considers that the Court of First Instance was wrong in declaring his claim for compensation inadmissible without first ordering that measures of inquiry be taken and without clarifying:

— the wrongful nature of Mr. Charles' conduct, and

— the direct link between that wrongful conduct and the fact that the Sudanese authorities were deceived into issuing a visa to children without the authority of their father (the appellant).

Action brought on 11 January 2006 by the Commission of the European Communities against the Hellenic Republic

(Case C-13/06)

(2006/C 48/39)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 11 January 2006 by the Commission of the European Communities, represented by Dimitris Triantafillou, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by imposing VAT on services which consist in the provision of a vehicle-breakdown service, the Hellenic Republic has failed to fulfil its obligations under Article 13B(a) of the Sixth Directive; ([1])
2. order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that although the Greek body ELPA (Elliniki Leskhi Aftokinitou kai Periigiseon; Automobile & Touring Club of Greece) which provides roadside assistance is not subject to the insurance directives, it engages in insurance activity for the purposes of Article 13B(a) of the Sixth VAT Directive.

The Commission relies on the other language versions of the directive and also:

— the principle of neutrality of VAT, which requires the same activity to be taxed in the same way, irrespective of the person carrying it out;

— the fact that in case-law the term 'insurance' (Case C-349/96 *CPP*) is construed as covering vehicle-breakdown services;

— the independence of the tax provisions vis-à-vis other Community provisions (insurance directives);

— the fact that roadside assistance by insurers is subject to the Insurance Directive 73/239 (as amended by Directive 84/641).

([1]) OJ No L 145, 13.6.1977, p.1.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 14 December 2005 — FIAMM and FIAMM Technologies v Council and Commission

(Case T-69/00) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct of its institutions — Causal link — Unusual and special damage)

(2006/C 48/40)

Language of the case: Italian

Parties

Applicants: Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM) (Montecccchio Maggiore, Italy) and Fabbrica italiana accumulatori motocarri Montecchio Technologies, Inc. (FIAMM Technologies) (East Haven, Delaware, United States) (represented by I. Van Bael, A. Cevese and F. Di Gianni, lawyers)

Defendants: Council of the European Union (represented by G. Maganza, J. Huber, F. Ruggeri Laderchi and S. Marquardt, acting as Agents) and Commission of the European Communities (represented initially by P. Kuijper, L. Gussetti, V. Di Bucci, C. Brown and E. Righini, and subsequently by P. Kuijper, L. Gussetti, V. Di Bucci and E. Righini, acting as Agents)

Intervener in support of the defendants: Kingdom of Spain (represented initially by R. Silva de Lapuerta, and subsequently by E. Braquehais Conesa, acting as Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on imports of the applicants' stationary batteries, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicants to bear, in addition to their own costs, the costs incurred by the Council and the Commission;*

3) *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 135 of 13.5.2000.

Judgment of the Court of First Instance of 14 December 2005 —Laboratoire du Bain v Council and Commission

(Case T-151/00) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct of its institutions — Causal link — Unusual and special damage)

(2006/C 48/41)

Language of the case: French

Parties

Applicant: Le Laboratoire du Bain (Nontron, France) (represented by C. Lazarus, F. Prunet and L. Van den Hende, lawyers)

Defendants: Council of the European Union (represented by J. Huber and F. Ruggeri Laderchi, acting as Agents) and Commission of the European Communities (represented initially by L. Gussetti, V. Di Bucci, C. Brown, E. Righini and M. de Pauw, and subsequently by P. Kuijper, L. Gussetti, V. Di Bucci, C. Brown and E. Righini, acting as Agents)

Intervener in support of the defendants: Kingdom of Spain (represented initially by R. Silva de Lapuerta, and subsequently by E. Braquehais Conesa, acting as Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on imports of the applicant's effervescent bath products, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicant to bear, in addition to its own costs, the costs incurred by the Council and the Commission;*

3) *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 247 of 26.8.2000.

Judgment of the Court of First Instance of 8 December 2005 — Patrick Reynolds v European Parliament

(Case T-237/00) ([1])

(Officials — Secondment in the interests of the service — Article 38 of the Staff Regulations — Political group — Early termination of secondment — Rights of the defence — Obligation to state reasons — Legitimate expectation — Duty to have regard to the welfare of officials — Misuse of powers — Action for annulment — Action for damages — Setting aside in part of a judgment of the Court of First Instance — Res judicata)

(2006/C 48/42)

Language of the case: French

Parties

Applicant: Patrick Reynolds (Brussels (Belgium)) (represented by: P. Legros and S. Rodrigues, avocats)

Defendant: European Parliament (represented by: H. von Hertzen and D. Moore, acting as Agents)

Application for

first, annulment of the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the political group 'Europe of Democracies and Diversities' and reinstating him in the Directorate-General for Information and Public relations and, second, compensation for the harm sustained by the applicant owing to the adoption of that decision by the defendant and to the actions of the political group and of certain of its members

Operative part of the judgment

The Court:

1) *Annuls the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the EDD political group and reinstating him in the Directorate-General for Information and Public Relations in so far as that decision is applicable between 15 July 2000 and 24 July 2000;*

2) *Orders the Parliament to pay the applicant a sum corresponding to the difference between the remuneration which he should have received as an official in Grade A 2, Step 1, and that which he received following his reinstatement in Grade LA 5, Step 3, for the period 15 to 24 July 2000, plus default interest at the rate of 5.25 % per annum from the date on which the amounts making up that sum were payable until such date as payment is actually made. The rate of interest to be applied is calculated on the basis of the rate set by the European Central Bank for main refinancing operations applicable during the period concerned, plus two percentage points;*

3) *Declares the action for compensation inadmissible in so far as it relates to reparation for the harm caused by conduct not entailing a decision on the part of the EDD Group and of certain of its members;*

4) *Dismisses the remainder of the application;*

5) *Orders the parties to bear their own costs pertaining to all the proceedings referred to in paragraph 213 above.*

([1]) OJ C302 of 21. 10. 2000.

Judgment of the Court of First Instance of 14 December 2005 — Groupe Fremaux and Palais Royal v Council and Commission

(Case T-301/00) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct of its institutions — Causal link — Unusual and special damage)

(2006/C 48/43)

Language of the case: French

Parties

Applicants: Groupe Fremaux SA (Paris, France) and Palais Royal Inc. (Charlottesville, Virginia, United States) (represented by C. Lazarus, F. Prunet and L. Van den Hende, lawyers)

Defendants: Council of the European Union (represented by J. Huber, F. Ruggeri Laderchi and S. Marquardt, acting as Agents) and Commission of the European Communities (represented initially by E. Righini, L. Gussetti and M. de Pauw, and subsequently by P. Kuijper, V. Di Bucci, C. Brown and E. Righini, acting as Agents)

Intervener in support of the defendants: Kingdom of Spain (represented initially by R. Silva de Lapuerta, and subsequently by E. Braquehais Conesa, acting as Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on imports of the applicants' cotton bed linen, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicants to bear, in addition to their own costs, the costs incurred by the Council and the Commission;*

3) *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 355 of 9.12.2000.

Judgment of the Court of First Instance of 14 December 2005 — CD Cartondruck v Council and Commission

(Case T-320/00) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct of its institutions — Causal link — Unusual and special damage)

(2006/C 48/44)

Language of the case: German

Parties

Applicant: CD Cartondruck AG (Obersulm, Germany) (represented initially by H.-J. Niemeyer and W. Berg, and subsequently by W. Berg, lawyers)

Defendants: Council of the European Union (represented by J. Huber and S. Marquardt, acting as Agents) and Commission of the European Communities (represented initially by S. Jansen and B. Fries, and subsequently by P. Kuijper and S. Fries, acting as Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on imports of the applicant's folding boxes made of printed paperboard, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicant to bear, in addition to its own costs, the costs incurred by the Council and the Commission.*

([1]) OJ C 355 of 9.12.2000.

Judgment of the Court of First Instance of 14 December 2005 — Beamglow v Parliament and Others

(Case T-383/00) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct of its institutions — Causal link — Unusual and special damage)

(2006/C 48/45)

Language of the case: English

Parties

Applicant: Beamglow Ltd (St Ives, Cambridgeshire (United Kingdom)) (represented by: D. Waelbroeck, lawyer)

Defendants: European Parliament (represented by R. Passos and K. Bradley, acting as Agents), Council of the European Union (represented by S. Marquardt and M. Bishop, acting as Agents) and Commission of the European Communities (represented by P. Kuijper, C. Brown and E. Righini, acting as Agents)

Intervener in support of the defendants: Kingdom of Spain (represented initially by R. Silva de Lapuerta, and subsequently by E. Braquehais Conesa, acting as Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on imports of the applicant's boxes made of printed and decorated paperboard, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1) *Dismisses the action as inadmissible in so far as it is brought against the Parliament;*

2) *Dismisses the remainder of the action as unfounded;*

3) *Orders the applicant to bear, in addition to its own costs, the costs incurred by the Parliament, the Council and the Commission;*

4) *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 61 of 24. 2. 2001.

Judgment of the Court of First Instance of 15 December 2005 — Infront WM AG v Commission of the European Communities

(Case T-33/01) ([1])

(Television broadcasting — Directive 89/552/EEC — Directive 97/36/EC — Article 3a — Events of major importance for society — Admissibility — Infringement of essential procedural requirements)

(2006/C 48/46)

Language of the case: English

Parties

Applicant(s): Infront WM AG, formerly KirchMedia WM AG (Zug (Switzerland)) (represented initially by C. Lenz, A. Bardong, lawyers, and E. Batchelor, Solicitor, and subsequently by C. Lenz, E. Batchelor, R. Denton, Solicitors, F. Carlin, Barrister, and M. Clough QC)

Defendant(s): Commission of the European Communities (represented by: K. Banks and M. Huttunen, acting as Agents, and by J. Flynn QC)

Intervener(s) in support of the defendant(s): French Republic, represented by G. de Bergues, acting as Agent, United Kingdom of Great Britain and Northern Ireland, represented initially by J. Collins and subsequently by R. Caudwell and finally by M. Berthell and by K. Parker QC, European Parliament, represented by C. Pennera and M. Moore, acting as Agents, and Council of the European Union, represented by A. Lopes Sabino and M. Bishop, acting as Agents,

Application for

annulment of the alleged decision of the Commission adopted under Article 3a of Council Directive 89/552/EEC 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 (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60),

Operative part of the judgment

The Court:

1) *annuls the decision of the Commission contained in its letter of 28 July 2000 to the United Kingdom of Great Britain and Northern Ireland;*

2) *dismisses the remainder of the action;*

3) *orders the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Parliament to bear the applicant's costs arising from their interventions;*

4) *orders the Commission to bear its own costs and those of the applicant, apart from those referred to at 3, above;*

5) *orders the interveners to bear their own costs.*

([1]) OJ C 134 of 05. 05. 2001.

Judgment of the Court of First Instance of 14 December 2005 — Fedon & Figli and Others v Council and Commission

(Case T-135/01) ([1])

(Non-contractual liability of the Community — Incompatibility of the Community regime governing the import of bananas with the rules of the World Trade Organisation (WTO) — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports from the Community, pursuant to a WTO authorisation — Decision of the WTO Dispute Settlement Body — Legal effects — Community liability in the absence of unlawful conduct on the part of its institutions — Causal link — Unusual and special damage)

(2006/C 48/47)

Language of the case: Italian

Parties

Applicants: Giorgio Fedon & Figli SpA (Vallesella di Cadore, Italy), Fedon Srl (Pieve d'Alpago, Italy) and Fedon America, Inc. (Wilmington, Delaware, United States) (represented by: I. Van Bael, A. Cevese and F. Di Gianni, lawyers)

Defendants: Council of the European Union (represented by: S. Marquardt and F. Ruggeri Laderchi, Agents) and Commission of the European Communities (initially represented by: P. Kuijper, E. Righini, V. Di Bucci and B. Jansen and then by: P. Kuijper, E. Righini and V. Di Bucci, Agents)

Application for

compensation in respect of the damage allegedly caused by the levying by the United States of America of increased customs duty on the applicants' imports of spectacle cases, as authorised by the Dispute Settlement Body of the World Trade Organisation (WTO), following a finding that the Community regime governing the import of bananas was incompatible with the agreements and understandings annexed to the Agreement establishing the WTO

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicants to bear their own costs and to pay those of the Council and the Commission.*

([1]) OJ C 275, 29.9.2001.

Judgment of the Court of First Instance of 14 December 2005 — Honeywell International Inc. v Commission of the European Communities

(Case T-209/01) ([1])

(Action for annulment — Competition — Commission decision declaring a concentration to be incompatible with the common market — Regulation (EEC) No 4064/89 — Ineffectiveness of a partial challenge to the decision — Aeronautical markets — Action that cannot lead to annulment of the decision)

(2006/C 48/48)

Language of the case: English

Parties

Applicant: Honeywell International Inc. (Morristown, New Jersey (United States)) (represented by: K. Lasok QC and F. Depoortere, lawyer)

Defendant: Commission of the European Communities (represented by: R. Lyal, P. Hellström and F. Siredey-Garnier, acting as Agents)

Interveners in support of the defendant: Rolls-Royce plc (London, United Kingdom, represented by A. Renshaw, Solicitor) and Rockwell Collins, Inc. (Cedar Rapids, Iowa, United States, represented by T. Soames, J. Davies, A. Ryan, Solicitors, and P. Camesasca, lawyer)

Application for

the annulment of Commission Decision 2004/134/EC of 3 July 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case No COMP/M.2220 — General Electric/Honeywell) (OJ 2004 L 48, p. 1)

Operative part of the judgment

The Court:

1) *Dismisses the application;*

2) *Orders the applicant to bear its own costs and to pay those incurred by the Commission and by the interveners.*

([1]) OJ C 331 of 24. 11. 2001.

Judgment of the Court of First Instance of 14 December 2005 — General Electric v Commission

(Case T-210/01) ([1])

(Action for annulment — Competition — Commission decision declaring a concentration to be incompatible with the common market — Regulation (EEC) No 4064/89 — Aeronautical markets — Acquisition of Honeywell by General Electric — Vertical integration — Bundling — Foreclosure — Horizontal overlaps — Rights of the defence)

(2006/C 48/49)

Language of the case: English

Parties

Applicant: General Electric Company (Fairfield, Connecticut (United States)) (represented by: N. Green QC, C. Booth QC, J. Simor, K. Bacon, Barristers, S. Baxter, Solicitor, L. Vogel and J. Vogel, lawyers, and, initially, by M. Van Kerckhove, lawyer, and subsequently by J. O'Leary, Solicitor)

Defendant: Commission of the European Communities (represented by: R. Lyal, P. Hellström and F. Siredey-Garnier, Agents)

Intervener(s) in support of the defendant: Rolls-Royce plc (London (United Kingdom)) (represented by: A. Renshaw, Solicitor) and by Rockwell Collins, Inc. (Cedar Rapids, Iowa (United States)) (represented by: T. Soames, J. Davies and A. Ryan, Solicitors, and P.D. Camesasca, lawyer)

Application for

the annulment of Commission Decision 2004/134/EC of 3 July 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case No COMP/M.2220 — General Electric/Honeywell) (OJ 2004 L 48, p. 1),

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and to pay those incurred by the Commission and by the interveners.*

([1]) OJ C 331, 24.11.2001.

Judgment of the Court of First Instance of 14 December 2005 — Greencore Group plc v Commission of the European Communities

(Case T-135/02) ([1])

(Compliance with a judgment of the Court of First Instance — Reduction of the fine imposed on the applicant — Failure then refusal of the Commission to pay interest on the sum refunded — Action for annulment — Principle of legal certainty)

(2006/C 48/50)

Language of the case: English

Parties

Applicant: Greencore Group plc (Dublin, Ireland) (represented by: A. Böhlke, lawyer)

Defendant: Commission of the European Communities (represented by: initially K. Wiedner, subsequently by P. Oliver and A. Nijenhuis, and finally by A. Nijenhuis and M. Wilderspin, acting as Agents)

Application for

annulment of the decision of 11 February 2002 by which the Commission refused to grant the applicant's request for default interest to be paid to its subsidiary Irish Sugar plc on the principal sum repaid to the latter to comply with a judgment of the Court of First Instance

Operative part of the judgment

The Court:

1) *Annuls the decision of 11 February 2002, by which the Commission refused to grant the applicant's request for default interest to be paid to its subsidiary Irish Sugar plc on the principal sum repaid to the latter to comply with a judgment of the Court of First Instance;*

2) *Orders the Commission to pay the costs, including those relating to the appeal proceedings before the Court of Justice.*

([1]) OJ C 169 of 13. 07. 2002.

Judgment of the Court of First Instance of 13 December 2005 — Cwik v Commission

(Joined Cases T-155/03, T-157/03 and T-331/03) ([1])

(Officials — Staff report — Promotion exercises 1995/1997, 1997/1999 and 1999/2001 — Actions for annulment — Drawing-up successive staff reports at the same time — Procedural irregularities — Lateness — Personal file — Manifest error of assessment — Misuse of powers — Inconsistency of the statement of reasons — Compensation for damage suffered — Material damage — Non-material damage)

(2006/C 48/51)

Language of the case: French

Parties

Applicant: Michael Cwik (Tervuren, Belgium) (represented by: N. Lhoëst and E. de Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and L. Lozano Palacios, Agents)

Application for

Firstly, annulment of the Commission decisions drawing-up the definitive version of the applicant's staff reports for the periods running from 1 July 1995 to 30 June 1997, from 1 July 1997 to 30 June 1999 and from 1 July 1999 to 30 June 2001 and, so far as necessary, the Commission decisions rejecting the applicant's complaints as to those reports, and, secondly, compensation for the material and non-material damage alleged.

Operative part of the judgment

The Court:

1. *Annuls the Commission decisions drawing-up the definitive version of the applicant's staff reports for the periods 1995/1997 and 1997/1999 and the Commission decisions rejecting the applicant's complaints as to those staff reports;*

2. *Orders the Commission to pay the applicant the sum of EUR 2 000 by way of damages;*

3. *Dismisses the remainder of the actions;*

4. *In Cases T-155/03 and T-157/03, orders the Commission to pay the costs;*

5. *In Case T-331/03, orders the Commission to bear its own costs and to pay half the applicant's costs.*

([1]) OJ C 171, 19.7.2003.

Judgment of the Court of First Instance of 8 December 2005 — Castellblanch v OHIM

(Case T-29/04) ([1])

(Community trade mark — Opposition proceedings — Application for a figurative Community trade mark containing the word element 'CRISTAL CASTELLBLANCH' — Earlier national word mark CRISTAL — Genuine use of the earlier mark — Likelihood of confusion — Article 8(1)(b), Article 15(2)(a) and Article 43(2) and (3) of Regulation (EC) No 40/94)

(2006/C 48/52)

Language of the case: English

Parties

Applicant: Castellblanch, SA (Sant Sadurni d'Anoia, Spain) (represented by: F. de Visscher, E. Cornu, É. De Gryse and D. Moreau, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, Agent)

Other party or parties to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Champagne Louis Roederer SA (Reims, France) (represented by: P. Cousin, lawyer)

Action

brought against the decision of the Second Board of Appeal of OHIM of 17 November 2003 (Case R 37/2000-2), relating to opposition proceedings between Castellblanch, SA and Champagne Louis Roederer SA

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicant to pay the costs.*

([1]) OJ C 71 of 20. 03. 2004.

Judgment of the Court of First Instance of 22 December 2005 — Gorostiaga Atxalandabaso v Parliament

(Case T-146/04) ([1])

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Review of use of allowances — Justification of expenses — Recovery of a debt by offsetting)

(2006/C 48/53)

Language of the case: French

Parties

Applicant: Koldo Gorostiaga Atxalandabaso (Saint-Pierre-d'Irube, France) (represented by: D. Rouget, lawyer)

Defendant: European Parliament (represented by H. Krück, C. Karamarcos and D. Moore, Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by its Agent)

Application for

Annulment of the decision of the Secretary-General of the European Parliament of 24 February 2004 concerning the recovery of sums paid to the applicant as parliamentary expenses and allowances

Operative part of the judgment

The Court:

1) *Annuls the decision of the Secretary-General of the European Parliament of 24 February 2004 concerning the recovery of sums paid to the applicant as parliamentary expenses and allowances in so far as it provides that the sum owed by the applicant will be recovered by offsetting.*

2) *Dismisses the remainder of the application.*

3) *Orders the applicant, the Parliament and the Kingdom of Spain to bear their own costs.*

(1) OJ C 168, 26.6.2004.

Judgment of the Court of First Instance of 15 December 2005 — Bauwens v Commission

(Case T-154/04) (1)

(Officials — Career development report — 2001/2002 appraisal exercise — Article 7 of the General Implementing Provisions — Deadline for submission of an application to refer a matter to the Joint Evaluation Committee — Suspension)

(2006/C 48/54)

Language of the case: French

Parties

Applicant: Daniel Bauwens (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and H. Tserepa-Lacombe, Agents)

Application for

Annulment of the counter-signing officer's decision of 15 July 2003 not to refer a matter to the Joint Evaluation Committee in the course of the procedure for the drawing-up of the applicant's career development report under Article 7 of the General Provisions Implementing Article 43 of the Staff Regulations of officials of the European Communities

Operative part of the judgment

The Court:

1. *Annuls the counter-signing officer's decision of 15 July 2003 not to refer the matter to the Joint Evaluation Committee;*

2. *Orders the Commission to pay the costs.*

(1) OJ C 168, 26.6.2004.

Judgment of the Court of First Instance of 14 December 2005 — Arysta Lifescience v OHIM

(Case T-169/04) (1)

(Community trade mark — Opposition proceedings — Application for the Community word mark CARPOVIRUSINE — Former national word mark CARPO — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 48/55)

Language of the case: French

Parties

Applicant: Arysta Lifescience SAS, formally Calliope SAS (Noguères, France) (represented by: S. Legrand, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Pétrequin, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: BASF AG (Ludwigshafen am Rhein, Germany)

Action

brought against the decision of the First Board of Appeal of OHIM of 4 March 2004 (Case R 289/2003-1) relating to the opposition proceedings between Calliope SAS and BASF AG

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

(1) OJ C 179 of 10.7.2004.

Judgment of the Court of First Instance of 8 December 2005 — Merladet v Commission

(Case T-198/04) ([1])

(Officials — Career development report — 2001/2002 appraisal exercise — Proper conduct of the reporting procedure — Action for annulment)

(2006/C 48/56)

Language of the case: French

Parties

Applicant: José Félix Merladet (Overijse, Belgium) (represented by: N. Lhoëst and E. de Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and H. Kraemer, Agents)

Application for

Annulment of the decision adopting the applicant's career development report for the 2001/2002 appraisal exercise

Operative part of the judgment

The Court:

1. *Annuls the decision adopting the applicant's career development report for the 2001/2002 appraisal exercise;*

2. *Orders the Commission to pay the costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 14 December 2005 — Regione autonoma della Sardegna v Commission

(Case T-200/04) ([1])

(State aid — Measures on the part of the Italian authorities aimed at compensating for the damage caused by ovine catarrhal fever (blue tongue) — Guidelines concerning State aid in the agricultural sector)

(2006/C 48/57)

Language of the case: Italian

Parties

Applicant: Regione autonoma della Sardegna (represented by: D. Dodaro and S. Cianciullo, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Application for

Annulment of Commission Decision C(2004) 471 Final of 16 March 2004 concerning the aid scheme which Italy is planning to implement in favour of processing and marketing cooperatives in order to compensate the damage caused by ovine catarrhal fever (blue tongue) (Article 5 of Law No 22 of the Region of Sardinia of 17 November 2000)

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 8 December 2005 — Rounis v Commission

(Case T-274/04) ([1])

(Officials — Staff report — Action for annulment — No longer any legal interest in bringing proceedings — No need to adjudicate — Action for damages — Late drawing-up of the staff report)

(2006/C 48/58)

Language of the case: French

Parties

Applicant: Georgios Rounis (Brussels, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities (represented by: G. Berscheid and M. Velardo, Agents)

Application for

Firstly, annulment of the appeal assessor's decision to confirm the applicant's staff reports for the periods 1997/1999 and 1999/2001 and, secondly, damages.

Operative part of the judgment

The Court:

1. *Declares that there is no longer any need to adjudicate on the claims for annulment;*

2. *Orders the Commission to pay the applicant a sum of EUR 3 500;*

3. *Dismisses the remainder of the action;*

4. *Orders the Commission to bear its own costs and to pay two thirds of those incurred by the applicant.*

([1]) OJ C 262, 21.10.2004.

Judgment of the Court of First Instance of 15 December 2005 — RB Square Holdings Spain v OHIM

(Case T-384/04) ([1])

(Community trade mark — Figurative mark containing the word element 'clean x' — Opposition by the proprietor of the earlier national word and figurative marks CLEN — Rejection of the opposition — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 48/59)

Language of the case: French

Parties

Applicant: RB Square Holdings Spain, SL (Granollers, Spain) (represented by: K. Manhaeve, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Pétrequin and A. Rassat, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Unelko NV (Zingem, Belgium)

Action

brought against the decision of the Fourth Board of Appeal of OHIM of 15 June 2004 (Case R 652/2002-4) relating to opposition proceedings between RB Square Holdings Spain, SL and Unelko NV

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 300 of 4.12.2004.

Order of the Court of First Instance of 25 November 2005 — Pérez-Díaz v Commission

(Case T-41/04) ([1])

(Officials — Actions for annulment — Lis alibi pendens — Late submission of the prior complaint through official channels — Application for compensation closely linked to the claims for annulment — Manifest inadmissibility)

(2006/C 48/60)

Language of the case: French

Parties

Applicant: Orlando Pérez-Díaz (Brussels, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: Commission of the European Communities (represented by: H. Tserepa-Lacombe and L. Lozano Palacios, Agents)

Application for

Firstly, annulment of the Commission decision of 21 January 2003 not to enter the applicant on the reserve list of temporary agents at the end of selection procedure COM/R/A/01/1999 and, secondly, compensation in respect of the damage allegedly resulting from that decision.

Operative part of the Order

1. *The action is dismissed as inadmissible;*

2. *Each party shall bear its own costs.*

([1]) OJ C 94, 17.4.2004.

Order of the Court of First Instance of 8 December 2005 — Just v Commission

(Case T-91/04) ([1])

(Officials — Open competition — Multiple-choice questions — Accuracy of the answers on the correction form — Action manifestly unfounded in law)

(2006/C 48/61)

Language of the case: German

Parties

Applicant: Alexander Just (Hoeilaart, Belgium) (represented by: G. Lebitsch, lawyer)

Defendant: Commission of the European Communities (represented by: H. Krämer, assisted by B. Wägenbaur, lawyer)

Application for

Annulment of the decision of the selection board in competition COM/A/2/02 to award the applicant, in respect of the preselection stage, a number of marks which did not allow him admission to the subsequent tests in that competition

Operative part of the Order

1. *The action is dismissed.*

2. *Each party shall bear its own costs.*

([1]) OJ C 106, 30.4.2004

Order of the Court of First Instance of 8 December 2005 — Moren Abat v Commission

(Case T-92/04) ([1])

(Officials — Open competition — Multiple-choice questions — Accuracy of the answers on the correction form — Action manifestly unfounded in law)

(2006/C 48/62)

Language of the case: German

Parties

Applicant: Marta Cristina Moren Abat (Brussels, Belgium) (represented by: G. Lebitsch, lawyer)

Defendant: Commission of the European Communities (represented by: H. Krämer, assisted by B. Wägenbaur, lawyer)

Application for

Annulment of the decision of the selection board in competition COM/A/1/02 to award the applicant, in respect of the preselection stage, a number of marks which did not allow her admission to the subsequent tests in that competition

Operative part of the Order

1. *The action is dismissed.*

2. *Each party shall bear its own costs.*

([1]) OJ C 118, 30.4.2004.

Order of the Court of First Instance of 28 November 2005 — European Environmental Bureau (EEB) and Others v Commission of the European Communities

(Case T-94/04) ([1])

(Action for annulment — Objection of inadmissibility — Directive 2003/112/EC — Standing to bring proceedings)

(2006/C 48/63)

Language of the case: English

Parties

Applicants: European Environmental Bureau (EEB) (Brussels, Belgium), Pesticides Action Network Europe (London, United Kingdom), International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) (Geneva, Switzerland), European Federation of Trade Unions in the Food, Agricultural and Tourism sectors and allied branches (EFFAT) (Brussels), Stichting Natuur en Milieu (Utrecht, Netherlands) and Svenska Naturskyddföreningen (Stockholm, Sweden), represented by P. van den Biesen, G. Vandersanden and B. Arentz, lawyers.

Defendant: Commission of the European Communities, represented by B. Doherty, acting as Agent.

Intervener in support of the defendant: Syngenta Ltd (Guildford, United Kingdom), represented by C. Simpson, Solicitor, and D. Abrahams, Barrister.

Application for:

Annulment of Commission Directive 2003/112/EC of 1 December 2003 amending Council Directive 91/414/EEC to include paraquat as an active substance (OJ 2003 L 321, p. 32).

Operative part of the Order:

1) *The action is dismissed as inadmissible.*

2) *The applicants shall pay, in addition to their own costs, those of the Commission.*

3) *The intervener shall bear its own costs.*

([1]) OJ C 106 of 30. 04. 2004.

Order of the Court of First Instance of 28 November 2005 — European Environmental Bureau (EEB) and Stichting Natuur en Milieu v Commission of the European Communities

(Joined Cases T-236/04 and T-241/04) ([1])

(Action for annulment — Decisions 2004/247/EC and 2004/248/EC — Objection of inadmissibility — Standing to bring proceedings)

(2006/C 48/64)

Language of the case: English

Parties

Applicants: European Environmental Bureau (EEB) (Brussels, Belgium) and Stichting Natuur en Milieu (Utrecht, Netherlands), represented by: P. van den Biesen and B. Arentz, lawyers.

Defendant: Commission of the European Communities, represented by: B. Doherty.

Intervener in support of the applicants: French Republic, represented by J.-L. Florent and G. de Bergues, acting as Agents.

Intervener in support of the defendant: Syngenta Crop Protection AG, established in Basle, Switzerland, represented by D. Abrahams, Barrister, and C. Simpson, Solicitor.

Application for:

In Case T-236/04, for annulment in part of Commission Decision 2004/248/EC of 10 March 2004 concerning the non-inclusion of atrazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 53) and, in Case T-241/04, for annulment in part of Commission Decision 2004/247/EC of 10 March 2004 concerning the non-inclusion of simazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 50).

Operative part of the Order:

1) *Cases T 236/04 and T 241/04 are joined;*

2) *The actions in Cases T 236/04 and T 241/04 are dismissed as inadmissible;*

3) *The applicants shall pay, in addition to their own costs, those of the Commission in Cases T-236/04 and T-241/04;*

4) *The interveners shall bear their own costs.*

([1]) OJ C 217 of 28.07.2004.

Order of the Court of First Instance of 18 November 2005 — Selmani v Council and Commission

(Case T-299/04) ([1])

(Common foreign and security policy — Council common positions — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Action for annulment — Manifest lack of jurisdiction — Time-limits — Admissibility)

(2006/C 48/65)

Language of the case: English

Parties

Applicant(s): Abdelghani Selmani (Dublin, Ireland) (represented by: C. Ó Briain, Solicitor)

Defendant(s): Council of the European Union (represented by: E. Finnegan and D. Canga Fano, Agents) and Commission of the European Communities (represented by: J. Enegren and C. Brown, Agents)

Application for

primarily, annulment of Article 2 of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restricted measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) and Article 1 of Council Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/902/EC (OJ 2004 L 99, p. 28) and all decisions adopted by the Council on the basis of Regulation No 2580/2001 and having the same effect as Decision 2004/306, in so far as those measures apply to the applicant,

Operative part of the Order

1. *The action is dismissed as manifestly inadmissible.*

2. *The applicant shall pay the costs.*

([1]) OJ C 284, 20.11.2004.

Order of the Court of First Instance of 23 November 2005 — Bustec Ireland v OHIM

(Case T-218/05) ([1])

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2006/C 48/66)

Language of the case: Spanish

Parties

Applicant: Bustec Ireland (Shanon, County Clare, Ireland) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Mustek, S.L. (Barcelona, Spain)

Action

brought against the decision of the Second Board of Appeal of OHIM of 22 March 2005 (Case R 1125/2004-2) relating to opposition proceedings brought against the registration of the Community trade mark BUSTEC

Operative part of the judgment

The Court:

1. *Declares it no longer necessary to give judgment on the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 182 of 23.7.2005.

Action lodged on 31 October 2005 — Multikauf v OHIM

(Case T-395/05)

(2006/C 48/67)

Language of the case: German

Parties

Applicant: Multikauf Warenhandelsgesellschaft mBH (Krailling, Germany) (represented by: M. Bahmann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demo Holding S.A. (Luxembourg, Luxembourg)

Forms of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 June 2005 — served on the applicant's agent by DHL on 31 August 2005 — in appeal proceedings R 895/2004-1

— dismiss the objection raised by the third party through its agent on 18 September 2001 to registration of the Community trade mark 1841121 'webmulti'.

Pleas in law and main arguments

Applicant for Community trade mark: The applicant

Community trade mark sought: The word mark 'webmulti' for goods and services in Classes 3, 7, 8, 9, 16, 20, 21, 25 and 30 — Registration application No 1 841 121

Proprietor of mark or sign cited in opposition proceedings: Demo Holding S.A.

Mark or sign cited in opposition: The Community, national and international word and figurative marks 'WEB' for goods in Classes 3, 9 and 25

Decision of the Opposition Division: The opposition was allowed and the registration in respect of certain goods referred to in the application was refused

Decision of the Board of Appeal: The applicant's appeal was dismissed

Pleas in law: The opposing marks were not used for some of the goods.

Action brought on 14 November 2005 — Eerola v Commission

(Case T-410/05)

(2006/C 48/68)

Language of the case: French

Parties

Applicant: Iiro Eerola (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission refusing to grant to the applicant the expatriation allowance provided for in Article 4(1) of Annex VII to the Staff Regulations;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, of Finnish nationality, was appointed an official of the Commission on 1 October 2004. The Commission refused to grant him the expatriation allowance, considering that during the reference period, from 1 January 1999 to 31 December 2004, the applicant was living in Belgium.

The applicant contests that decision, claiming that the period from 1 April 2003 to 31 December 2003, during which he worked in Brussels as scientific advisor at the Academy of Finland, should not be taken into account since the Academy does not have a distinct legal personality but is part of the Finnish State. On that basis, the applicant pleads infringement of the first paragraph of Article 4 of Annex VII to the Staff Regulations, and an error of law.

Action brought on 18 November 2005 — 'M' v Ombudsman

(Case T-412/05)

(2006/C 48/69)

Language of the case: French

Parties

Applicant(s): 'M' (Brussels, Belgium) (represented by: G. Vandersanden, lawyer)

Defendant(s): European Ombudsman

Form of order sought

The applicant(s) claim(s) that the Court should:

— hold that the European Community has incurred non-contractual liability under the second paragraph of Article 288 EC as a result of wrongful acts or omissions committed by the European Ombudsman in the performance of his duties, specifically as a result of the publication of his report 1288/99/OV wrongfully naming the applicant, and as a result of the European Ombudsman's negligence in investigating the matter and the incorrect conclusions he arrived at;

— consequently, order the European Community, represented by the European Ombudsman, to pay the applicant by way of compensation for professional and non-material damage and for damage to his health a sum provisionally assessed at EUR 150 000, without prejudice to any subsequent amendment in the course of the proceedings;

— order the European Community, represented by the European Ombudsman, to pay the costs.

Pleas in law and main arguments

By complaint brought before the European Ombudsman, a group of citizens sought a finding that there had been an instance of maladministration within the Commission in its handling of a complaint lodged by those citizens against their national authorities. By decision issued on 18 July 2002, the Ombudsman found that there had been an instance of maladministration and unfair treatment of the complaint on the part of the Commission.

The purpose of the present action, which has been brought by an official of the Commission unit responsible for handling the complaint at issue, is to seek compensation for damage allegedly suffered by the applicant as a result of his having been named in person in Decision 1288/99/OV and alleged negligence by the European Ombudsman in his investigation of the complaint and in the conclusions he arrived at in that decision. The applicant contends that after the decision had been published he was named in a press release issued by the European Ombudsman, and this was reproduced in various newspapers and on internet websites, which caused him to suffer damage. In the applicant's view, the damage allegedly suffered is especially serious as he holds an important position and the publication of the European Ombudsman's decision could seriously undermine his professional integrity.

The applicant bases his claim on the second paragraph of Article 288 EC, establishing the non-contractual liability of the European Community, which, according to the applicant, has been incurred in the present case as a result of the allegedly wrongful conduct on the part of the Ombudsman.

In support of his claim, the applicant alleges that, in the present case, the Ombudsman committed a serious breach of his duties by naming individuals — including the applicant — in person in his report in breach of the principles of confidentiality and proportionality insofar as the publication of the applicant's name was not, in the applicant's view, absolutely necessary and could not be justified by any exception to the general rule of confidentiality ([1]).

Moreover, the applicant claims that conduct of the Ombudsman and his staff constitutes a breach of the *audi alterem partem* principle, which forms a fundamental element of the right to a fair hearing. He also submits that it is forbidden to make an adverse judgment on a natural or legal person in a report that is to be published after general disclosure and is to be widely circulated.

Lastly, the applicant also claims that, in adopting the decision at issue, the Ombudsman made an incorrect assessment of the facts and based himself on inadequate information.

([1]) In support of his claim, the applicant relies, inter alia, on Case C-315/99 P *ISMERI-EUROPA v Court of Auditors* [2001] ECR I-5281.

Action brought on 18 November 2005 — Sanchez Ferriz v Commission

(Case T-413/05)

(2006/C 48/70)

Language of the case: French

Parties

Applicant: Carlos Sanchez Ferriz (Brussels, Belgium) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the applicant's career development report (REC/CDR) for the period 1.7.2001 — 31.12.2002;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant first submits that Article 26 of the Staff Regulations has been infringed, on the ground that his staff report is not physically present in his personal file, but is stored in electronic form and that there is no sign of the first version of that report either in the paper file or in the electronic file.

The applicant also claims infringement of Article 43 of the Staff Regulations, of the General Implementing Provisions for that latter article and of the Appraisal Guide and the special guide for the 2001-2002 exercise, on account of the fact that the appraisers are required by the Commission to comply with a 'target' average in respect of appraisal.

The applicant next submits that the system of merit points, established by the Commission, makes it possible to classify equally a number of officials with varying levels of performance which, in the applicant's view, infringes the principle of equal treatment.

Lastly, the applicant claims breach of the prohibition of arbitrary procedures and of the duty to state reasons, an abuse of powers, breach of the principle of protection of legitimate expectations, of the rule *patere legem quam ipse fecisti* (abide by your own rules) and of the duty to have regard for the welfare and/or interests of officials.

Action brought on 18 November 2005 — Bain and Others v Commission

(Case T-419/05)

(2006/C 48/71)

Language of the case: French

Parties

Applicants: Neil Bain (Brussels, Belgium), Obhijit Chatterjee (Brussels, Belgium), Richard Fordham (Bergen, Netherlands) and Roger Hurst (Bergen, Netherlands) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicants claim that the Court should:

— annul the applicants' pay slips for the months of February, March and April 2005, and all subsequent pay slips, to the extent that they apply the unlawful provisions of Regulation No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities, and of Regulation No 856/2004 fixing the new correction coefficients and Regulation No 31/2005 adjusting them;

— as far as is necessary, annul the decisions of the appointing authority of 29 July 2005, rejecting the applicants' complaints (R/458.14/05, R/458.5/05, R/458.12/05 and R/458.2/05);

— order the defendant to pay all the costs in the case.

Pleas in law and main arguments

The pleas in law and arguments relied on by the applicants are identical to those relied on by the applicant in Case T-393/05.

Action brought on 3 November 2005 — Kay v Commission

(Case T-421/05)

(2006/C 48/72)

Language of the case: French

Parties

Applicant: Roderick Neil Kay (Brussels, Belgium) (represented by: T. Bontinck and J. Feld, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 31 January 2005;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant was an official of the Commission in grade B*7. After passing the external competition COM/A/3/02, he was appointed by the contested decision to an administrator post in grade A*6.

By his action, the applicant disputes his classification, submitting that he should have been classified in one of the grades A*8, A*9 or A*10. He also disputes the loss of all his promotion points, constituting his 'rucksack', following his reclassification.

In support of his action, the applicant claims infringement of Article 2(2) of Annex XIII to the Staff Regulations, which he considers applicable to his situation, instead of Article 5(2) of that annex, which the Commission applied. In addition, he pleads breach of the principles of protection of legitimate expectations, protection of acquired rights and equal treatment between officials.

Action brought on 5 December 2005 — Mediocurso — Estabelecimento de Ensino Particular SA v Commission of the European Communities

(Case T-425/05)

(2006/C 48/73)

Language of the case: Portuguese

Parties

Applicant(s): Mediocurso — Estabelecimento de Ensino Particular, SA (Lisbon, Portugal) (represented by: Carlos Botelho Moniz and Eduardo Maia Cadete, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— order joined to this case the administrative proceedings relating to Dossier FSE 890588/P1 under way in the Commission of the European Communities and the Department for European Social Fund Affairs, part of the Ministério para a Qulificação e o Emprego (Ministry for Qualifications and Employment) of the Portuguese Republic, which department is situated at 72 Av. Almirante Reis (3rd floor), P-1100, Lisbon, Portugal;

— annul the decision of the Commission of the European Communities of 13 September 2005 'Reducing the amount of assistance granted by the European Social Fund to the entity "Mediocurso — Estabelecimento de Ensino particular, Lda", in accordance with Commission Decision C (89) 0570 of 22 March 1989 in connection with Project No 890588 P1', with the reference 'C(2005) 3557';

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is a commercial company with the object, according to its memorandum and articles of association, of 'providing training and technical specialisation courses and drawing up projects, studies, advice on matters of company economics, tax, accountancy and management and operation'. In 1988 it presented to the European Social Fund, through the Department for European Social Fund Affairs, various applications for assistance relating to training projects that it said it would carry out during 1989, including the application for assistance at issue in these proceedings which gave rise to File 890588 P1. The application for assistance in that file was approved and the vocational training programmes to which it related were implemented, with the result that the applicant presented the corresponding request for final payment.

The act challenged by the applicant is the decision adopted by the Commission following the presentation of the claim for final payment and various procedural documents.

The applicant claims that the Commission has infringed essential procedural requirements, having regard to the inadequacy of the reasons given for the contested decision.

It also alleges breach of the principles of legal certainty and of the protection of legitimate expectations, in so far as the contested act is incompatible, in a manner disadvantageous to the applicant, with the earlier act certifying the accuracy of the facts and accounts given by the applicant in the final payment application it had submitted. Last, it alleges a manifest error in the assessment of the documentary evidence of expenditure put forward by Mediocurso and breach of the principle of proportionality, in that the contested decision does not deal with the grounds of fact and law relied on in support of the reduction of assistance which is its subject-matter.

Action brought on 7 December 2005 — Artegodan v Commission

(Case T-429/05)

(2006/C 48/74)

Language of the case: German

Parties

Applicant: Artegodan GmbH (Lüchow, Germany) (represented by: U. Doepner, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

The applicant claims that the Court should:

— Order the defendant to pay the applicant the sum of EUR 1 430 821,36 plus a lump-sum interest payment of 8 % for the period from the date of the judgment to that of full payment of the sum due;

— Declare that the defendant is under an obligation to compensate the applicant for all future damage which it will incur as a result of marketing expenses which are necessary to re-establish the market position which the pharmaceutical product Tenuate retard enjoyed before the defendant withdrew the authorisation for that product;

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks compensation from the Commission under the second paragraph of Article 288 EC and Article 235 EC and a declaration that the defendant is under an obligation to compensate the applicant for all future damage which it will incur as a result of marketing expenses.

In relation to the background to the dispute, it should be pointed out that the applicant is the proprietor of the legal rights of the authorisation for the pharmaceutical preparation Tenuate retard, which contains amfepramone. On 9 March 2000, the defendant adopted, on the basis of Article 15a of Directive 75/319/EEC, [1] Decision C(2000) 453 concerning the withdrawal of marketing authorisations of medicinal products for human use containing 'amfepramone'. By decision of 11 April 2000, the competent German authorities implemented that latter Commission decision. By judgment of 26 November 2002 in Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00 the Court of First Instance declared Commission Decision C(2000) 453 invalid. The appeal lodged by the Commission against that judgment was dismissed by the judgment of the Court of Justice of the European Communities in Case C-39/03 P.

In the reasons given in its action the applicant submits that, by reason of Decision C(2000) 453, the Commission acted unlawfully and thereby infringed various provisions serving to protect the applicant. The applicant claims that its basic right to carry on the business which it established (company and property rights) was infringed. In addition, it alleges infringement of Article 11 of Directive 65/65/EEC. [2] Furthermore, the applicant claims that the Commission infringed the principle of proportionality and the basic principles of sound administration.

The applicant submits that it suffered harm as a result of the decision in question and the implementation thereof. According to the applicant, the defendant should pay to it compensation in regards of the infringements identified above.

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[1] Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products.

[2] Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products.

Action brought on 5 December 2005 — Cerafogli and Poloni v ECB

(Case T-431/05)

(2006/C 48/75)

Language of the case: French

Parties

Applicants: Maria Concetta Cerafogli (Frankfurt am Main, Germany) and Paolo Poloni (Frankfurt am Main, Germany) (represented by G. Vandersanden and L. Levi, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the applicants' pay slips of February 2005 as replaced in May 2005 and the defendant's letter of 15 February 2005;

— to the extent necessary, annul the decisions rejecting the applications for an administrative review (decisions of 17 May 2005) and grievances under the grievance procedure (decisions of 26 September 2005);

— order the defendant to pay compensation for the damage suffered by the applicants, consisting in the payment of EUR 5 000 to each applicant in respect of loss of purchasing power since 1 July 2001, arrears of remuneration corresponding to an increase in salary and all the applicants' associated rights of 0.3 % from 1 July 2001 and 0.6 % from 1 July 2003, and interest on the said arrears from the respective due dates until the date of payment. The interest rate must be the rate fixed by the European Central Bank for principal refinancing operations applicable for the period in question, increased by two points;

— order the defendant to pay the entirety of the costs.

Pleas in law and main arguments

In Case T-63/02, brought by the same applicants, staff of the European Central Bank (ECB), the Court of First Instance annulled the decisions contained in the salary statements sent on 13 July 2001 to the applicants, for July 2001, as the ECB did not consult the Staff Committee at the time of the adoption of the salary adjustment for 2001. In consequence of that judgment, the ECB consulted the Staff Committee concerning the salary adjustments for the period 2001-2003, and a salary increase for all staff from 1 July 2004. Moreover, it produced, in February 2005, new pay slips for the applicants replacing those of July 2001, which were annulled by the Court of First Instance.

The applicants claim first of all that, by refusing to apply to them retrospectively from July 2001 the correction linked to the salary adjustment for 2001, the ECB infringed Article 233 EC, and the principle of res judicata with regard to the judgment given on 20 November 2003 in Case T-63/02.

Moreover, they claim the infringement of Articles 45 and 46 of the Conditions of Employment for Staff of the ECB, of the Memorandum of Understanding on relations between the ECB's managing bodies and the Staff Committee, of the principles of good administration and non-discrimination and of the obligation of good faith.

Finally, the applicants claim compensation for the damage allegedly caused by the ECB's conduct.

Action brought on 15 December 2005 — Brink's Security Luxembourg v Commission

(Case T-437/05)

(2006/C 48/76)

Language of the case: French

Parties

Applicant(s): Brink's Security Luxembourg SA (Luxembourg) (represented by: Christian Point, Lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— declare the present action admissible and well-founded;

— annul the decision not to award the contract, that is, the Commission's unilateral decision not to award the contract to Brink's Security Luxembourg;

— annul the decision to award the contract, that is, the Commission's unilateral decision to award the contract to Group 4 Falck Luxembourg;

— annul the implicit decision of the Commission to refuse to withdraw its two aforementioned decisions;

— annul the Commission's two letters dated respectively 7 and 14 December 2005 replying to the applicant's requests for information pursuant to Article 149(3) of the regulation implementing the Financial Regulation;

— order the Commission to pay to the applicant the sum of EUR 1 000 000 by way of damages for the material and non-material harm suffered by reason of the illegality of the decision challenged, that sum being determined *ex aequo et bono* and on a provisional basis;

— order the Commission to pay the entire costs.

Pleas in law and main arguments

The present application seeks, firstly, the annulment of the Commission's decision rejecting the tender submitted by the applicant in call for tenders No 16/2005/OIL (provision of building surveillance and security services) and, secondly, the annulment of the decision awarding the contract to a competitor.

The arguments relied on by the applicant in support of the orders for annulment sought can be categorised, in substance, into seven pleas.

By the first plea the applicant relies on the alleged infringement of the principle of equal treatment and non-discrimination in so far as the Commission imposed a requirement for length of service of one year for the employees of each tenderer to be assigned to the contract which, according to the applicant — the current holder of the contract with long-serving employees — placed it at a disadvantage vis-à-vis the other tenderers, who could recruit people with the minimum experience and have lower wage costs than those of the applicant.

By the second plea, the applicant claims that the Commission infringed the provisions of Directive 2001/23/EC [1]. That plea has two parts: alleged irregularity in the tender accepted by the Commission in that that tender did not guarantee the retention of the applicant's employees nor, moreover, did it ensure that all of their rights would be respected. The applicant alleges that the decision to award taken by the Commission was illegal from the time it was taken since the accepted tender involved the infringement of employment law.

The third plea is based on an alleged infringement of the principle of equal treatment in so far as the successful party, at the time of submission of its tender, had privileged information in relation to the applicant, in particular in relation to turnover by client and activity, contracts and their expiry dates, and analysis of their prices and costs, which had been obtained by reason of the merger with the applicant's former parent company. In the applicant's opinion, this would have allowed its competitor to prepare a more favourable tender compared with that submitted by the applicant itself.

By the fourth plea, the applicant relies on the alleged infringement of the decision of Directorate General IV of the Commission of 28 May 2004 [2] and the rules aimed at ensuring undistorted competition in that, by the decision challenged in the present application, the Commission permitted the group to which the successful tenderer selected belonged to recover assets which it was obliged to relinquish at the time of the merger authorised by the decision of 28 May 2004.

The fifth plea is based on the alleged infringement of the obligation to give reasons for the decision, the alleged infringement of the transparency principle and the right of access to documents of the Community institutions. The applicant alleges that the Commission, despite several written requests, send it only a brief explanation, which was limited to comparative tables of the tenders, of the reasons for its decision.

The applicant also relies on the infringement of the rules applying to the award of the contract, a failure to take account of the contract documents and a manifest error of assessment in relation to the analysis and evaluation of the third qualitative award criterion in relation to the basic first-aid and fire fighting training of the security agents. It alleges that it has proof that the tenderer selected by the Commission does not have all of the operatives whom it proposed to assign to the performance of the contract at issue.

By its last plea, the applicant alleges infringement of the principle of transparency and of the right of citizens to access documents of the institutions in so far as the Commission refused it information on the composition of the selection and award committees.

The applicant also seeks, by relying on the principle of extra-contractual liability, compensation for the harm which it claims to have suffered by reason of the illegality of the Commission's conduct in the tender award procedure for the contract at issue.

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[1] Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

[2] Commission Decision of 28/05/2004 declaring a concentration to be compatible with the common market (Case N IV / M. 3396 – Group 4 Falck / Securicor (4064) pursuant to Council Regulation (EEC) No 4064/89).

Action brought on 21 December 2005 — Navigazione Libera del Golfo v Commission

(Case T-444/05)

(2006/C 48/77)

Language of the case: Italian

Parties

Applicant: Navigazione Libera del Golfo (NLG) (Naples, Italy) (represented by: Salvatore Ravenna, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 12 October 2005 refusing access to data and information concerning the extra costs arising as a result of PSO (public service obligations) and payments to offset those costs in respect of the services carried out by Caremar SpA on the Naples Beverello-Capri route;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-109/05 *Navigazione Libera del Golfo* v *Commission*. ([1])

It should, however, be stated that the contested decision in Case T-109/05 is based on Article 4(2) of Regulation No 1049/2001, whereas the decision at issue in this case is based on Article 4(4) and (5) of that regulation. Accordingly, it was not Caremar that was consulted, as 'third party author' of the documents/data to which access was requested, but rather it was the Italian authorities, which did not issue the documents of the case and had no concerns relating to commercial interests, that were consulted.

Further, that consultation was carried out in an artificial manner, given that the Member States have exclusive competence together with a right of veto which is binding on the Commission.

([1]) OJ C 106 of 30.04.2005, p. 43.

Action brought on 19 December 2005 — Associazione italiana del risparmio gestito and Fineco Asset Management v Commission of the European Communities

(Case T-445/05)

(2006/C 48/78)

Language of the case: Italian

Parties

Applicants: Associazione italiana del risparmio gestito and Fineco Asset Management SpA (Italy) (represented by: Gabriele Escalar and Giuseppe Maria Cipolla, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision No C(2005) 3302 of 6 September 2005 which brought proceedings C-19/2004 (ex NN 163/03) to a close;

— order the defendant to pay the costs.

Pleas in law and main arguments

This action concerns the same decision as that challenged in Case T-424/05 *Italian Republic* v *Commission*. ([1])

In support of their pleas, the applicants allege:

— inadequacy and inconsistency of the contested decision, in that it concerns, first, the existence of an economic advantage which is selective, as it is not clear from its wording what economic advantage is conferred by the tax measures at issue and what beneficiaries there are. Secondly, the statement of reasons for the decision is also to be regarded as inadequate as to the existence of a distortion of competition which may affect trade between the Member States;

— infringement of Article 87(1) of the EC Treaty, since the reduction in the tax applicable to the income of undertakings for collective investment in transferable securities (UCITS) specialising in shares of small or medium-sized capitalisation companies (SMCC) does not give rise to State aid. In that regard it is claimed, in particular, that the tax reduction in question constitutes an economic advantage for all the relevant stakeholders, not a selective one for the managers of the undertakings. In fact, all Italian and Community independent asset management companies (*società di gestione del risparmio; SGR*) may manage UCITS and all Italian or Community open-ended investment companies (SICAV) may act as SICAV specialising in SMCC. Further, even if the measures at issue were to result in an economic advantage for UCITS, they would not, however, give rise to State aid, given that the investment funds consist of collections of assets that do not exist as independent entities, do not have their own management bodies and do not pursue economic objectives, and accordingly have no organs which can manifest intent. Finally, the tax measures at issue do not constitute economic advantages of a selective nature for the SMCC.

In the alternative, the applicants claim that:

— the tax measures in question must be regarded as compatible with the common market, pursuant to Article 87(2)(a) of the Treaty; and

— the contested decision infringes Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 since recovery was ordered from the investment vehicles in the form of companies and from the undertakings managing the investment instruments that are established by contract.

([1]) Not yet published in the OJ.

Action brought on 16 December 2005 — Oxley Threads v Commission

(Case T-448/05)

(2006/C 48/79)

Language of the case: English

Parties

Applicant: Oxley Threads Ltd (Ashton-Under-Lyne, United Kingdom) [represented by: G. Peretz, Barrister, M. Rees, K. Vernon, Solicitors]

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 2(b) of the Commission's Decision of 14 September 2005 relating to a proceeding under Article 81 EC and Article 53 EEA in case 38.337 — PO/Thread insofar as it imposes a fine on the applicant of 1.271 million EUR or, in the alternative, reduce that fine;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested Decision the Commission found that the applicant, among other undertakings, had infringed Article 81 EC and Article 53 EEA by participating in agreements and concentrated practices affecting the markets of automotive thread in the EEA. As a result, it imposed a fine of 1.271 million EUR on the applicant.

In support of its application against the contested Decision, the applicant contends first of all that the Commission infringed the principles of equal treatment and proportionality as well as its own guidelines when it fixed the starting amount for the fine without taking into account the fact that, contrary to the other participants, the applicant is a small and medium-sized enterprise and very much smaller, by reference to any indicator, to any other participant. According to the applicant, the Commission fixed the same starting amount for it as for two other participants 71 times bigger than it in terms of total turnover. In the same context, the applicant considers that the Commission failed to take the grossly disproportionate impact the fine could be expected to have on it into account or the fact that, at the time of the infringements, it was only becoming established as a significant player in the supply of automotive thread to customers in the EEA outside the United Kingdom. Finally, the applicant submits that according to the Commission's own findings and evidence, its participation in the cartel had less importance and impact on competition than that of other undertakings concerned, in particular the two undertakings for which the same starting amount was fixed.

The applicant also contends that the Commission infringed its obligation to state reasons in assessing the appropriate starting amount, that it infringed its own guidelines and committed a manifest error of assessment in failing to take proper account of the degree of cooperation by the applicant and that it infringed its own guidelines, the principle of equal treatment and committed a manifest error of assessment in categorising the cartel in question as a 'very serious' infringement.

Action brought on 29 December 2005 — Componenta Oyj v Commission of the European Communities

(Case T-455/05)

(2006/C 48/80)

Language of the case: Finnish

Parties

Applicant: Componenta Oyj (Helsinki, Finland) (represented by: M. Savola, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2005) 3871 final of 20 October 2005 on State aid granted by Finland to Componenta as investment aid;

— Order the Commission to pay the applicant's costs with interest.

Pleas in law and main arguments

The action concerns Commission Decision C(2005) 3871 final of 20 October 2005 finding that the Finnish State had granted Componenta State aid prohibited under Article 87 EC (aid No C 37/2004, ex NN 51/2004).

The Commission considered that the aid had been granted in the context of an arrangement in two parts in which, first, Componenta sold its holding (50 %) in the property investment company Karkkilan Keskustakiinteistöt Oy to the municipality of Karkkila, which already owned 50 % of that company, and, second, the property investment company repaid Componenta the shareholder's loan invested in that company. At the same time the municipality of Karkkila invested in the company a new additional loan in the same amount.

According to the Commission, the State aid consists of both the purchase price and the repayment of the shareholder's loan.

The applicant refers inter alia to the following points in support of its application:

The Commission's decision is incorrect and unlawful in its entirety as regards both its grounds and its amount. The applicant claims that the Commission committed a breach of essential procedural requirements and an abuse of discretion, since it made a manifestly wrong assessment of the evidence put to it during the investigative procedure. The applicant also submits that the Commission's decision is contrary to the provisions of Article 87 EC on State aid. It further asserts that the conclusion of the decision is unreasonable with respect to it and in breach of the principle of proportionality laid down in the third paragraph of Article 5 EC.

The applicant submits that the Commission applied the wrong procedure when assessing the value of the shares in the property investment company which were the subject of the transaction. The applicant claims, contrary to the Commission's view, that the value of the subject of the transaction was assessed in accordance with market conditions at the time of the transaction.

As regards the shareholder's loan arrangement, the applicant submits that no economic advantage accrued to it as a result of the arrangement. In its view, the Commission wrongly assessed the nature and significance of the arrangement. In addition, the reasons stated in the Commission's decision concerning the shareholder's loan arrangement are in the applicant's view unclear and defective.

Finally, the applicant alleges that the Commission's decision conflicts with the practice it followed in other State aid cases and does not correspond to the principles set out in the Commission's communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector. ([1])

As regards the investment clause in the sale contract, the applicant submits that the Commission assessed that clause and its significance incorrectly.

([1]) OJ 1993 C 307, 13.11.1993, p. 3.

Action brought on 17 January 2006 — Equant Belgium v Commission

(Case T-9/06)

(2006/C 48/81)

Language of the case: English

Parties

Applicant: Equant Belgium SA (Brussels, Belgium) [represented by: T. Müller-Ibold, T. Graf, lawyers]

Defendant: Commission of the European Communities

Form of order sought

— Annul

(i) the decision of the European Commission dated December 6, 2005 to suspend the signing of the contract identified in the Commission's earlier decision of November 3, 2005 relating to the award of the contract pursuant to the following procurement procedure: 'Restricted invitation to tender No ENTR/04/011 — Lot 1 Secured Trans European Services for Telematics between administrations (s-TESTA)';

(ii) the decision of the European Commission dated December 27, 2005 to reject the Offer submitted by Equant/HP in the framework of the Restricted invitation to tender No ENTR/04/011 — Lot 1 'Secured Trans European Services for Telematics between administrations (s-TESTA)' and to tacitly withdraw its decision in favour of Equant/HP dated November 3, 2005; and

(iii) the decision of the European Commission communicated to the Applicant by the same letter of December 27, 2005 to select another tenderer for the award of the contract in the framework of the Restricted invitation to tender No. ENTR/04/011 — Lot 1 'Secured Trans European Services for Telematics between administrations (s-TESTA)';

— grant any other relief that the Court considers appropriate in the circumstances; and, in any event;

— order the Commission to pay Equant's legal costs and other fees and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant, in conjunction with another company, submitted an offer to the Commission in the context of a procurement procedure relevant to the Commission's contract notice No. 2004/S 137-116821 'Lot 1 — Secured Trans European Services for Telematics between administrations (s-TESTA)'. By letter dated 3 November 2005 the Commission informed the applicant that its joint offer had been selected for the award of the contract. However, by letter dated 6 December 2005 the Commission informed the applicant that it had decided to suspend the signing of the contract, awaiting further examination of the offers. By a further letter, dated 27 December 2005, the Commission informed the applicant that it had decided to reject the applicant's joint offer on the grounds that it did not conform to the tendering specifications and to award the contract to another tenderer.

In support of its application to annul the above decisions, the applicant first of all disputes in detail the Commission's findings that certain components of its offer, more particularly its waiver of one-off installation charges for an initial two-year period, the inclusion of a five-year discount period in preparing prices and its volume discount on the monthly charges for turnkey access points, were contrary to the specifications. The applicant's position is that in identifying an alleged incompatibility the Commission committed a manifest error of assessment and that the contested decisions are unlawful.

The applicant further submits that the Commission breached the principle of transparency by relying on an unsupported interpretation of its tendering specifications and that it breached Regulation 2342/2002 as well as the principles of equality, proportionality and good administration by failing to ask for clarifications or apply less restrictive remedies. The applicant finally alleges that the Commission also violated the principle of legitimate expectations as well as the rights of defence and the duty to state reasons for its decisions.

Order of the Court of First Instance of 9 December 2005 — Raymond Claudel v Court of Auditors

(Case T -338/05) ([1])

(2006/C 48/82)

Language of the case: French

The President of the Third Chamber has ordered that the case be removed from the register.

([1]) OJ C 296 of 26.11.2005.

Order of the Court of First Instance of 11 January 2006 — GHK Consulting v Commission

(Case T -383/05 R)

(2006/C 48/83)

Language of the case: French

The President of the Court of First Justice has ordered that the case be removed from the register.

III

(Notices)

(2006/C 48/84)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 36, 11.2.2006

Past publications

OJ C 22, 28.1.2006

OJ C 10, 14.1.2006

OJ C 330, 24.12.2005

OJ C 315, 10.12.2005

OJ C 296, 26.11.2005

OJ C 281, 12.11.2005

These texts are available on:
EUR-Lex:http://europa.eu.int/eur-lex
CELEX:http://europa.eu.int/celex

CORRIGENDA

Corrigendum to the Notice in the Official Journal in Case T-408/05

(Official Journal of the European Union C 22 of 28 January 2006, p. 18)

(2006/C 48/85)

The notice in the OJ in Case T-408/05 *Luigi Marcuccio* v *Commission* should read as follows:

Action brought on 16 *November* 2005 — Luigi Marcuccio v Commission

(Case T-408/05)

(2006/C 22/35)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: Alessandro Distante, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the implied decision rejecting the request of 11 October 2004;

— annul, so far as necessary, the decision of 4 August 2005;

— order the defendant to pay the applicant the additional sum of EUR 381.04 needed to make up 100 % (one hundred per cent) reimbursement of medical expenses;

— order the defendant to pay the applicant default interest at the rate of 10 % (ten per cent), with annual capitalisation from 11 October 2004 until actual payment;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in this case objects to the defendant's refusal to reimburse 100 % of the medical expenses incurred by him.

The pleas and main arguments are those relied on in Case T-18/04 *Marcuccio* v *Commission*. ([1])

In particular, the applicant alleges absolute failure to state reasons, manifest error of assessment and infringement of Article 72 of the Staff Regulations and of the duty to have regard to the welfare of officials, the duty of non-discrimination and the principle of sound administration.

([1]) OJ C 71 of 20.3.2004, p. 38.

Corrigendum to the Notice in the Official Journal in Joined Cases T-130/05, T-160/05 and T-183/05

(Official Journal of the European Union C 22, 28 January 2006, p. 26)

(2006/C 48/86)

The Official Journal notice in Joined Cases T-130/05, T-160/05 and T-183/05 should read as follows:

Order of the Court of First Instance of 16 November 2005 — Albert-Bousquet and Others v Commission

(Joined Cases T -130/05, T-160/05 and T-183/05) [1]

(2006/C 22/52)

Language of the case: French

The President of the Fourth Chamber has ordered that Case *T-183/05* be removed from the register.

[1] OJ C 132, 28.5.2005.