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I

(Information)

COURT OF JUSTICE

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Reference for a preliminary ruling from the Verwaltungsgericht Aachen lodged on 11 January 2006 — Rhiannon Morgan v Bezirksregierung Köln

(Case C-11/06)

(2006/C 121/01)

Language of the case: German

Referring court

Verwaltungsgericht Aachen (Administrative Court, Aachen (Germany))

Parties to the main proceedings

Claimant: Rhiannon Morgan

Defendant: Bezirksregierung Köln

Question referred

Does the freedom of movement guaranteed for citizens of the Union under Articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals for a full course of study in another Member State on the ground that the course does not represent the continuation of attendance at a German education or training establishment for a period of at least one year?

Reference for a preliminary ruling from the Verwaltungsgericht Aachen (Germany) lodged on 11 January 2006 — Iris Bucher v Landrat des Kreises Düren

(Case C-12/06)

(2006/C 121/02)

Language of the case: German

Referring court

Verwaltungsgericht Aachen (Germany)

Parties to the main proceedings

Applicant: Iris Bucher

Defendant: Landrat des Kreises Düren

Question(s) referred

1. Does the freedom of movement guaranteed for citizens of the Union under Articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals for a full course of study in another Member State on the ground that the course does not constitute the continuation of attendance at a German education or training establishment for a period of at least one year?

2. Does the freedom of movement guaranteed for citizens of the Union under Articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals, who as a cross-border commuter is pursuing her course of study in a neighbouring Member State, on the grounds that she is residing at a border location in Germany only for education or training purposes and that that place of abode is not her permanent residence?

Reference for a preliminary ruling from the Obvodní soud pro Prahu 3 lodged on 7 February 2006 — Český Telecom a.s. v Czech On Line a.s.

(Case C-64/06)

(2006/C 121/03)

Language of the case: Czech

Referring court

Obvodní soud pro Prahu 3 (Prague 3 District Court)

Parties to the main proceedings

Applicant: Český Telecom a.s.

Defendant: Czech On Line a.s.

Questions referred

1. Was the national telecommunications regulator (Czech Telecommunications Office) entitled, in the form of an administrative decision after 1 May 2004, and thus after the day of the Czech Republic's accession to the European Communities, to impose on a telecommunications company with significant (dominant) market power in the telecommunications market an obligation to conclude a contract on the interconnection of its network with another operator?

2. If the answer to Question 1 is in the affirmative:

   Was the national regulator entitled to act in that way only under the conditions laid down in Article 8(2) of Directive 2002/19/EC of the European Parliament and of the Council (Access Directive), i.e. on the strength of a previous market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) and on the basis of the previous procedure described in Articles 6 and 7 of the Framework Directive 2002/21/EC

   or could it (for example in accordance with recital 15, Article 3, Article 4(1), Article 5(1)(a) and (4), Article 10(1) and (2) of the Access Directive) act in that way even without a previous market analysis?

3. Can it have an impact on the answer to Question 2 that the application of a particular operator for the issuing of a decision on the compulsory interconnection of his network with the network of an operator with significant (dominant) market power was lodged with the national regulator, and the decisive part of the proceedings on that application before it took place, before 1 May 2004, i.e. before the day on which the Czech Republic acceded to the European Communities?

4. To the extent that during the crucial period — from 1 May 2004 to 30 April 2005 — the Czech Republic had not sufficiently implemented the above-mentioned directives, is it possible directly to apply Directive 2002/21/EC (Framework Directive) and Directive 2002/19/EC of the European Parliament and of the Council (Access Directive), thus

   4a. are these directives (or is one of them) unconditional and sufficiently precise to be applied (by a court) in the place of national law?

   4b. is an operator with significant (dominant) market power in the telecommunications market entitled (actively subjectively legitimised) to rely, as a result of the incorrect transposition of Directives 2002/19/EC and 2002/21/EC, on their direct effectiveness, having regard to the question whether those directives (or one of them) do in any case protect the interests of that person who refuses to conclude an agreement on interconnection (in the area of ADSL service) with other domestic telecommunications operators (and who in the view of the national telecommunications regulator, which the court must also take into account, thus acts contrary to the aims of the new regulatory framework)?

   4c. Can that operator invoke the direct effectiveness of directives that have not been properly implemented (or of one of them), if (even where the conditions introduced in the directives are fulfilled) in the decision-making process of the national telecommunications regulator decisions are always made about the concrete conditions for interconnection of operators' sites, i.e. it concerns the imposition of concrete duties on individuals?

Reference for a preliminary ruling from the Juzgado de lo Social No 3 lodged on 14 February 2006 — Vicente Pascual García v Confederación Hidrográfica del Duero

(Case C-87/06)

(2006/C 121/04)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 3

Parties to the main proceedings

Applicant: Vicente Pascual García

Defendant: Confederación Hidrográfica del Duero

Questions referred

1. Does the principle of equal treatment, which prohibits any discrimination whatsoever on grounds of age, laid down in Article 13 of the Treaty and Article 2 (1) of Directive 2000/78 [1], preclude a national law (specifically the first paragraph of the Single Transitional Provision of Law 14/2005 on clauses in collective agreements concerning the attainment of normal retirement age), pursuant to which compulsory retirement clauses contained in collective agreements are lawful, where such clauses provide as sole requirements that workers should have reached normal retirement age and have satisfied the conditions set out in the social security legislation of the Spanish State for entitlement to draw a retirement pension under their contribution regime, whereas, for future agreements to be able to provide for termination of the contract on grounds of age, the undertaking must also link such termination to an employment policy?

2. Does the principle of equal treatment, which prohibits any discrimination whatsoever on grounds of age, laid down in Article 13 of the Treaty and Article 2 (1) of Directive 2000/78, require this Court, as a national court, not to apply to this case the first paragraph of the Single Transitional Provision of Law 14/2005?

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(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Appeal brought on 10 February 2006 by Soffass SpA against the judgment delivered on 23 November 2005 in Case T-396/04 Soffass SpA v Office for Harmonisation in the Internal Market (OHIM)

(Case C-92/06 P)

(2006/C 121/05)

Language of the case: Italian

Parties

Appellant: Soffass SpA (represented by: V. Bilardo, C. Bacchini and M. Mazzitelli, Avvocati)

Defendant: Office for Harmonisation in the Internal Market (OHIM)

Other party to the proceedings: Sodipan SCA, intervener

Form of order sought

— Set aside the judgment under appeal.

— Grant the forms of order sought by the appellant in the proceedings at first instance and annul the decision of the OHIM First Board of Appeal of 16 July 2004 in Case R0699/2003-1.

— Order OHIM to pay the costs.

Pleas in law and main arguments

The appellant claims that the judgment under appeal was given contrary to Article 8(1)(b) and (2)(a)(ii) of Regulation (EC) No 40/94 [1], which provides that '… the trade mark applied for shall not be registered if because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected …'. The court has in fact misapplied the concept of the likelihood of confusion, as interpreted by the Court of Justice of the European Communities.

According to the appellant, the trade marks which are the subject of the present dispute are not likely to be confused with each other in view of the clear phonetic, visual, graphic and conceptual differences.

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(1) OJ L 11, 14/01/1994, p. 1.

Action brought on 23 February 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-108/06)

(2006/C 121/06)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. van Vliet and F. Simonetti, as Agents)

Defendant: Kingdom of the Netherlands

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2001/42/EC [1] of the European Parliament and of the Council of 27 June 2001 on the assessment of certain plans and programs on the environment or in any event by failing to inform the Commission thereof, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for implementing the directive in national law expired on 21 July 2004.

[1] OJ 2001 L 197, p. 30.

Action brought on 24 February 2006 — Commission of the European Communities v Hellenic Republic

(Case C-112/06)

(2006/C 121/07)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis)

Defendant: Hellenic Republic

Form of order sought

The applicant asks the Court to:

(a) declare that, by failing to take the necessary measures to ensure that:

— the waste in the landfill sites of Mesomouri and Kouroupitos in Crete is disposed of without endangering human health or the environment,

— the waste in the landfill sites of Mesomouri and Kouroupitos is handled by a private or public waste collector or by an undertaking which carries out waste disposal operations,

— the landfill site at Mesomouri, which has not been authorised to continue operating, will cease operating as soon as possible, and the necessary procedure of after-care and management will be followed,

the Hellenic Republic has failed to fulfil its obligations under Articles 4 and 8 of Council Directive 75/442/EEC [1] of 15 July 1975 on waste, as amended by Directive 91/156/EEC [2], and Article 14(b) of Council Directive 1999/31/EC [3] of 26 April 1999 on the landfill of waste;

(b) order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The applicant considers that the disposal of waste at the Mesomouri and Kouroupitos, Crete, sites is taking place in infringement of the Hellenic Republic's obligations under Articles 4 and 8 of Directive 75/442 on waste, as amended by Directive 91/156/EEC, and under Article 14(b) of Directive 1999/31/EC on the landfill of waste.

2. As regards the uncontrolled disposal of waste at Mesomouri, the conclusions of the report of the Commission's experts showed that the tipping of 90 000 tonnes of waste at the site endangers human health and is likely to harm the environment. In addition, the Commission stresses that the Greek authorities have not taken the measures necessary to ensure that the waste tipped at Mesomouri will be handled by a private or public waste collector or by an undertaking which carries out waste disposal operations.

   The Commission adds that the Greek authorities have decided that the Mesomouri site ought to cease operating, finding it essential to restore it and to lay down specific requirements for subsequent after-care and management of the site. Nevertheless, that decision does not include a specific timetable for compliance and has not yet been put into effect on account of lack of resources.

3. As regards the old tip at Kouroupitos, the Commission's experts' report showed that the site has not been restored and stresses the likely risks to human health and the environment. The report refers in particular to the fact that there is: 1. leaching of a large part of the earth cover; 2. insufficient stability and resistance to deterioration; and 3. incineration of the existing waste in the tip, which can lead to toxic emissions. At the same time the Greek authorities have not taken the necessary measures to ensure that the waste at Kouroupitos will be handled by a private or public waste collector or by an undertaking which carries out waste disposal operations.

[1] OJ L 194 of 25.07.1975, p. 39.
[2] OJ L 78 of 26.03.1991, p. 32.
[3] OJ L 182 of 16.07.99, p. 1.

Reference for a preliminary ruling from the Tampereen käräjäoikeus lodged on 28 February 2006 — Sari Kiiski v Tampereen kaupunki

(Case C-116/06)

(2006/C 121/08)

Language of the case: Finnish

Referring court

Tampereen käräjäoikeus (Finland)

Parties to the main proceedings

Applicant: Sari Kiiski

Defendant: Tampereen kaupunki

Questions referred

1. Is it direct or indirect discrimination contrary to Article 2 of the Equal Treatment Directive 76/207/EEC ([1]), as amended by Directive 2002/73/EC ([2]), for an employer to refuse to make changes to the date of child-care leave which has been granted to an employee or to interrupt it as a result of a new pregnancy of which the employee has become aware before the start of the child-care leave, in accordance with the settled interpretation of national provisions according to which a new pregnancy is not generally an unforeseen and justified ground on the basis of which the date and duration of child-care leave may be altered?

2. May an employer sufficiently justify his conduct, described in point 1, which possibly constitutes indirect discrimination, from the point of view of that directive by the fact that ordinary problems but not ones giving rise to serious disturbances would be connected with changing teachers' working arrangements and continuity of teaching, or that the employer would under the national provisions have to compensate the person replacing the teacher on child-care leave for the loss of pay incurred if the teacher on child-care leave were to return to work in the middle of the child-care leave?

3. Can Directive 92/85/EEC ([3]) on measures for the protection of pregnant workers and certain other workers be applicable, and, if that directive can be applicable, is the employer's conduct described in point 1 contrary to Articles 8 and 11 of that directive, if with child-care leave continuing the employee has lost her opportunity of enjoying the employment-based pay benefits of maternity leave?

([1]) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

([2]) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working (OJ 2002 L 269, p. 15).

([3]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

Reference for a preliminary ruling from the Commissione tributaria provinciale di Roma lodged on 28 February 2006 — Diagram APS Applicazioni Prodotti Software v Agenzia Entrate Ufficio Roma 6

(Case C-118/06)

(2006/C 121/09)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma (Italy)

Parties to the main proceedings

Applicant: Diagram APS Applicazioni Prodotti Software

Defendant: Agenzia Entrate Ufficio Roma 6

Question(s) referred

The Commissione Tributaria provinciale di Roma (Provincial Tax Court Rome) has referred the following question to the Court of Justice for a preliminary ruling:

Must Article 33 of Directive 77/388/EEC ([1]) (as amended by Directive 91/680/EEC ([2])) be interpreted as meaning that net output value arising from regular engagement in independent activities involving the production or exchange of goods or the rendering of services cannot be made liable to IRAP (Imposta Regionale sulle Attività Produttive — Regional tax on businesses)?

([1]) OJ L 145, 13/06/1977, p. 1.
([2]) OJ L 376, 31/12/1991, p. 1.

Action brought on 15 March 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-141/06)

(2006/C 121/10)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and J.R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, having failed to adopt, in relation to financial services other than private insurance, the laws, regulations and administrative provisions necessary to comply with Directive 2002/65/EC ([1]) of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC ([2]) and Directives 97/7/EC ([3]) and 98/27/EC ([4]), and, in any event, by having failed to inform the Commission of them, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of Directive 2002/65/EC into national law expired on 9 October 2004.

([1]) OJ L 271, p. 16
([2]) OJ L 330, p. 50
([3]) OJ L 144, p. 19
([4]) OJ L 166, p. 51

Reference for a preliminary ruling from the Landgericht Hamburg lodged on 17 March 2006 — Ludwigs-Apotheke München Internationale Apotheke v Juers Pharma Import-Export GmbH

(Case C-143/06)

(2006/C 121/11)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Ludwigs-Apotheke München Internationale Apotheke

Defendant: Juers Pharma Import-Export GmbH

Questions referred

1. Is the rule in the third indent of Article 86(2) of Directive 2001/83/EC ([1]) to be interpreted as precluding a national rule prohibiting as prohibited advertising the dispatch of price lists for medicinal products to pharmacists if and to the extent that the medicinal products included on those lists are not approved in the relevant Member State but may be imported in isolated cases from other Member States of the European Union and other States?

2. What is the purpose of the rule according to which the title on advertising does not cover trade catalogues and price lists provided they include no product claims, if the scope of application of national provisions on advertising of medicinal products is not thereby exhaustively defined?

([1]) OJ L 311, 28.11.2001, p. 67.

Appeal brought on 20 March 2006 by Henkel KGaA against the judgment of the Court of First Instance (Second Chamber) delivered on 17 January 2006 in Case T-398/04 Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-144/06 P)

(2006/C 121/12)

Language of the case: German

Parties

Appellant: Henkel KGaA (represented by: Dr C. Osterrieth, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Set aside the judgment of the Court of First Instance of the European Communities of 17 January 2006 in Case T-398/04 [1], notified on 23 January 2006 and annul the decision of the Second Board of Appeal of OHIM of 4 August 2004 (Case R771/1999-2) concerning the Community trade mark application No 000941971;

— order OHIM to pay the costs.

Pleas in law and main arguments

In its appeal, the appellant contends that there has been an infringement of substantive law as a result of the assessment, erroneous in law and in fact, of the requirement that the mark applied for be distinctive.

In the judgment under appeal, the Court of First Instance wrongly stated that the sign claimed — a three-coloured figurative mark, which is an accurate depiction of a dishwasher and washing machine tablet — is not sufficiently distinctive. This view of the Court neither satisfies the previous criteria of the case-law of the Court of Justice with regard to the requirements which are to be met for a figurative mark to be distinctive, nor did it take account of the actual circumstances on the relevant market.

There is nothing to support the Court's 'general experience' that the products in question are acquired without care and that the public will not be significantly influenced by the depiction of the product. Contrary to this assumption by the Court, the target public are completely accustomed to drawing immediate conclusions as to the manufacturer based only on the depiction of the specific, individually shaped product. In the market in question, it has become settled practice that the individual form of the dishwasher and washing machine tablets has a direct purpose as an indication of origin: each manufacturer uses different colourings to distinguish his product from those of other manufacturers.

In testing distinctive character, it must simply be verified whether the sign claimed is suitable to distinguish the goods for which the application is made as coming from a particular company and thereby distinguishing these goods from those of other companies. Individuality and originality are not necessary and may not be used as the basis of a test. Since the appellant has chosen several elements, namely the rectangular shape, the layer structure as well as the insertion of an oval centre combined with the free choice of three colours, it has provided enough individual elements which show that the figurative mark is sufficiently distinctive.

[1] OJ 2006 C 74, p.18

Appeal brought on 17 March 2006 by Arizona Chemical BV, Eastman Belgium BVBA, Cray Valley Iberica, SA against the judgment of the Court of First Instance (Third Chamber) delivered on 14 December 2005 in Case T-369/03: Arizona Chemical B.V, Eastman Belgium BVBA, Resinall Europe BVBA, Cray Valley Iberica S.A v Commission of the European Communities, supported by Finland

(Case C-150/06 P)

(2006/C 121/13)

Language of the case: English

Parties

Appellants: Arizona Chemical BV, Eastman Belgium BVBA, Cray Valley Iberica, SA (represented by: K. Van Maldegem and C. Mereu, avocats)

Other parties to the proceedings: Commission of the European Communities, Finland, Resinall Europe BVBA

Form of order sought

The applicants claim that the Court should:

— declare the present appeal admissible and well-founded;

— set aside the order of the Court of First Instance of 14 December 2005 in Case T-369/03;

— declare the Applicants' requests in Case T-369/03 admissible;

— rule on the merits or, in the alternative, refer the case to the Court of First Instance to rule on the merits; and

— order the Commission of the European Communities to bear all costs and expenses of these proceedings.

Pleas in law and main arguments

The applicants submit that the judgements of the Court of First Instance should be set aside for the following reasons:

1) Inconsistency in reasoning and misapplication of the legal test for admissibility applicable to the addressee of a binding act producing legal effects.

   The applicants submit that the Court of First Instance (hereinafter the CFI) erred in law where it did not base its assessment on the fact that the contested decision is a binding act producing legal effects bringing about a distinct change in the applicants' legal position.

2) Misinterpretation of the regulatory framework applicable to the assessment of the applicants' data under directive 67/548/EEC.

   The applicants submit that the CFI erred in law where it considered that the assessment of the applicants' data and the Commission's final decision on the relevance of these data as the basis for declassification is not an administrative process that is subject to challenge.

3) Misinterpretation of the regulatory framework and of the applicants' related rights under directive 67/548/EEC.

   The applicants submit that te CFI erred in law when it concluded that the applicants could not bring a challenge on the grounds that the applicants were seeking to challenge a measure of general application.

4) Violation of the applicants' right to effective judicial protection.

   The applicants submit tha the CFI erred in law when it considered that the applicants may challenge the contested decision at national level.

5) Error in law in concluding that the applicants' action is time-barred.

   The applicants' submit that the action for damages is not time-barred because the starting point for damages is, at the earliest, the 1999 decision of the Commission not to declassify, and, at the latest, the contested decision.

Action brought on 23 March 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-155/06)

(2006/C 121/14)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Lawunmi, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

Form of order sought

The applicant claims that the Court should:

— declare that, the United Kingdom of Great Britain and Northern Ireland, has failed to adopt all the final measures necessary to fulfil its obligations under Article 53 of the Council 96/29 [1] Euratom, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, because of the lack of provisions allowing for appropriate intervention in all situations of lasting exposure to ionising radiation resulting from the after effects of a radiological emergency or a past practice;

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

Pleas in law and main arguments

Title IX of the Directive lays down the obligations of Member States regarding the preparation and implementation of intervention in cases of radiological emergency. Article 53 provides that Member States are responsible for intervention in cases of lasting exposure.

The United Kingdom authorities have acknowledged that their existing legislation fails to effect complete transposition of the directive, in so far as it does not provide for measures in all cases where a situation of radioactive contamination is identified. The complaint which provided the impetus for the present procedure exposed the fact that it is not possible to identify and to take measures against lasting exposure for past activities for which a licence had never been issued, intervention only being possible where exposure can be linked to a given past activity carried out on land where possible radioactive contamination is now being identified.

([1]) OJ L 314 , 4.12.1996, p. 20.

Reference for a preliminary ruling from the Krajský soud v Ostravě lodged on 24 March 2006 — Skoma-Lux, s.r.o. v Celní ředitelství Olomouc

(Case C-161/06)

(2006/C 121/15)

Language of the case: Czech

Referring court

Krajský soud v Ostravě (Czech Republic)

Parties to the main proceedings

Applicant: Skoma-Lux, s.r.o.

Defendant: Celní ředitelství Olomouc

Questions referred

1. May Article 58 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, on the basis of which the Czech Republic became a Member State of the European Union from 1 May 2004, be interpreted as meaning that a Member State may apply against an individual a regulation which at the time of its application has not been properly published in the Official Journal in the official language of that Member State?

2. If Question 1 is answered in the negative, is the unenforceability of the regulation concerned against an individual a question of the interpretation or of the validity of Community law within the meaning of Article 234 of the Treaty establishing the European Community?

3. Should the Court of Justice conclude that the present reference for a preliminary ruling concerns the validity of a Community act within the meaning of the judgment in Case 314/85 *Foto-Frost* [1987] ECR 4199, is Regulation No 2454/93 invalid in relation to the applicant and its dispute with the customs authorities of the Czech Republic on the ground of the absence of proper publication in the Official Journal of the EU in accordance with Article 58 of the Act concerning the conditions of accession?

Reference for a preliminary ruling from The Court of Appeal (Civil Division) (England and Wales) made on 29 March 2006 — The Queen on the application of Northern Foods Plc v The Secretary of State for the Environment, Food and Rural Affairs

Interested Party: The Melton Mowbray Pork Pie Association

(Case C-169/06)

(2006/C 121/16)

Language of the case: English

Referring court

Court of Appeal (Civil Division) (England and Wales)

Parties to the main proceedings

Applicant: The Queen on the application of Northern Foods Plc,

Defendant: The Secretary of State for Environment, Food and Rural Affairs

Interested Party: The Melton Mowbray Pork Pie Association

Questions referred

Where the specification in an application for a protected geographical indication (PGI) in respect of 'Melton Mowbray Pork Pies' made pursuant to Council Regulation 2081/92/EEC on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ('the Regulation') defines the relevant geographical area pursuant to Article 4(2)(c) of the Regulation as

the town of Melton Mowbray and its surrounding region bounded as follows:

— to the North by the A52 from the M1 and the A1 and including the city of Nottingham;

— to the East by the A1 from the A52 to the A45 and including the towns of Grantham and Stamford;

— to the West by the M1 from the A52 and the A45; and

— to the South by the A45 from the M1 and the A1 and including the town of Northampton

1. are the requirements of Article 2(2)(b) of the Regulation capable of being satisfied insofar as the proposed PGI would apply to products produced and/or processed and/or prepared in places other than that whose name appears in the PGI;

2. if so, what criteria must be applied in delimiting the defined geographical area referred to in Articles 2(2)(b) and 4(2)(c) of the Regulation?

Appeal brought on 31 March 2006 by T.I.M.E. ART Uluslararasi Saat Ticareti ve dis Ticaret A.S. against the judgment of the Court of First Instance (Fourth Chamber) delivered on 12 January 2006 in Case T-147/03: Devinlec Développement Innovation Leclerc SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), T.I.M.E. ART Uluslararasi Saat Ticareti ve Ticaret AS

(Case C-171/06 P)

(2006/C 121/17)

Language of the case: English

Parties

Appellant: T.I.M.E. ART Uluslararasi Saat Ticareti ve dis Ticaret A.S. (represented by: M. Francetti and F. Jacobacci, avvocati)

Other parties to the proceedings: Devinlec Développement Innovation Leclerc SA, Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)

Form of order sought

The applicant claim that the Court should:

— reverse the judgment issued on 12 January 2006 by the Court of First Instance in Case T-147/03, because it breaches article 8(1)(b) of EC Regulation No 40/94 [1];

— admit the conclusions submitted by T.I.M.E during the first-level judgment in its brief dated 28 October 2003.

Pleas in law and main arguments

The applicant submits that the judgment of the Court of First Instance should be set aside on the grounds that the Court infringed and misapplied article 8(1)(b) of EC Regulation No 40/94 by:

— Failing to take account of the distinctive strength of the earlier trademark ('QUANTIEME'), an essential element that must be taken into account when assessing likelihood of confusion;

— Concluding that, in spite of the conceptual distance between the two marks, there is still a risk of confusion in view of their phonetic and visual similarities.

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(1) JO L 011, p.1

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 22 March 2006 — Mausolf v Europol

(Case T-209/02 and T-210/04) [1]

(Europol staff — Remuneration — Steps granted on the basis of an appraisal — Director's decision)

(2006/C 121/18)

Language of the case: Dutch

Parties

Applicant: Andreas Mausolf (Leiden, the Netherlands) (represented by: M. Baltusen and P. de Casparis, lawyers)

Defendant: European Police Office (Europol) (represented by: K. Hennessy-Massaro and D. Heimans initially, then K. Hennessy-Massaro, N. Urban and D. Neumann, Agents)

Application for

Firstly, annulment of the decision of 23 November 2001, by which the director of Europol promoted the applicant by one step with effect from 1 July 2001, and also of the implied decision rejecting the applicant's complaint against that decision and, secondly, annulment of the decisions of 2 January 2003 and 1 March 2004, by which the director of Europol decided not to promote the applicant by a further step with effect from 1 July 2002.

Operative part of the judgment

The Court:

1. *Dismisses the actions.*

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

(1) OJ C 202, 24.8.2002.

Judgment of the Court of First Instance of 30 March 2006 — Yedaş Tarim ve Otomotiv Sanayi ve Ticaret v Council and Commission

(Case T-367/03) [1]

(Action for damages — International agreements — EEC-Turkey Association Agreement — Customs Union between the European Community and Turkey — Compensatory financial aid)

(2006/C 121/19)

Language of the case: English

Parties

Applicant: Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ (Ümraniye, Istanbul, Turkey) (represented by: R. Sinner, lawyer)

Defendants: Council of the European Union (represented by: M. Bishop and D. Canga Fano, Agents) and Commission of the European Communities (represented by: G. Boudot and X. Lewis, Agents)

Re:

Action for compensation for damage allegedly caused by the implementation of the procedures of the Customs Union instituted by the Agreement establishing an Association between the European Economic Community and Turkey and its Additional Protocols and Decision 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 59 of 6.3.2004.

Order of the Court of First Instance of 6 March 2006 — Marcuccio v Commission

(Case T-176/04) (1)

(Officials — Social security benefits — Access to information about the existence of a medical report — Transmission after the action was brought — No need to adjudicate)

(2006/C 121/20)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Application for, in the first place, annulment of the Commission's implied decision rejecting the applicant's request to be sent a medical report or the written confirmation that that report does not exist; in the second place, annulment of the Commission's implied decision rejecting the complaint made about the rejection of that request and, in the third place, a declaration of the applicant's right to have the claims in his request and in his complaint granted.

Operative part of the order

1. *There is no further need to adjudicate on the action.*

2. *The Commission is to bear its own costs and to pay those incurred by the applicant before the notification of the defence. The applicant is to bear his own costs incurred after the notification of the defence.*

(1) OJ C 179, 10.7.2004.

Order of the Court of First Instance of 22 March 2006 — Strack v Commission

(Case T-4/05) (1)

(Officials — Official informing OLAF of possible irregularities — Decision of OLAF to close the investigation — Act adversely affecting an official — Standing to bring proceedings — Inadmissibility)

(2006/C 121/21)

Language of the case: German

Parties

Applicant: Guido Strack (Wasserliesch, Germany) (represented by: R. Schmitt, lawyer)

Defendant: Commission of the European Communities (represented by: C. Ladenburger and H. Kraemer, acting as Agents)

Re:

First, an application for annulment of the decision of the European Anti-Fraud Office (OLAF) of 5 February 2004 to close the investigation number OF/2002/0356 and the final case report on which that decision was based dated 5 February 2004 and, secondly, an application to reopen that investigation and to draw up a new final case report.

Operative part of the order

1. *The application is dismissed as inadmissible.*

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

(1) OJ C 57, 5.3.2005.

Order of the President of the Court of First Instance of 24 March 2006 — Sumitomo Chemical Agro Europe and Philagro France v Commission

(Case T-454/05 R)

(Application for interim measures — Directive 91/414/EEC — Admissibility)

(2006/C 121/22)

Language of the case: English

Parties

Applicants: Sumitomo Chemical Agro Europe SAS (Saint-Didier-au-Mont-d'Or, France) and Philagro France SAS (Saint-Didier-au-Mont-d'Or) (represented by: K. Van Maldegem and C. Mereu, lawyers)

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

Re:

Application, first, for suspension of a decision allegedly contained in a letter from the Commission of 20 October 2005 and, second, for an order for interim measures concerning the administrative procedure conducted before the Commission for the inclusion of procymidone in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p.1)

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Action brought on 8 August 2005 — Fermont v Commission

(Case T-307/05)

(2006/C 121/23)

Language of the case: French

Parties

Applicant: Alain Fermont (Kraainem, Belgium) (represented by: L. Kakiese, lawyer, and N. Luzeyemo, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— order the European Commission to procure the cessation of the highly damaging machinations against the applicant of the two officials complained about both of whom are infringing the rules of the Staff Regulations;

— make a declaration that the duty to protect legitimate expectations has been infringed;

— make a declaration that the applicant has suffered and experienced psychological harassment on the part of the two officials complained about;

— order the European Commission, for failing to act in the face of the highly damaging machinations of the two officials against the applicant, to pay EUR 5 040 000 for non-material, physical and material damage.

Pleas in law and main arguments

The applicant in this case had concluded a contract of employment with the Centre for the Development of Undertakings (CDU), a structure dependent on the Group of ACP States. As part of the performance of that contract, the applicant's task was to implement the harmonisation of the health authorities and the monitoring of fishing in Sao Tomé and Principe and in the Gulf of Guinea.

The applicant alleges, first of all, that the defendant impeded the performance of his functions.

The applicant also alleges infringement of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, and of the provisions of the Staff Regulations prohibiting psychological harassment and enshrining the duty of independence.

Action brought on 24 February 2006 — Armando Álvarez v Commission of the European Communities

(Case T-78/06)

(2006/C 121/24)

Language of the case: Spanish

Parties

Applicant: Armando Álvarez (Madrid, Spain) (represented by: E. Garayar and A. García Castillo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Declare the present action for annulment admissible;

— Annul Decision C(2005) 4634 Final of 30 November 2005, in Case COMP/F/38.354 in so far as it imputes liability to Armando Álvarez, S.A.;

— Order the Commission to pay all costs incurred by Armando Álvarez, S.A. in the present proceedings.

Pleas in law and main arguments

This action seeks annulment of Commission C(2005) 4634 Final of 30 November 2005 in Case COMP/F/38.354 — industrial bags. In the contested decision, the Commission states that the applicant, together with other companies, infringed Article 81 EC by participating, in the period 1991-2002, in agreements and concerted practices in the industrial plastic bag sector in Germany, Belgium, the Netherlands, Luxembourg, Spain and France. In respect of these infringements, the Commission imposed a fine on the applicant jointly and severally with Plásticos Españoles, S.A.

In support of its claim, the applicant alleges that the Commission wrongly assessed the facts and infringed the principle of the presumption of innocence and the claimant's rights of defence.

Action brought on 16 March 2006 — Studio Bichara e.a. v Commission

(Case T-86/06)

(2006/C 121/25)

Language of the case: Italian

Parties

Applicants: Studio Bichara SrL, Riccardo Bichara and Maria Proietti (Rome, Italy) (represented by: M. Pappalardo and M.C. Santacroce, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Hold the Commission Delegation in Papua New Guinea liable for non-contractual damages and OLAF liable for non-contractual damages in connection with Project No 8.ACP.PNG.003;

— order the Commission and OLAF to pay compensation for damage suffered as a result of unlawful conduct in the execution of Project No 8.ACP.PNG.003 provisionally assessed at Euro 5 884 873,99;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action concerns a claim for compensation for damage suffered by the applicant company, an Italian engineering consultancy which operated for a number of years in the context of EU funded programmes, as a result of the conduct of officials of the Commission Delegation in Papua New Guinea and the European Anti-Fraud Office (OLAF) in relation to contract for services No 8.ACP.PNG.003, which was supported by the European Development Fund.

It should be noted in this regard that in December 1999 the applicant company was awarded the contract in question to design improvement works for nine education establishments in a number of regions in Papua New Guinea.

The applicant company considers, together with two other applicants, that the Community has incurred non-contractual liability in this case as a consequence of:

— improper interference by the Commission Delegation in Papua New Guinea in the contractual relationship between Studio Bichara and the local Government with regard to the contract for services at issue. That interference obliged the applicant company to terminate the contract prematurely and made it impossible for there to be any amicable solution to the dispute between the contracting parties.

— the conduct on the part of OLAF in the course of investigations OF/2002/0261 and OF/2002/0322. That conduct is to be regarded as inconsistent both with OLAF's duty to carry out its investigations in complete independence, even in its dealings with the European Commission, and the principles of justice, impartiality and the presumption of innocence of those under investigation.

Action brought on 13 March 2006 — Gargani v Parliament

(Case T-94/06)

(2006/C 121/26)

Language of the case: German

Parties

Applicant: Giuseppe Gargani (Morra de Sanctis, Italy) (represented by: W. Rothley, lawyer)

Defendant: European Parliament

Form of order sought

— Declare that by deciding to submit observations on a question submitted for a preliminary ruling in Case C-305/05 pending before the Court of Justice, the Parliament infringed Article 121 of its Rules of Procedure;

— Order the Parliament to pay the costs.

Pleas in law and main arguments

The present action is brought in light of the fact that the President of the European Parliament, representing that institution in Case C-305/05, submitted observations under the second paragraph of Article 23 of the Statute of the Court of Justice. According to the applicant this opinion was issued without having been put to the vote of the Legal Affairs Committee of the European Parliament and without a decision of the European Parliament in plenary session having been obtained.

The applicant bases his action on an infringement of Article 121 of the Rules of Procedure of the European Parliament.

Action brought on 30 March 2006 — Phildar v OHIM

(Case T-99/06)

(2006/C 121/27)

Language in which the application was lodged: English

Parties

Applicant: Phildar SA (Roubaix, France) (represented by: E. Baud, lawyer)

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

Other party to the proceedings before the Board of Appeal: Comercial Jacinto Parera SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of January 16, 2006 in Case R 245/2004-2;

— subsidiarily, and if the Court decides not to annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Marked (Trade Marks and Designs) of January 16, 2006 in Case R 245/2004-2, it should remit the case to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for consideration of the opposition against the registration of the CTM application 'FILDOR' No 831 834 notably on the basis of the earlier French word trade mark 'FILDOR' No 744 927 owned by the applicant;

— order that the costs of the proceedings be borne by the defendant and, if appropriate, the intervener.

Pleas in law and main arguments

Applicant for the Community trade mark: Comercial Jacinto Parera SA

Community trade mark concerned: The word mark 'FILDOR' for goods in classes 22, 23, 24, 25 and 26 — application No 831 834

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The national and international word and figurative marks 'FILDOR' and 'PHILDAR' for goods in classes 22, 23, 24, 25 and 26

Decision of the Opposition Division: Rejection of the application for the trade mark in question

Decision of the Board of Appeal: Annulment of the Opposition Division's decision

Pleas in law: Infringement of Articles 8(1)(b), 62 and 73 of Council Regulation No 40/94 as the conflicting trade marks are visually and phonetically similar, as the applicant did not have the opportunity to present its comments on the assessment of the modes of purchase of the goods in question, and as the Board of Appeal rejected the opposition on the basis of the earlier national figurative mark 'PHILDAR' without examining the earlier national word mark 'FILDOR'.

Action brought on 23 March 2006 — Castell del Remei v OHIM

(Case T -101/06)

(2006/C 121/28)

Language in which the application was lodged: Spanish

Parties

Applicant: Castell del Remei, S.L. (Lérida, Spain) (represented by: Fernand de Visscher, Emmanuel Cornu, Donatienne Moreau, Jorge Grau Mora, Alejandro Angulo Lafora, Maite Ferrándiz Avendaño, María Baylos Morales and Antonio Velázquez Ibáñez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bodegas Roda (Haro, La Rioja, Spain)

Form of order sought

— Annul the Decision of the First Board of Appeal of OHIM of 17 January 2006, upholding the refusal of the application for Community trade mark No 2 325 256 'Castell del Remei (figurative)', which should consequently be registered by OHIM;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Castell del Remei

Community trade mark concerned: Figurative trade mark 'Castell del Remei ODA' (application No 2 325 256) for goods in Classes 29, 30 and 33

Proprietor of the mark or sign cited in the opposition proceedings: Bodegas Roda, S.A.

Mark or sign cited in opposition: Spanish word marks 'RODA' (No 1 757 553), 'RODA I' (No 2 006 616), 'RODA II' (No 2 006 615) and 'BODEGAS RODA' (No 137 050) for goods in Class 33, and the trade name 'BODEGAS RODA, S.A.' 'for the undertaking producing and maturing wines …'

Decision of the Opposition Division: Opposition upheld, refusal of registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark

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Action brought on 4 April 2006 — Investire Partecipazioni v Commission

(Case T-102/06)

(2006/C 121/29)

Language of the case: Italian

Parties

Applicant: Investire Partecipazioni SpA (Rome, Italy) (represented by: G.M. Roberti and A. Franchi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annulment of Commission Decision C (2005) 4683 of 25 November 2005;
- declaration under Article 241 EC that points B.12 and C.2 of Datasheet No 19 annexed to Commission Decision 97/322/EC of 23 April 1997 are unlawful and inapplicable;
- order that the Commission pay the costs.

Pleas in law and main arguments

The applicant submits that the contested decision should be annulled on grounds similar to those put forward in Case T-418/05 *Investire Partecipazioni* v *Commission* (OJ C 22 of 28.1.06, p. 21).

Action brought on 27 March 2006 — ESOTRADE v OHIM

(Case T-103/06)

(2006/C 121/30)

Language in which the application was lodged: Spanish

Parties

Applicant: ESOTRADE, S.A. (Madrid, Spain) (represented by Jaime de Rivera Lamo de Espinosa, lawyer)

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

Other party to the proceedings before the Board of Appeal: Antonio Segura Sánchez

Form of order sought

- Annul the Decision of the Second Board of Appeal of OHIM of 10 January 2006 in Case R 217/2004-2 in the dispute between the marks YOKANA and YOKONO;
- declare the Community trade mark No 1 600 659, 'YOKANA' eligible for registration;
- order the defendant to pay the costs of both the present and the earlier proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark 'YOKANA' (application No 1 600 659) for goods in Classes 14, 18 and 25

Proprietor of the mark or sign cited in the opposition proceedings: Antonio Segura Sánchez

Mark or sign cited in opposition: Figurative Community and Spanish trade marks 'YOKONO' for goods in Classes 25 (No 1 099 356) and 18, 25 and 39 (No 336 750)

Decision of the Opposition Division: Opposition upheld in part and refusal of the application for registration for certain goods in Classes 18 and 25

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark

Action brought on 7 April 2006 — InterVideo v OHIM

(Case T-105/06)

(2006/C 121/31)

Language of the case: English

Parties

Applicant: InterVideo, Inc. (California, USA) (represented by: K. Manhaeve, lawyer)

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

Form of order sought

- Annul the decision of the Board of Appeal of 31 January 2006;
- order the defendant to pay all the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'WinDVD Creator' for goods in class 9 — application No 4 106 936

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Articles 4 and 7(1)(b) and (c) of Council Regulation No 40/94 as the Board of Appeal has defined the relevant public incorrectly. The relevant public is, according to the applicant, the average consumer and not PC users familiar with specific computer language.

Order of the Court of First Instance of 20 March 2006 — Bioelettrica v Commission

(Case T -287/01) [1]

(2006/C 121/32)

Language of the case: Italian

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

[1] OJ C 31, 2.2.2002.

Order of the Court of First Instance of 15 March 2006 — Bioelettrica v Commission

(Case T -56/03) [1]

(2006/C 121/33)

Language of the case: Italian

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

[1] OJ C 101, 26.4.2003.

Order of the Court of First Instance of 21 March 2006 — Holcim (France) v Commission

(Case T -86/03) [1]

(2006/C 121/34)

Language of the case: French

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

[1] OJ C 112, 10.5.2003.

Order of the Court of First Instance of 21 March 2006 — Colgate-Palmolive v OHIM

(Case T-322/04) [1]

(2006/C 121/35)

Language of the case: Spanish

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

[1] OJ C 262, 23.10.2004.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 17 March 2006 — Sequeira Wandschneider v Commission

(Case F-28/06)

(2006/C 121/36)

Language of the case: French

Parties

Applicant: Paulo Sequeira Wandschneider (Brussels, Belgium) (represented by: G. Vandersanden and C. Ronzi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicant's career development report (CDR) covering the reference period from 1 January 2004 to 31 December 2004;

— As far as necessary, annul the decision rejecting the complaint brought by the applicant on 5 September 2005;

— Order the defendant to pay damages and interest to compensate for the material and non-material loss suffered, assessed on an equitable basis, reserving the right to increase their amount to EUR 5 000;

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

Pleas in law and main arguments

The applicant, a Commission official with responsibility, inter alia, for conducting investigations into dumping practices, challenges the validity of his CDR in respect of the 2004 appraisal exercise.

In his application, he submits that his immediate superior awarded him lower marks than he deserved, on account of his refusal to favour the interest of Community industry during his investigations.

He also argues that the procedure followed in order to compile his CDR infringes Article 43 of the Staff Regulations, the general provisions implementing that Article, the Appraisal Guide and the Internal Rules of Procedure of the Joint Evaluation Committee. The defendant also infringed the applicant's right to a defence and his right to an effective appeal procedure.

The applicant is of the view, firstly, that his CDR is vitiated by manifest errors of assessment and a failure to state the grounds and, secondly, that the defendant has infringed the duty to have regard for the welfare of officials and the duty of sound administration.

Lastly, the applicant alleges a misuse of powers, inasmuch as the appraisal of his performance as unsatisfactory is simply a means of attempting to remove him from his position as an investigator.

Action brought on 13 March 2006 — Arnaldos Rosauro and Others v Commission

(Case F-29/06)

(2006/C 121/37)

Language of the case: French

Parties

Applicants: Andres Arnaldos Rosauro and Others (represented by: S. Rodrigues and A. Jaume, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicants' instruments of appointment, taken together with the remuneration slips which they have received since the date of their advancement from category C to category B, in that the slips appoint them in grade B*3/B*4 and retain their basic salary as it was before the change of category through the application of a multiplier;

— Annul the decision of the Appointing Authority to remove the applicants' promotion points ('rucksack') following their advancement from category C to category B;

— Inform the Appointing Authority of the consequences of those annulments, that is to say, with retroactive effect from the day of their advancement from category C to category B: (1) the appointment of the applicants in grade B*5/B*6 under Article 2 of Annex XIII to the Staff Regulations, (2) the payment to them of the basic salary to which they are entitled under the Article 2(2) of Annex XIII to the Staff Regulations without a multiplier, (3) their retention, after their advancement to category B, of the merit points and transitional points which they accumulated when they were employed in category C;
— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicants are all successful candidates of the internal competition for change of category COM/PB/04, the notice for which was published before the date when the new Staff Regulations entered into force. After that date, they were appointed by the defendant to the higher category but, because of the application of a multiplier, that did not entail an increase in their remuneration. In addition, their promotion points were re-set at zero.

In their action, the applicants submit three complaints, the first of which is that their appointment to grade B*3/B*4 is unlawful to the extent that the equivalent grades to those referred to in the competition notice are the grades B*5/B*6, in accordance with Article 2 of Annex XIII to the Staff Regulations.

So far as the second complaint is concerned, the applicants argue that the application of a multiplier to their remuneration is contrary to, on the one hand, the Staff Regulations, which make no mention of the application of such a factor in this instance, and, on the other hand, the principle of non-discrimination, the principle of the protection of legitimate expectations and the principle of acquired rights.

Lastly, as regards the third complaint, the applicants maintain that the cancellation of their promotion points is contrary to the spirit of Article 45a of the Staff Regulations and Article 5 of Annex XIII to the Staff Regulations, and the principle of equal treatment.

III

(Notices)

(2006/C 121/38)

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

OJ C 108, 6.5.2006

Past publications

OJ C 96, 22.4.2006

OJ C 86, 8.4.2006

OJ C 74, 25.3.2006

OJ C 60, 11.3.2006

OJ C 48, 25.2.2006

OJ C 36, 11.2.2006

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