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(Information)

COURT OF JUSTICE

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Order of the Court (Sixth Chamber) of 19 January 2006 — Audi AG v OHIM

(Case C-82/04 P) [1]

(Appeal — Community trade mark — Word mark 'TDI' — Refusal of registration — Appeal which has become devoid of purpose — No need to adjudicate)

(2006/C 154/01)

Language of the case: German

Parties

Applicant: Audi AG (represented by: L. von Zumbusch, avocat)

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

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 3 December 2003 in Case T-16/02 Audi v OHIM dismissing the action brought against decision R 652/2000-1 of the First Board of Appeal of OHIM of 8 November 2001 refusing registration as a Community trade mark of the word sign 'TDI' for certain goods in classes 12 and 37 — Descriptive nature as absolute ground for refusal — Article 7(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the order

1. *There is no need to adjudicate on the appeal brought by Audi AG;*

2. *Audi AG is ordered to pay the costs of these proceedings.*

[1] OJ C 106, 30.04.2004.

Order of the Court (Sixth Chamber) of 16 February 2006 — Adriatica di Navigazione SpA v Commission of the European Communities

(Case C-111/04 P) [1]

(Appeal — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Competition — Cartels — Agreement between undertakings — Proof of participation of an undertaking in a cartel)

(2006/C 154/02)

Language of the case: Italian

Parties

Applicant: Adriatica di Navigazione SpA (represented by: M. Siragusa and F. Moretti, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: R. Lyal and L. Pignataro, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 11 December 2003 in Case T-61/99 *Adriatica di Navigazione v Commission* dismissing as unfounded an action for annulment of the Commission's decision of 9 December 1998 relating to a proceeding under Article 85 of the EC Treaty (IV/34466 — Greek Ferry Boats)

Operative part of the order

1. *The appeal is dismissed;*

2. *The cross-appeal of the Commission of the European Communities is dismissed;*

3. *Adriatica di Navigazione SpA shall pay 90 % of the costs;*

4. *The Commission of the European Communities shall pay 10 % of the costs.*

(1) OJ C 106 of 30.04.2004

Order of the Court (Fourth Chamber) of 21 February 2006 — Deutsche Post AG, DHL Express (Italy) Srl, formerly DHL International Srl v Commission of the European Communities, Italian Republic, Poste Italiane SpA

(Case C-367/04 P) (1)

(Appeal — Aid granted by the Italian authorities in favour of Poste Italiane)

(2006/C 154/03)

Language of the case: German

Parties

Applicants: Deutsche Post AG, DHL Express (Italy) Srl, formerly DHL International Srl (represented by: J. Sedemund and T. Lübbig, avocats)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Kreuschitz and M. Niejahr, Agents), Italian Republic (represented by I. Braguglia, Agent, and D. Del Gaizo, avocat), Poste Italiane SpA (represented by: A. Sandulli, A. Fratini and B. O'Connor, avocats)

Re:

Appeal against the order of the Court of First Instance (Second Chamber, Extended Composition) of 27 May 2004 in Case T-358/02 Deutsche Post and DHL International Srl v Commission dismissing as inadmissible the action for annulment of Commission Decision 2002/782/EC of 12 March 2002 on the State aid granted by Italy to Poste Italiane SpA (formerly Ente Poste Italiane) (OJ 2002 L 282, p.29)

Operative part of the order

1. *The appeal is dismissed;*

2. *Deutsche Post AG and DHL Express (Italy) Srl, formerly DHL International Srl, are ordered to pay the costs;*

3. *The Italian Republic is ordered to bear its own costs.*

(1) OJ C 284, 20.11.2004.

Order of the Court (Third Chamber) of 16 February 2006 (reference for a preliminary ruling by the Landesgericht Korneuburg) — Plato Plastik Robert Frank GmbH v Caropack Handelsgesellschaft mbH

(Case C-26/05) (1)

(Second paragraph of Article 104(3) of the Rules of Procedure — Directive 94/62/EC — Packaging and packaging waste — Concepts of producer of packaging and producer of packaging materials — producer of plastic carrier bags)

(2006/C 154/04)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties

Applicant: Plato Plastik Robert Frank GmbH

Defendant: Caropack Handelsgesellschaft mbH

Re:

Reference for a preliminary ruling — Landesgericht Korneuburg — Interpretation of Article 3 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p.10) — Concepts of producers of grouped, sales or transport packaging and suppliers of packaging materials — Producer of plastic carrier bags

Operative part of the order

1. *Article 3(1) and (11) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste must be interpreted as meaning that the producer of packaging is not necessarily the party who puts goods together, or causes them to be put together with the product intended as packaging. The producer of plastic carrier bags handed to customers free of charge or for a price in shops must be considered as being a producer of packaging.*

2. *Directive 94/62 must be interpreted as meaning that it is does not preclude the national legislation, such as the decree of the Federal Ministry for the Environment, Youth and Family Affairs on the avoidance and recovery of packaging waste and certain product waste and the setting-up of collection and recovery systems which provides that the producer of packaging, in particular plastic carrier bags must either accept the return of the bags after use or participate in a collection and recovery system of packaging waste unless a party further down the distribution chain takes over that obligation and the producer obtains a valid declaration on that matter.*

(1) OJ C 82 of 02.04.2005

Order of the Court of 12 January 2006 — Entorn, Societat Limitada Enginyeria i Serveis v Commission of the European Communities

(Case C-162/05 P) ([1])

(Appeal — EAGGF — Financial participation in a demonstration project concerning the introduction of new cultivation techniques in sumac production — Withdrawal of financial aid)

(2006/C 154/05)

Language of the case: Spanish

Parties

Appellant: Entorn, Societat Limitada Enginyeria i Serveis (represented by: M. Belard-Kopke Marques-Pinto, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: L. Visaggio and F. Jimeno Fernández, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 18 January 2005 in Case T-141/01 *Entorn* v *Commission* refusing an application to annul a decision of the Commission withdrawing financial aid from the European Agricultural Guidance and Guarantee Fund (EAGGF), 'Guidance' Section, granted to the appellant for a demonstration project concerning the introduction of new cultivation techniques in sumac production

Operative part of the order

1. *The appeal is dismissed;*

2. *Entorn, Societat Limitada Enginyeria i Serveis is ordered to pay the costs.*

([1]) OJ C 143 of 11.6.2005.

Order of the Court of 23 February 2006 — Laurent Piau v Commission of the European Communities, Fédération Internationale de Football Association (FIFA)

(Case C-171/05 P) ([1])

(Appeal — Freedom to provide services — Competition — Regulation of the activities of players' agents — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2006/C 154/06)

Language of the case: French

Parties

Applicant: Laurent Piau (represented by: M. Fauconnet, lawyer)

Other parties to the proceedings: Commission of the European Communities (represented by: A. Bouquet and O. Beynet, Agents), Fédération Internationale de Football Association (FIFA) (represented by: F. Louis and A. Vallery, lawyers)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 26 January 2005 in Case T-193/03 *Piau v Commission*, in which the Court of First Instance dismissed the action for annulment of the Commission's decision of 15 April 2002 rejecting the complaint lodged by the applicant concerning the Fédération Internationale de Football Association's regulation governing the activities of players' agents

Operative part of the order

1. *The appeal is dismissed;*

2. *Mr Piau is ordered to pay the costs of the present proceedings.*

([1]) OJ C 155 25.06.2005

Order of the Court (Fourth Chamber) of 9 February 2006 (reference for a preliminary ruling from the Komárom-Esztergom Megyei Bíróság) — Lakép Kft., Pár-Bau Kft., Rottelma Kft. v Komáron-Esztergom Megyei Közigazgatási Hivatal

(Case C-261/05) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Accession to the European Union — Sixth Directive 77/388/EEC — Application ratione temporis — Article 33 — Local tax on economic operations — Lack of jurisdiction of the Court)

(2006/C 154/07)

Language of the case: Hungarian

Parties

Applicants: Lakép Kft., Pár-Bau Kft., Rottelma Kft.

Defendant: Komáron-Esztergom Megyei Közigazgatási Hivatal

Re:

Reference for a preliminary ruling — Komárom-Esztergom Megyei Bíróság — Interpretation of Art. 33 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Prohibition of taxes capable of being characterised as turnover taxes — National rules authorising the local authorities to introduce a tax on economic operations

Operative part of the order

The Court of Justice of the European Communities does not have the jurisdiction to answer the questions referred by the Komárom-Esztergom Megyei Bíróság.

([1]) OJ C 205, 20.08.2005.

Order of the Court (Sixth Chamber) of 9 February 2006 — Hippocrate Vounakis v Commission of the European Communities

(Case C-322/05 P) ([1])

(Appeal — Officials — Promotion — Article 90(2) of the Staff Regulations — Complaint — Time-limits — Appeal manifestly unfounded)

(2006/C 154/08)

Language of the case: French

Parties

Appellant: Hippocrate Vounakis (represented by: S. Orlandi, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: G. Berscheid and C. Berardis-Keyser, Agents)

Re:

Appeal against the order of the Court of First Instance (Third Chamber) of 2 June 2005 in Case T-326/03 *Vounakis* v *Commission* rejecting, as inadmissible, an application to annul the decision of the Commission not to promote the appellant to grade A4 in the 2002 promotion exercise

Operative part of the order

1. *The appeal is dismissed;*

2. *Mr Vounakis is ordered to pay the costs.*

([1]) OJ C 257 of 15.10.2005.

Reference for a preliminary ruling from the Finanzgericht des Landes Brandenburg lodged on 30 January 2006 — Campina GmbH & G. formerly TUFFI Campina emzett GmbH v Haupzollamt Frankfurt (Oder)

(Case C-45/06)

(2006/C 154/09)

Language of the case: German

Referring court

Finanzgericht des Landes Brandenburg (Germany)

Parties to the main proceedings

Applicant: Campina GmbH & G. formerly TUFFI Campina emzett GmbH

Defendant: Haupzollamt Frankfurt (Oder)

Question referred

Does the system of penalties laid down in the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 ([1]) as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998 ([2]), contravene the principle of proportionality in cases where the time-limit is exceeded only marginally and, moreover, without appreciable effect?

([1]) OJ 1993 L 57, p.22.
([2]) OJ 1998 L 142, p. 22.

Reference for a preliminary ruling from the Consiglio di Stato, Quinta Sezione lodged on 20 March 2006 — Santorso Soc. coop. arl v Comune di Torino

(Case C-148/06)

(2006/C 154/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Santorso Soc. coop. arl

Defendant: Comune di Torino and Others

Question(s) referred

1. Does the rule laid down in Article 30(4) of Directive 93/37/EEC ([1]) or the similar rule contained in Art. 55 (1) and (2) of Directive 2004/18/EC ([2]) (in cases where that is the relevant provision), that, where tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received, constitute a fundamental principle of Community law?

2. If the answer to the preceding question is in the negative, is the rule established by Art. 30 (4) of Directive 93/37/EEC or the similar rule contained in Art. 55 (1) and (2) of Directive 2004/18/EC (in cases where that is the relevant provision), according to which, if tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received, while not presenting the characteristics of a fundamental principle of Community law, nevertheless an implied consequence of or a principle deriving from the principle of competition, considered in conjunction with the principles of administrative transparency and non-discrimination on grounds of nationality and is it therefore, as such, directly binding, taking precedence over possibly incompatible national provisions adopted by the Member States to regulate public works contracts to which Community law is not directly applicable?

([1]) OJ L 199, p. 54.
([2]) OJ L 134, p. 114.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven lodged on 23 March 2006 — Stichting ROM-projecten v Staatssecretaris van Economische Zaken

(Case C-158/06)

(2006/C 154/11)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Stichting ROM-projecten

Defendants: Staatssecretaris van Economische Zaken

Questions referred

1. Is Article 6 of the Commission Decision of 16 October 1995 concerning a contribution from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) for an operational programme within the framework of the SME Community initiative for the benefit of areas eligible under Objectives 1 and 2 in the Netherlands (C(95) 1753) unconditional and sufficiently clear and precise to be directly applicable in the national legal order?

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

   Must Article 249 EC be interpreted as meaning that Article 6 of that decision has a direct effect so as to require an individual, as a final beneficiary, to enter into the legally binding commitments referred to in that respect and to specifically allocate the requisite finance no later than 31 December 1999?

3. If the answer to question 2 is in the affirmative:

   Does Article 38(1)(h) of Council Regulation (EC) No 1260/1999 [1] of 21 June 1999 laying down general provisions on the Structural Funds, viewed in the light of the principles of Community law, leave the Member States scope to refrain from recovery on account of an infringement of a provision where the subsidy beneficiary concerned was unaware of that provision and is not at fault for its lack of knowledge of that provision?

[1] OJ L 161, 21.06.2001, p.1.

Appeal brought on 27 March 2006 by the Republic of Finland against the order made on 9 January 2006 in Case T-177/05 Republic of Finland v Commission of the European Communities

(Case C-163/06 P)

(2006/C 154/12)

Language of the case: Finnish

Parties

Appellant: Republic of Finland (Agent: E. Bygglin)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the order of the Court of First Instance of the European Communities of 9 January 2006 in Case T-177/05 *Republic of Finland* v *Commission of the European Communities* and declare Finland's action under Article 230 EC admissible and remit the main action to the Court of First Instance of the European Communities, in which the Commission should be ordered to reimburse Finland also the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Finland submits that in its order the Court of First Instance infringed Community law within the meaning of Article 58 of the Statute of the Court of Justice.

Finland submits that the Court of First Instance erred in law in considering that the contested letters of the Commission did not contain a decision amenable to an action under Article 230 EC.

In Finland's view, the contested letters of the Commission contain a decision amenable to an action under Article 230 EC.

By the contested decision the Commission in fact denied Finland the opportunity to make a conditional payment within the meaning of case-law of the Court of Justice.

The contested decision thus has binding legal effects for Finland which affect Finland's interests and clearly change Finland's legal position, as required by the case-law concerning the application of Article 230 EC. In addition, the contested decision caused a loss of rights for Finland and is thus manifestly adverse to Finland.

Reference for a preliminary ruling from the Commissione tributaria provinciale di Roma lodged on 27 March 2006 — Nissan Italia Srl v Agenzia Entrate Ufficio Roma 3

(Case C-164/06)

(2006/C 154/13)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma (Italy)

Parties to the main proceedings

Applicant: Nissan Italia Srl

Defendant: Agenzia Entrate Ufficio Roma 3

Question referred

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 production activities)?

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

Reference for a preliminary ruling from the Commissione tributaria provinciale di Roma lodged on 27 March 2006 — Leasys SpA v Agenzia Entrate Ufficio Roma 7

(Case C-165/06)

(2006/C 154/14)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma (Italy)

Parties to the main proceedings

Applicant: Leasys SpA

Defendant: Agenzia Entrate Ufficio Roma 7

Question referred

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 production activities)?

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

Reference for a preliminary ruling from the Tribunale civile di Bolzano lodged on 28 March 2006 — Eurodomus SrL v Comune di Bolzano

(Case C-166/06)

(2006/C 154/15)

Language of the case: Italian

Referring court

Tribunale civile di Bolzano (Italy)

Parties to the main proceedings

Applicant: Eurodomus SrL

Defendant: Comune di Bolzano

Questions referred

1. Does a regulatory authority which, in the exercise of its powers, may affect the substantive economic position of the applicant, infringe Community law by introducing legal measures which disapply a decision of an administrative court that is res judicata?

2. Did the Provincia Autonoma di Bolzano infringe Community law by adopting Article 107 c. 25 LP No 13/1997, which, by amending town planning legislation, removed the consent for commercial purposes granted in respect of buildings constructed with building consent in accordance with previous town planning legislation under which consent for commercial purposes had been granted for those buildings?

3. By adopting and implementing the Provincia Autonoma di Bolzano's obstructive measure 'tout court', did the Commissario del governo italiano also infringe Community law?

Reference for a preliminary ruling from the Corte Suprema di Cassazione lodged on 3 April 2006 — Ministero delle Finanze v CO.GE.P Srl

(Case C-174/06)

(2006/C 154/16)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ministero delle Finanze

Defendant: CO.GE.P Srl

Question referred

Does the grant to an entity of a right to use, including exclusively, public property without provision of services of a nature such as to outweigh that of the permission to use the property, for a specified period and against payment of a much lower amount than the value of the property, which is made, at the request of the party concerned, by a public entity carrying on a business, through the enactment of an administrative measure rather than by contract, such as the concession, under national law, of property owned by the State constitute the letting of immovable property exempt from VAT under Article 13B(b) of Sixth Directive 77/388/EEC? [1]

[1] OJ 1977, L 145 p. 1.

Reference for a preliminary ruling from the Tribunale Civile Di Genova lodged on 24 March 2006 — Alessandro Tedesco v Tomasoni Fittings SrL, RWO Marine Equipment Ltd

(Case C-175/06)

(2006/C 154/17)

Language of the case: Italian

Referring court

Tribunale Civile Di Genova

Parties to the main proceedings

Applicant: Alessandro Tedesco

Defendant: Tomasoni Fittings SrL, RWO Marine Equipment Ltd

Question(s) referred

1. Is a request for obtaining a description of goods under Articles 128 and 130 of the Italian Code of Industrial and Intellectual Property, in accordance with the formal terms of the order made by this court in the present case, one of the forms of the taking of evidence prescribed by Council Regulation (EC) No 1206/2001 of 28 May 2001 [1] (on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters) by which the courts of one Member State may, on the basis of that regulation, request that the competent court of another Member State should itself take that evidence?

2. If the answer to question 1 is yes and the request for obtaining a description is incomplete or fails to comply with the conditions under Article 4 of the regulation, is the court to which the request is made under an obligation to:

   (a) send an acknowledgment of receipt in accordance with the conditions laid down by Article 7 of the regulation;

   (b) indicate any respect in which the request may be incomplete so as to enable the requesting court to complete and/or amend its request?

[1] OJ L 174, page 1

Reference for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto lodged on 7 April 2006 — Deutsche Lufthansa Aktiengesellschaft (LUFTHANSA) v ANA — Aeroportos de Portugal, S.A

(Case C-181/06)

(2006/C 154/18)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal do Porto

Parties to the main proceedings

Applicant: Deutsche Lufthansa Aktiengesellschaft (LUFTHANSA)

Defendant: ANA — Aeroportos de Portugal, S.A

Questions referred

1. May the sum demanded by way of charges for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999, be regarded as a fee having been 'determined according to relevant, objective, transparent and non-discriminatory criteria', as required by Article 16(3) of Directive 96/67 of the Council of the European Union of 15 October 1997?

2. Is it in conflict, or incompatible, with the free access to the market for the provision of groundhandling services to third parties provided for by Article 6 of Council Directive 96/97 [1], for payment to be required of a sum by way of charges for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum?

3. Is it in conflict, or incompatible, with the completion of the internal market and the principles laid down in Articles 3(c) and 4 of the EC Treaty, for payment to be required of a sum by way of charges for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum?

4. May requiring payment of a sum by way of charges for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum, be regarded as abuse within the meaning of Article 82 of the EC Treaty?

[1] Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36).

Action brought on 18 April 2006 — Kingdom of Spain v Council of the European Union

(Case C-184/06)

(2006/C 154/19)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Defendant: Council of the European Union

Form of order sought

— annulment of Council Regulation (EC) No 51/2006 of 22 December 2005 ([1]) fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, in so far as it does not allocate specific quotas to the Spanish fishing fleet in the Community waters of the North Sea and the Baltic Sea;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

1. *Infringement of the principle of non-discrimination*

The Kingdom of Spain believes that, in so far as the contested regulation does not allocate to Spain quotas in the Community waters of the North Sea and the Baltic Sea, it infringes the principle of non-discrimination since, upon expiry of the transitional period laid down in the Act of Accession, the other Member States are granted the right of access to those waters and their resources, whereas the Kingdom of Spain is granted only the right of access to waters.

2. *Incorrect interpretation of the Act of Accession of Spain*

In regulating the transitional period for Spain concerning fisheries, the Act of Accession does not distinguish between access to waters and access to resources. Moreover, the provisions of the Act of Accession must be interpreted in the light of their context and purpose.

3. *Infringement of Article 20(2) of Regulation No 2371/2002* ([2])

The failure to allocate to Spain quotas which constitute new fishing opportunities distributed for the first time after expiry of the transitional period laid down in the Act of Accession infringes the above provision.

([1]) OJ L 16 of 20.1.2006, p. 1.

([2]) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358 of 31.12.2002, p. 59).

Reference for a preliminary ruling from the Court of Appeal (Civil Division) (England and Wales) made on 14/04/2006 — The Queen on the application of British Telecommunications plc v Commissioners for HM Revenue and Customs

(Case C-185/06)

(2006/C 154/20)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: British Telecommunications plc

Defendant: Commissioners for HM Revenue and Customs

Questions referred

1. Does the European law right to the repayment of improperly levied sums by tax authorities, referred to by the ECJ in paragraph 84 of the Judgment in Metallgesellschaft v. CIR (Joined Cases C-397/98 and C-410/98), apply equally to the repayment of sums paid voluntarily by a taxpayer to a tax authority in error (where the tax authority did not contribute to that error and had no reason to be aware of it), or is it a matter for domestic law?

2. If European law does confer a right to the repayment of such sums in such circumstances, does it also give rise to a right to interest on the amounts repaid, or is it a matter for domestic law, as suggested by paragraph 86 of the Judgment of the ECJ in Metallgesellschaft?

3. If European law does confer a right to interest on the repayment of such sums in such circumstances is that a right to simple interest or to compound interest?

Action brought on 18 April 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-186/06)

(2006/C 154/21)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and A. Alcover San Pedro, Agents, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— a declaration that, in relation to the plan to irrigate the irrigable area of the Segarra-Garrigues Canal, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 4(1) and (4) of Council Directive 79/409/EEC ([1]) of 2 April 1979 on the conservation of wild birds;

— an order that the Kingdom of Spain should pay the costs.

Pleas in law and main arguments

The Member States may not take advantage of their failure to designate Zones in accordance with the Directive in order to perform actions in those areas that may endanger its objectives and when, as in this case, the Member State has not designated protected areas where it ought to have done, the levels of protection required in an area of importance for birds are those laid down in Article 4(4) of the Directive.

In consequence, the Commission takes the view that, by having provided for and implemented the procedures leading to the authorisation of the Segarra-Garrigues Canal irrigation plan, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 4(1) and (4) of the Directive.

([1]) OJ 1979 L 103, p. 1

Action brought on 12 April 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-187/06)

(2006/C 154/22)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne, H. Van Vliet, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to execute within the prescribed period the Decision of 24 April 2002 (C(2002)1341 final) on the State aid implemented by Belgium for the Beaulieu group (Ter Lembeek International) (State Aid C 36/01, ex NN 73/00) ([1]), the Kingdom of Belgium has failed to fulfil its obligations under the fourth paragraph of Article 249 of the EC Treaty and Articles 2 and 3 of that Decision;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

Nearly four years have passed since the Belgian authorities were notified of the Decision, yet the disputed aid has not, to date, actually been reimbursed by the beneficiary. The latter is still enjoying the benefits of using the funds, which is exactly what the Decision intended to put an end to.

([1]) OJ 2002 L 296, p.60

Reference for a preliminary ruling from the Cour d'appel de Bruxelles lodged on 21 April 2006 — Belgacom Mobile SA v Institut belge des services postaux et des télécommunications

(Case C-190/06)

(2006/C 154/23)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Belgacom Mobile SA

Defendant: Institut belge des services postaux et des télécommunications

Questions referred

1 Do individual rights of use for radio frequencies, as referred to in Article 5(1) of Directive 2002/20/EC (Authorisation Directive), ([1]) include the exclusive right to use devices such as GSM devices or to authorise their use?

2 Must Article 7(3) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ([2]) be understood as meaning that it precludes a national measure making the use of SIM cards in GSM gateways subject to the prior permission of the mobile network operator concerned?

3 Does the concept of 'access' within the meaning of Directive 2002/19/EC (Access Directive) ([3]) cover the provision to another undertaking of a SIM card where that SIM card is used by that undertaking in GSM gateway devices in order to provide third parties with services which make it possible to bypass interconnection points?

4 Where a national legal or administrative measure consists in requiring the prior permission of the operator of a public mobile telephony network which provides another undertaking with one or more SIM cards enabling the user of the SIM card to access the electronic communications services provided by that operator, and the SIM cards are used in devices which afford a technical means of accessing the operator's services without passing through interconnection points and without any need to obtain from that operator the provision of other resources and/or services, is that measure compatible with:

— Directive 2002/20/EC (Authorisation Directive) which introduced a system of general authorisation for all electronic communications networks and services;

— the [second] subparagraph of Article 8(1) of Directive 2002/21/EC (Framework Directive), ([4]) which provides that Member States are to ensure that, in carrying out their tasks, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral;

— the competition rules to which recital 7 in the preamble to Directive 2002/19/EC (Access Directive) refers, in the sense that it would have the effect of linking the terms and conditions for access within the meaning of Article 2(a) of Directive 2002/19/EC (Access Directive) to the activities of the party seeking access, and specifically to the degree of its investment in network infrastructure;

5 If it must be held that the use of GSM gateways for the commercial provision of electronic communications services requires the consent of the mobile operator concerned, must Articles 3 and 4 of Directive 97/33/EC ([5]) and Article 4 of Directive 2002/19/EC (Access Directive) be interpreted as meaning that such use must be covered by an agreement between the parties concerned on the technical and commercial terms and conditions?

6 Must the obligation imposed on organisations notified as having significant market power to make their prices cost oriented, as referred to in Article 7 of Directive 97/33/EC and Article 13(1) of Directive 2002/19/EC (Access Directive), be interpreted as meaning that it does not preclude an operator which is subject to it from setting its tariffs in such a way as to recover the investment costs for interconnection points on the ground that these were established taking account of the total volume of 'off-net' calls, including calls diverted through GSM gateways?

7 Must Article 10(6) of Directive 2002/20/EC (Authorisation Directive) and Article 7(6) of Directive 2002/21/EC (Framework Directive) be interpreted as meaning that they allow Member States the discretion to provide that, where the national regulatory authority adopts urgent interim measures, those measures may apply only for a limited period fixed at two months?

([1]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

([2]) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10).

([3]) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7).

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

([5]) Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32).

Reference for a preliminary ruling from the Bundesverwaltungsgericht lodged on 21 April 2006 — Matthias Kruck v Landkreis Potsdam-Mittelmark

(Case C-192/06)

(2006/C 154/24)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Matthias Kruck

Defendant: Landkreis Potsdam-Mittelmark

Question referred

Is Article 9(2) to (4) of Regulation (EEC) No 3887/92, [1] as amended by Regulation (EC) No 1648/95. [2] to be interpreted as meaning that the maximum area to be considered for compensatory payments for set-aside in accordance with the second and fourth sentences of Article 7(6) of Regulation (EEC) No 1765/92, as amended by Regulation (EC) No 2989/95, [3] should be calculated on the basis of the area applied for or the area actually determined?

[1] AB1.l 391, S.36
[2] AB1.156, S.27
[3] AB1.L 312, S.5

Reference for a preliminary ruling from the Conseil d' Etat lodged on 2 May 2006 — Centre d'exportation du livre francais (CELF), Ministre de la culture et de la communication v Société internationale de diffusion et d'édition

(Case C-199/06)

(2006/C 154/25)

Language of the case: French

Referring court

Conseil d' Etat (France)

Parties to the main proceedings

Appellants: Centre d'exportation du livre francais (CELF), Ministre de la culture et de la communication

Respondent: Société internationale de diffusion et d'édition

Questions referred

(1) Is it permissible under Article 88 (EC) for a State which has granted to an undertaking aid which is unlawful, and which the courts of that State have found to be unlawful on the ground that it had not previously been notified to the European Commission as required under Article 88(3) EC, not to recover that aid from the economic operator which received it on the ground that, after receiving a complaint from a third party, the Commission declared that aid to be compatible with the rules of the common market, thus effectively exercising its exclusive right to determine such compatibility?

(2) If that obligation to repay the aid is confirmed, must the periods during which the aid in question was declared by the European Commission to be compatible with the rules of the common market, before those decisions were annulled by the Court of First Instance of the European Communities, be taken into account for the purpose of calculating the sums to be repaid?

Order of the President of the Court of 22 March 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-204/04) [1]

(2006/C 154/26)

Language of the case: German

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

[1] OJ C 201, 07.08.2004.

Order of the President of the Court of 11 January 2006 (references for a preliminary ruling from the Tribunale Amministrativo Regionale della Liguria) — Acquedotto De Ferrari Galliera SpA v Provincia di Genova and Others (C-241/04) and Acquedotto Nicolay SpA v Provincia di Genova and Others (C-242/04)

(Joined Case C-241/04 and C-242/04) [1]

(2006/C 154/27)

Language of the case: Italian.

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

[1] OJ C 217, 28.08.2004.

Order of the President of the Court of 7 February 2006 (reference for a preliminary ruling from the High Court — Queen's Bench Division — Administrative Court) — South Western Fish Producers' Organisation Ltd and Others v Secretary of State for Environment, Food and Rural Affairs

(Case C-388/04) ([1])

(2006/C 154/28)

Language of the case: English

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

([1]) OJ C 284, 20.11.2004.

Order of the President of the Court of 12 January 2006 (reference for a preliminary ruling from the Regeringsrätten) — GöteborgsOperan AB v Skatteverket

(Case C-390/04) ([1])

(2006/C 154/29)

Language of the case: Swedish

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

([1]) OJ C 273, 06.11.2004.

Order of the President of the Court of 12 January 2006 — Commission of the European Communities v Italian Republic

(Case C-477/04) ([1])

(2006/C 154/30)

Language of the case: Italian

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

([1]) OJ C 31, 05.02.2005.

Order of the President of the Court of 23 March 2006 — Galeries de Lisieux SA v Organic Recouvrement

(Case C-488/04) ([1])

(2006/C 154/31)

Language of the case: French

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

([1]) OJ C 31, 05.02.2005.

Order of the President of the Fifth Chamber of the Court of 26 January 2006 — Commission of the European Communities v French Republic

(Case C-92/05) ([1])

(2006/C 154/32)

Language of the case: French

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

([1]) OJ C 82, 02.04.2005.

Order of the President of the Court of 11 January 2006 — Commission of the European Communities v Hellenic Republic

(Case C-182/05) ([1])

(2006/C 154/33)

Language of the case: Greek

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

([1]) OJ C 155, 25.06.2005.

Order of the President of the Court of 7 February 2006 — Energy Technologies ET SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Aparellaje eléctrico, SL

(Case C-197/05 P) [1]

(2006/C 154/34)

Language of the case: English

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

[1] OJ C 243, 1.10.2005.

Order of the President of the Court of 15 February 2006 — Commission of the European Communities v Italian Republic

(Case C-218/05) [1]

(2006/C 154/35)

Language of the case: Italian

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

[1] OJ C 182, 23.07.2005.

Order of the President of the Court of 7 February 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-247/05) [1]

(2006/C 154/36)

Language of the case: Dutch

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

[1] OJ C 217, 03.09.2005.

Order of the President of the Court of 7 February 2006 (reference for a preliminary ruling from the High Court — Chancery Division) — Oakley Inc v Animal Ltd and Others

(Case C-267/05) [1]

(2006/C 154/37)

Language of the case: English

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

[1] OJ C 229, 17.09.2005.

Order of the President of the Court of 7 March 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-323/05) [1]

(2006/C 154/38)

Language of the case: English

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

[1] OJ C 271, 29.10.2005.

Order of the President of the Court of 16 February 2006 — Commission of the European Communities v Italian Republic

(Case C-413/05) [1]

(2006/C 154/39)

Language of the case: Italian

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

[1] OJ C 22, 28.01.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 2 May 2006 — O2 (Germany) v Commission

(Case T-328/03) ([1])

(Competition — Agreements, decisions and concerted practices — Notified agreement — Third generation of mobile telecommunications — Negative clearance — Individual exemption — Analysis of the situation in the absence of an agreement — Impact of the agreement on competition)

(2006/C 154/40)

Language of the case: English

Parties

Applicant: O2 (Germany) GmbH & Co. OHG, (Munich, Germany) (represented by: N. Green QC, K. Bacon, Barrister, and by B. Amory and F. Marchini Camia, lawyers)

Defendant: Commission of the European Communities (represented initially by: R. Wainwright, S. Rating and P. Oliver, and subsequently by É. Gippini Fournier, P. Hellström and K. Mojzesowicz, Agents)

Re:

Application for annulment of Articles 2 and 3(a) of Commission Decision 2004/207/EC of 16 July 2003 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.369: T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag) (OJ 2004 L 75, p. 32)

Operative part of the judgment

The Court:

1. *Annuls Articles 2 and 3(a) of Commission Decision 2004/207/EC of 16 July 2003 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.369: T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag) in so far as they imply that the clauses referred to in those articles fall within the scope of Article 81 EC and Article 53 of the EEA Agreement;*

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

([1]) OJ C 275, 15.11.2003.

Judgment of the Court of First Instance of 3 May 2006 — Klaas v Parliament

(Case T-393/04) ([1])

(Officials — Promotion — Article 45 of the Staff Regulations — Carrying forward of promotion points to the new grade after promotion — Transitional measures — Principle of equal treatment)

(2006/C 154/41)

Language of the case: German

Parties

Applicant: Dirk Klaas (Heidelberg, Germany) (represented by: R. Moos, lawyer)

Defendant: European Parliament (represented by: L. Knudsen and U. Rösslein, Agents)

Re:

Application for, first, annulment of the Parliament's decision of 12 February 2004 to cancel the two promotion points awarded to the applicant for the period preceding 1999 and also annulment of the Parliament's decision of 30 June 2004 rejecting the applicant's complaint on that point and, second, an order of the Court that the two promotion points in question be carried forward to the following years

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 6, 8.1.2005.

Judgment of the Court of First Instance of 3 May 2006 — Eurohypo v OHIM (EUROHYPO)

(Case T-439/04) ([1])

(Community trade mark — Word mark EUROHYPO — Absolute grounds for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Examination of the facts by the Board of Appeal of its own motion — Article 74(1) of Regulation No 40/94 — Admissibility of facts submitted for the first time before the Court of First Instance)

(2006/C 154/42)

Language of the case: German

Parties

Applicant: Eurohypo AG (Eschborn, Germany) (represented by: M.Kloth and C.Rohnke, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. von Mühlendahl and J. Weberndörfer, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 August 2004 (Case R 829/2002-4) concerning the registration of the word mark EUROHYPO as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 45, 19.2.2005

Order of the Court of First Instance of 25 April 2006 — Kreuzer Medien v Parliament and Council

(Case T-310/03) ([1])

(Action for annulment — Directive 2003/33/EC — Natural or legal persons — Standing to bring proceedings — Inadmissibility)

(2006/C 154/43)

Language of the case: German

Parties

Applicant: Kreuzer Medien GmbH (Leipzig, Germany) (represented: initially by U. Kornmeier and D. Valbert, and subsequently by M. Lenz, lawyers)

Defendants: European Parliament (represented by: E. Waldherr and U. Rösslein, Agents) and Council of the European Union (represented by: E. Karlsson, Agent)

Intervener in support of the applicant: Falstaff Verlags-Gesellschaft mbH (Klosterneuburg, Austria) (represented by: W.-G. Schärf, lawyer)

Interveners in support of the defendants: Commission of the European Communities (represented by: M.-J. Jonczy, L. Pignataro-Nolin and F. Hoffmeister, Agents), Kingdom of Spain (represented by: L. Fraguas Gadea, Agent) and Republic of Finland (A. Guimaraes-Purokoski, T. Pynnä and E. Bygglin, Agents)

Re:

Application for annulment of the wording of Article 3(1) of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 2003 L 152, p. 16)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant shall bear its own costs and pay those incurred by the Parliament and the Council.*

3. *The Kingdom of Spain and the Commission shall bear their own costs, including those relating to the application for interim measures before the Court of First Instance.*

4. *The Republic of Finland shall bear its own costs.*

5. *Falstaff Verlags-Gesellschaft mbH shall bear its own costs, including those relating to the application for interim measures before the Court of First Instance.*

([1]) OJ C 289, 29.11.2003.

Order of the Court of First Instance of 28 March 2006 — Mediocurso v Commission

(Case T-451/04) ([1])

(Action for failure to act — Compliance with a judgment of the Court of Justice — Adoption of implementing measures during the proceedings — No need to adjudicate)

(2006/C 154/44)

Language of the case: Portuguese

Parties

Applicant: Mediocurso — Estabelecimento de Ensino Particular, Lda (Lisbon, Portugal) (represented by: C. Botelho Moniz and E. Maia Cadete, lawyers)

Defendant: Commission of the European Communities (represented by: P. Andrade and A. Weimar, Agents)

Re:

Action for failure to act seeking a declaration that the Commission unlawfully failed to adopt the measures needed to comply with the judgment in Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183

Operative part of the order

1. *There is no longer any need to adjudicate on the present action.*

2. *The Commission shall bear its own costs and pay those incurred by Mediocurso — Estabelecimento de Ensino Particular, Lda.*

([1]) OJ C 19, 22.1.05.

Order of the President of the Court of First Instance of 25 April 2006 — Componenta v Commission

(Case T-455/05 R)

(Interim measures — Application for suspension of operation — State aid — Urgency)

(2006/C 154/45)

Language of the case: Finnish

Parties

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

Defendant: Commission of the European Communities (represented by: C. Giolito and M. Huttunen, Agents)

Intervener in support of the applicant: Republic of Finland (represented by: E. Bygglin, Agent)

Re:

Application for suspension of operation of Commission Decision C(2005) 3871 final of 20 October 2005 on State aid C 37/2004 (ex NN 51/2004) granted by the Republic of Finland to Componenta Ojy

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 13 April 2006 — Oakley v OHIM

(Case T-116/06)

(2006/C 154/46)

Language in which the application was lodged: English

Parties

Applicant: Oakley, Inc. (Foothill Ranch, USA) (represented by: Michaela Huth-Dierig, lawyer)

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

Other party to the proceedings before the Board of Appeal: Venticinque Ltd (Hailsham, United Kingdom)

Form of order sought

— The decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of January 17, 2006 in appeal R 682/2004-1 to be annulled.

— The defendant to be ordered to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'O STORE' for services in class 35 — Community trade mark No 2 074 599

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: Venticinque Limited

Trade mark right of the party requesting the declaration of invalidity: The earlier national word mark 'THE O STORE' for goods and services in classes 18 and 25

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Dismissal of both the applicant's and Venticinque Ltd's appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the goods and services are absolutely dissimilar and there is no likelihood of confusion between the conflicting trade marks since the distinctive character of the earlier mark 'THE O STORE' is very limited. Furthermore, proof has not been provided that 'THE O STORE' is in any way known or well established in the French market.

Action brought on 19 April 2006 — Usha Martin v Council and Commission

(Case T-119/06)

(2006/C 154/47)

Language of the case: English

Parties

Applicant: Usha Martin Ltd (Calcutta, India) (represented by: K. Adamantopoulos, lawyer and J. Branton, Solicitor)

Defendants: Council of the European Union and Commission of the European Communities

Form of order sought

— A declaration, pursuant to Article 230 of the Treaty establishing the European Communities, that Commission Decision of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings in connection with the anti-dumping proceedings concerning imports of steel wire rope and cables originating, inter alia, in India, published on 26 January 2006 in the *Official Journal of the European Union*, OJ L 22, p. 54, 26.01.2006 ('contested decision') is annulled insofar as it relates to the applicant and withdraws a minimum price undertaking previously in force.

— A declaration, pursuant to Article 230 of the Treaty establishing the European Communities, that Council Regulation (EC) No 121/2006 of 23 January 2006 amending Regulation (EC) No. 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in India, published on 26 January 2006 in the *Official Journal of the European Union*, OJ L 22, p. 1, 26.01.2006 is annulled insofar as it relates to the applicant and gives effect to the contested decision withdrawing a minimum price undertaking previously held by the applicant.

— An order that the costs of and occasioned by these proceedings be borne by the respondent.

Pleas in law and main arguments

The applicant is an exporting producer of steel wire ropes in India exporting to the European Union.

The Commission had by decision of 13 August 1999 ([1]) accepted certain minimum price undertakings offered by among others the applicant in the framework of anti-dumping proceedings concerning imports of steel wire ropes and cables originating in e.g. India.

By Decision 2006/38 ([2]) the Commission withdrew the acceptance of the price undertaking offered by the applicant on the grounds, according to the applicant, that it had failed to report sales outside the scope of the price undertaking and claimed Dubai origin on steel wire ropes and cables from Dubai when in fact the origin should have been Indian due to insufficient further working of Indian raw material in Dubai. By Council Regulation No 121/2006 ([3]) a definitive anti-dumping duty was imposed giving effect to the Commission's decision.

Concerning the failure to report sales outside the scope of the minimum price undertaking, the applicant alleges it relates to a human error and claims a violation of the principle of proportionality as it is not a material breach of the price undertaking and should therefore only result in instructions not to commit such a breach in the future and not in a withdrawal of the price undertaking. The applicant further submits that no material harm was done to the Community industry.

Concerning the claimed Dubai origin, the applicant alleges the institutions have erred in law by making an incorrect origin analysis as the Commission allegedly used the criterion whether or not there was a change in the tariff heading of the product concerned, whereas the applicant finds that the relevant criteria are the following:

i) Last substantial process or operation;

ii) the operation must be economically justified;

iii) the operation must be carried out in an undertaking equipped for the purpose; and

iv) the operation must result in the manufacture of a new product or represent an important stage of manufacture.

Furthermore, there were less onerous sanctions than withdrawing the price undertaking, such as the reclaiming of anti-dumping duty by the Member States' customs authorities or making it a condition that exports from Dubai of ropes made from Indian strand had stopped.

The applicant therefore invokes an error of law, lack of reasoning, misuse of powers and a violation of the principle of proportionality.

([1]) Commission Decision 1999/572/EC of 13 August 1999 accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating in the People's Republic of China, Hungary, India, the Republic of Korea, Mexico, Poland, South Africa and Ukraine (OJ 1999 L 217, p. 63).

([2]) Commission Decision 2006/38/EC of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating, inter alia , in India (JO 2006 L 22, p. 54).

([3]) Council Regulation (EC) No 121/2006 of 23 January 2006 amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia , in India (JO 2006 L 22, p. 1).

Action brought on 25 April 2006 — British Nuclear Group Sellafield v Commission

(Case T-121/06)

(2006/C 154/48)

Language of the case: English

Parties

Applicant: British Nuclear Group Sellafield Limited (Sellafield, United Kingdom) (represented by: J. Percival, A. Renshaw, J. Isted and G. Bushell, Solicitors and R. Plender, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— to annul the contested decision; or

— in the alternative, to annul the measures contained in Articles 2, 3 and 4 of the contested decision;

— to order the defendant to pay the costs of the proceedings; and

— to take any other actions that the Court considers to be appropriate.

Pleas in law

The applicant contests the Commission's Decision of 15 February 2006 on a procedure in application of Article 83 of the Euratom Treaty (BNG Sellafield Limited). By the contested Decision, the Commission issued a warning under Article 83(1)(a) EA. The Commission alleges that the applicant infringed certain provisions of the Euratom Treaty and Regulation 302/2005 ([1]), which relate to its particular reporting obligations and the provisions of access to certain facilities. The Commission accordingly requested that the applicant implement specified measures within the periods prescribed in the contested decision.

In support of its application, the applicant submits, first, that the Commission lacks the competence to adopt the contested decision and the measures imposed on the applicant. According to the applicant, the Commission does not have the legal authority to adopt the measures imposed, including the measures dealing with principles of quality assurance and standards for nuclear accountancy and control, which exceed the scope of existing safeguards legislation.

The applicant submits also that the defendant infringed the principle of subsidiarity since the imposed measures encroach on the competence of the relevant national authorities.

According to the applicant, the contested decision is furthermore based, in whole or in part, on safety concerns, rather than on safeguard concerns, and accordingly Article 83 EA would not be the appropriate legal basis for the adoption of the contested decision.

The applicant submits, second, that the Commission committed an infringement of an essential procedural requirement by failing to conduct a full and proper procedure under Article 83 EA. The applicant states that the Commission did not inform it of its objections, did not offer a hearing and has violated its right of defence.

Third, the applicant invokes that the Commission, in finding that the applicant had breached its safeguards obligations, infringed the Euratom Treaty and the rules of law relating to its application by committing a manifest error of assessment and infringed the principle of legal certainty.

Fourth, the applicant invokes a violation of the principle of proportionality and legitimate expectations.

Finally, the applicant submits that the Commission infringed the applicant's right of defence and the right to a fair hearing, by breaching its duty to inform the applicant of the essence of the measures imposed by the sanction in sufficient time to afford the applicant an opportunity to comment on them before the contested decision was adopted.

(1) Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards (OJ L 54, p. 1)

Action brought on 28 April 2006 — Helkon Media v Commission

(Case T-122/06)

(2006/C 154/49)

Language of the case: German

Parties

Applicant: Helkon Media AG (Munich, Germany) (represented by: U. Karpenstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— order the European Commission to pay the sum of EUR 120 000 to HELKON MEDIA AG i.L;

— order the Commission to pay the costs.

Pleas in law and main arguments

Helkon Media AG, in liquidation, represented by its insolvency administrator, relies on a claim for payment against the European Commission under an agreement to support a film, on the basis of an arbitration clause for the purposes of Article 238 EC, in the annex to that agreement.

According to the applicant, the claim for payment is not extinguished by the set-off alleged by the Commission. It bases its action on the assertion that this set-off has no legal basis. The applicant further contends that a set-off after the opening of insolvency proceedings is inadmissible in German law. Finally, it submits that the recognised conditions for a set-off have not been met.

Action brought on 28 April 2006 — Kapman v OHIM (representation of a saw blade in blue)

(Case T-127/06)

(2006/C 154/50)

Language of the case: English

Parties

Applicant: Kapman A.B. (Sandviken, Sweden) (represented by: R. Almaraz Palmero, lawyer)

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

Form of order sought

— Annulment of the Decision of the Second Board of Appeal at OHIM of 10 February 2006 in Case R 303/2004-2;

— order the Office to refund the appeal fee to the applicant;

— order the Office to pay the costs of the dispute, including those relating to the procedure before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: A figurative mark representing a saw blade in blue for goods in class 8 [saw blades (for hand-operated tools)] — application No 2 532 497

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as among others the combination of shape and colour causes an outstanding visual impression to the relevant public, i.e. professional handymen and not to the average consumer.

Action brought on 28 April 2006 — Japan Tobacco v OHIM — Torrefacção Camelo (figurative mark CAMELO)

(Case T-128/06)

(2006/C 154/51)

Language in which the application was lodged: French

Parties

Applicant: Japan Tobacco Inc. (Tokyo, Japan) (represented by: A. Ortiz López, S. Ferrandis González and E. Ochoa Santamaría, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Torrefacção Camelo L da

Form of order sought

— annul the decision of the Second Board of Appeal of 22 February 2006 in Case R 669/2003-2 and give a judgment in which, varying that decision, it [the Court of First Instance] declares that it is necessary to apply the prohibition in Article 8(5) of the Community Trade Mark Regulation in this case and consequently, recognising the merits of the arguments presented by Japan Tobacco, decide to refuse registration of Community trade mark no. 1469121;

— order OHIM to pay the costs of these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Torrefacção Camelo L da

Community trade mark concerned: Mark containing figurative elements (camel, pyramids, palm trees) and the name CAFÉ TORREFACTO CAMPO MAIOR CAMELO CAFÉ ESPECIAL PURO Torrefacção Camelo L da CAMPO MAIOR-PORTUGAL, for goods in Class 30 (application no. 1469121)

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

Mark or sign cited in opposition: National word and figurative marks 'CAMEL' for goods in Classes 22 and 34

Decision of the Opposition Division: Opposition upheld

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

Pleas in law: Incorrect application of Article 8(5) of Council Regulation No 40/94 and also errors in the conduct of the proceedings and infringement of Articles 74 and 79 of that regulation.

Action brought on 12 May 2006 — International Music and TTV 2000 v OHIM — Past Perfect (PAST PERFECT)

(Case T-133/06)

(2006/C 154/52)

Language in which the application was lodged: German

Parties

Applicants: The International Music Company AG (Hamburg, Germany) and TTV 2000 GmbH Tonträger Vertrieb (Hamburg, Germany) (represented by: G. Kukuk, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Past Perfect Limited

Forms of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of OHIM of 3 February 2006, Reference No R 150/2005-1, and remove the registered Community trade mark 'Past Perfect', Mark No 1 984 269, from the register;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark the annulment of which has been sought: The word mark 'PAST PERFECT' for goods in Class 9 (Community trade mark No 1 984 269).

Proprietor of the Community trade mark: Past Perfect Limited

Applicants for the declaration of annulment: The applicants

Decision of the Cancellation Division: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— The registered trade mark is devoid of any actual distinctive character within the meaning of Article 7(1)(b) of Regulation (EC) No 40/94, ([1])

— the contested decision infringes Article 7(2) of Regulation (EC) No 40/94 since it is sufficient when the ground for refusal obtains in part of the Community,

— in addition, the contested decision infringes Article 7(1)(c) of Regulation (EC) No 40/94 since the registered trade mark is not identifiable as a mark and is understood, in trade, as a product description,

— finally, Article 7(1)(d) of Regulation (EC) No 40/94 has been infringed since the registered trade mark consists of indications which have become customary in the current language or in the bona fide and established practices of the trade.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Order of the Court of First Instance of 27 April 2006 — ATI Technologies v Office for Harmonisation in the Internal Market (Trade Marks and Designs) — Asociación de Técnicos de Informatica (ATI)

(Case T -377/03) (1)

(2006/C 154/53)

Language of the case: French

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

(1) OJ C 21, 24.1.2004.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal of 16 May 2006 — Voigt v Commission

(Case F-55/05) [1]

(Officials — Occupational disease — Absence of a decision adversely affecting the applicant — Premature application — Manifestly inadmissible)

(2006/C 154/54)

Language of the case: French

Parties

Applicant: Eric Voigt (Orange, France) (represented by: B. Autric, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents, assisted by F. Longfils, lawyer)

Re:

Application, first, for recognition of the occupational origin of the disease from which the applicant is suffering and, second, damages for the harm which he claims to have sustained

Operative part of the order

1. *The application is dismissed as manifestly inadmissible;*

2. *The applicant is ordered to bear his own costs and to pay half of those incurred by the Commission.*

[1] OJ C 229, 17.9.2005 (case initially registered before the Court of First Instance of the European Communities under No T-258/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Action brought on 19 December 2005 — Kyriazis v Commission

(Case F-120/05)

(2006/C 154/55)

Language of the case: Greek

Parties

Applicant: Antonios Kyriazis (Luxembourg, Luxembourg) (represented by: M. Spanakis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul decision ADMIN.B.2. — D (05) 23023/EGL-ade of 12 October 2005, by which the Appointing Authority rejected the applicant's complaint R/549/05 against the defendant's refusal, on 25 April 2005, of his request to be granted the expatriation allowance (16 %);

— Order the defendant to grant the applicant the expatriation allowance with retroactive effect from 1 March 2005, plus interest for late payment at the annual rate of 10 %, until it is paid in full;

— Acknowledge the applicant's entitlement to the expatriation allowance (16 % of the net basic salary) in the future.

Pleas in law and main arguments

The applicant, a Commission official employed in Luxembourg, contests the decision refusing him payment of the expatriation allowance. He disputes the defendant's argument that he does not meet the conditions referred to in Article 4(1)(a) of Annex VII to the Staff Regulations by reason of the fact that, during a period of five years ending six months before his engagement by the Community institutions, he was a permanent resident in Luxembourg and carried on there his usual main occupation.

The applicant also claims that the work he carried out in Luxembourg in the defendant's building, during which he was employed by a company governed by private law, should be regarded as falling within the derogation provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.

Action brought on 13 February 2006 — Duyster v Commission

(Case F-18/06)

(2006/C 154/56)

Language of the case: Dutch

Parties

Applicant: Tinike Duyster (Oetrange, Luxembourg) (represented by: W.H.A.M. van den Muijsenbergh, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Appointing Authority's decision of 17 November 2005 to send the applicant on parental leave from 8 November 2004 until an unspecified date;

— Annul the Appointing Authority's decision of 6 April 2005;

— Annul the decision to grant parental leave from 1 November 2004 to 30 April 2005 inclusive, and/or the salary slip for November 2004, and/or the Commission's decision of 30 November 2004 not to take account of the request for deferment or cancellation of the parental leave;

— Find that from 1 November 2004 (or 8 November 2004) until 30 April 2005 inclusive the applicant had all the substantive rights connected with the active service of an official and that therefore payment according to her grade and step must be made to her with retroactive effect;

— Find that this payment must be made with interest for late payment;

— Find that the applicant may still request parental leave (even if, after the date when judgment is delivered, her son is more than or nearly 12 years old) since the failure to approve the request submitted is the Commission's fault; alternatively, that, since the Commission is responsible for the applicant's inability to take parental leave, she must be paid compensation corresponding to the loss of the benefits for parental leave, insurance, seniority, pension rights, appraisal reports and promotion opportunities; or, in the further alternative, that she must be paid damages for the period of parental leave not taken for loss of the benefits for parental leave, insurance and pension rights;

— Order the defendant to pay compensation for the material and non-material damage caused by the decision of 17 November 2005, assessed at EUR 4 000 and EUR 5 000 respectively;

— Order the defendant to pay EUR 2 500 as compensation for the uncertainty caused to the applicant regarding her status as an official and the non-material damage resulting from that uncertainty;

— Compensate the applicant for the value of seven days of parental leave;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In Case F-51/05, [1] the applicant already challenged the fact that the Commission granted her parental leave for the period from 1 November 2004 to 30 April 2005. In this case, she challenges the Appointing Authority's decision, taken in the meantime, of 17 November 2005, which set the date of the start of the parental leave as 8 November 2004.

In support of her action, the applicant submits that the decision of 17 November 2005 infringed the Treaty, the Staff Regulations and a number of legal principles. In particular, according to the applicant, that decision: (i) contains errors including, for example, an incorrect statement about a Court of First Instance case; (ii) is inaccurate for a number of reasons including, among others, a failure to specify on which of the applicant's complaints the decision is based, a failure to include the date of the end of the parental leave and a failure to include a description of the decision's effects; (iii) is drafted in a language other than that used by the applicant, in breach of Article 21 EC; (iv) does not cite any legal basis; (v) contains contradictions; (vi) states insufficient reasons; (vii) has retroactive effect although there was no longer any application for parental leave pending; (viii) fails to take account of the fact that the Appointing Authority's original decisions over the whole period were unlawful; (ix) takes no account of the application to defer the parental leave.

Furthermore, the wording of the contested decision creates the impression that the applicant is at least in part responsible for the muddle, whereas she has acted very carefully and produced a large number of documents.

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[1] OJ C 217, 3.9.2005 (case initially registered before the Court of First Instance of the European Communities under number T-249/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Action brought on 3 February 2006 — Michail v Commission

(Case F-34/06)

(2006/C 154/57)

Language of the case: Greek

Parties

Applicant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the applicant's Career Development Report (CDR) for the year 2004, as established by the SYSPER2 system in which it is included;

— Annul the Appointing Authority's decision of 4 November 2005 rejecting the applicant's complaints;

— Order the defendant to pay compensation for the non-material damage suffered by the applicant, amounting to EUR 120 000;

— Make an appropriate order as to costs.

Pleas in law and main arguments

The applicant, an official in Grade A*12, challenges the validity of the CDR which the defendant established for him for the year 2004. In support of his action, he submits, first, that that CDR assesses and includes a statement of reasons only for the period from 1 May 2004 to 31 December 2004 inclusive, while the first four months of that year were not taken into account, even by means of a reference to the mark in the interim note specifically covering that period. That omission constitutes an infringement of Article 4(3) of the General Provisions for Implementing Article 43 of the Staff Regulations. The applicant adds that, in any event, the interim note was drawn up by an authority without the power to do so.

Next, the applicant claims that in the second part of 2004 his superiors only entrusted him with tasks of a circumstantial or ancillary nature which were of no use for the purpose of drawing up a CDR for an official of his grade.

The applicant alleges, lastly, infringement of Article 12a of the Staff Regulations on psychological harassment.

Action brought on 26 April 2003 — C v Commission

(Case F-44/06)

(2006/C 154/58)

Language of the case: French

Parties

Applicant: C (Brussels, Belgium) (represented by: S. Orlandi and J.-N. Louis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Appointing Authority's decision of 13 June 2005 refusing to adopt any measure to comply with the judgment of the Court of First Instance of the European Communities of 23 November 2004 in Case T-376/02 O v *Commission* ([1]);

— Annul the decision of the Director of DG ADMIN/C: Social welfare policy, Luxembourg staff, health, safety of 23 February 2006 compulsorily retiring the applicant with entitlement to an invalidity pension to be determined in accordance with the provisions of the second paragraph of Article 78 of the Staff Regulations, with retroactive effect from 1 February 2002;

— Order the defendant to pay the applicant a sum assessed on equitable grounds at EUR 15 000 on account of breach of the principle that decisions must be adopted within a reasonable time;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Following the judgment in O v *Commission*, cited above, the applicant applied for the adoption by the Appointing Authority of measures to comply with that judgment. When that application was rejected, the applicant made a complaint, which was, in its turn, rejected in part by a decision of 11 January 2006. The Appointing Authority then adopted a new decision, dated 23 February 2006, compulsorily retiring the applicant with entitlement to an invalidity pension to be determined in accordance with the provisions of the second paragraph of Article 78 of the Staff Regulations, with retroactive effect from 1 February 2002.

In support of his action, the applicant submits, first, that the last decision does not constitute full compliance with the judgment referred to above, in that it does not restore the applicant to his legal position before the adoption of the decision annulled by the Court of First Instance.

Also, the decision of 23 February 2006 infringes Article 53 of the Staff Regulations, which provides that an official to whom the Invalidity Committee finds that the provisions of Article 78 apply must automatically be retired on the last day of the month in which the Appointing Authority recognises his permanent incapacity to perform his duties.

Lastly, the applicant alleges breach of the principle that decisions must be adopted within a reasonable time, inasmuch as the decision of 23 February was adopted 15 months after the abovementioned judgment was delivered.

([1]) ECR SC [2004] I-A-349 and II-1595.

Action brought on 8 May 2006 — Aimi and Others v Commission

(Case F-47/06)

(2006/C 154/59)

Language of the case: French

Parties

Applicants: Naomi Aimi (Evere, Belgium) and Others (represented by: A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the individual decisions rejecting the applicants' requests that the appointing authority adopt transitional measures in order to ensure, in the context of the 2005 and subsequent promotion exercises, equal treatment and their acquired rights;

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

Pleas in law and main arguments

In support of their application, the applicants claim that in rejecting their requests that it adopt transitional measures with the aim of taking account of their individual situations resulting from the creation of supplementary grades, the defendant disregarded their right to reasonable career prospects in the same conditions as their colleagues in the same category and also their acquired rights, in so far as their career prospects were significantly altered.

The applicants further plead an absence of relevant reasons, in that the defendant did not respond to the pleas and arguments set out in their requests and complaints.

Action brought on 5 May 2006 — Avanzata and Others v Commission

(Case F-48/06)

(2006/C 154/60)

Language of the case: French

Parties

Applicants: Eric Avanzata and Others (Beggent, France) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicant's contracts as contractual agents, in that they fix the applicants' function groups, grades, steps and remuneration;

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

Pleas in law and main arguments

The applicants, who entered the service of the Commission as contract staff or workers under contracts governed by Luxembourg law, dispute their classification and remuneration as fixed by the Commission upon their appointment as contract staff posted to the Office for Infrastructure and Logistics in Luxembourg (OIL).

In support of their action, the applicants rely on a breach of Article 80 of the Conditions of employment of other servants, a breach of Article 2 of the Annex to those conditions of employment, the illegality of the general implementing provisions of those articles and also a breach of the principle of equal treatment and non-discrimination, of transparency and of sound management.

The applicants submit first of all that the defendant adopted the general implementing provisions without obtaining the prior opinion of the Staff Regulations Committee. Furthermore, the general implementing provisions do not contain a precise description of the powers attaching to each type of duties, which makes it impossible to ascertain whether the applicants were appointed to a function group corresponding to the tasks which they perform and whether their grade was fixed in accordance with Article 80 of the conditions of employment. Nor has the defendant adduced evidence that it did in fact ascertain whether it was possible to award the applicants a supplementary grade to take account of the reality of the market, as provided for in the general implementing provisions.

Last, the applicants contend that they are in the same situation as the staff employed in the crèches and the garderie in Brussels and recruited as contract staff in the Office for Infrastructure and Logistics in Brussels with a guarantee that their remuneration would be maintained. The defendant has not shown for what reasons such a guarantee was not given to the applicants.

Action brought on 9 May 2006 — Nijs v Court of Auditors

(Case F-49/06)

(2006/C 154/61)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Appointing Authority's decision not to promote the applicant in 2005 and any connected and/or subsequent decision;

— Order the payment of compensation for the material and non-material damage suffered by the applicant;

— Order the Court of Auditors to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant relies on:

1. The effects for the 2004 appraisal exercise of a falsification of his staff report relating to the 2003 exercise,
2. Breach of the principles of legal certainty for staff, equal treatment of officials and sound administration in the application to the applicant of the new appraisal system developed by the defendant,
3. The fact that one of his colleagues was unlawfully asked to carry out more senior duties on a temporary basis,
4. The fact that one of his hierarchical superiors carried out his duties unlawfully,
5. That superior's lack of integrity,
6. Several instances of misuse of powers and a breach of the Treaty.

Action brought on 3 May 2006 — Lebedef-Caponi v Commission

(Case F-50/06)

(2006/C 154/62)

Language of the case: French

Parties

Applicant: Maddalena Lebedef-Caponi (Senningerberg, Luxembourg) (represented by: G. Bounéou and F. Frabetti, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicant's career development report for the period 1.7.2001 to 31.12.2002;

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

Pleas in law and main arguments

In support of her action, the applicant puts forward five pleas in law, alleging:

— first, breach of Article 26 of the Staff Regulations;

— second, breach of the general implementing provisions of Article 43 of the Staff Regulations;

— third, breach of the principle of the prohibition of arbitrary process and of the principle of the prohibition of misuse of powers and breach of the obligation to state reasons;

— fourth, breach of the principle of protection of legitimate expectations and of the rule *patere legem quam ipse fecisti*;

— fifth, breach of the duty to have regard to the welfare of officials.

Action brought on 30 April 2006 — Claudia Gualtieri v Commission of the European Communities

(Case F-53/06)

(2006/C 154/63)

Language of the case: Italian

Parties

Applicant: Claudia Gualtieri (Brussels, Belgium) (represented by: P. Gualtieri and M. Gualtieri, Lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the decision adopted by the Director-General of Personnel and Administration on 30 January 2006 rejecting complaint No R/783/05, registered on 17 October 2005, seeking annulment of the decision adopted by the DG ADMIN, communicated on 5 September 2005, by which the applicant's claim that she was entitled to the full daily subsistence allowance was rejected;

— annulment of the decision communicated on 5 September 2005;

— annulment of all of the defendant's communications received each month relating to the determination of the allowance in question;

— an order that the defendant pay the applicant, with effect from 1 January 2004 until 31 December 2005, the daily subsistence allowance and the monthly allowance provided for by the Commission Decision on Seconded National Experts (SNEs);

— in the alternative, an order that the defendant pay the applicant the abovementioned allowances with effect from 2 February 2005, the date of the applicant's de facto separation from her husband and the date when she ceased to live with him, or, in the further alternative, from the 4 July 2005, the date when the divorce petition was lodged with the District Court Brussels, until 31 December 2005;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a national expert on secondment to the Commission, complains that it was unlawful to reduce to 25 % the daily subsistence allowance provided for under the rules on SNEs and to fail to pay the further monthly allowance also provided for under those rules.

First of all, the applicant submits that in the documents preparatory to her taking up her appointment the allowances in question, being in the nature of pay, were expressly stated to be payable in full notwithstanding the fact that she had declared that she was married to an official of the European Union resident in Brussels. She adds that her employment contract was signed on 7 January 2004 on that basis and the conditions of remuneration could not be changed unilaterally.

The applicant also alleges unlawfulness under Article 241 EC and the third paragraph of Article 20 of the Decision on SNEs. That provision discriminates in favour of individuals who opt for a non-marital relationship as against members of a lawful union. It also results in unequal treatment since it does not allow the applicant to receive additional remuneration on an equal footing with other SNEs, whether married or not. The provision in question infringes Article 14 of the Europen Convention on Human Rights, Articles 2, 3, 13 and 141 EC and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. ([1])

([1]) OJ L 180, 19.7.2000, page 22.

Action brought on 10 May 2006 — Davis and Others v Council

(Case F-54/06)

(2006/C 154/64)

Language of the case: French

Parties

Applicants: John Davis (Bolton, United Kingdom), Svend Mikkelsen (Sabro, Denmark), Dorrit Pedersen (Copenhagen, Denmark) and Margareta Strandberg (Axminster, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Tribunal should:

— Annul the Council decisions determining the applicants' pension entitlements, on the grounds that the portion of their pension entitlement acquired after 30 April 2004 is not multiplied by a correction coefficient, and that the correction coefficient by which the portion of their pension entitlement acquired before 30 April 2004 is multiplied differs from that by which the remuneration of officials in active employment in the United Kingdom or Denmark is multiplied;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The applicants, all former officials of the European Communities resident in the United Kingdom or Denmark, retired after the entry into force of the new Staff Regulations.

In support of their action, they plead the illegality of Article 82 of the Staff Regulations, Articles 1(3) and 3(5) of Annex XI to the Staff Regulations and of Article 20 of Annex XIII to the Staff Regulations, which entered into force on 1 May 2004.

They also allege breach of the principle of equal treatment and non-discrimination in that, under the abovementioned provisions, officials who retired after 1 May 2004 do not enjoy the guarantee of equivalent purchasing power irrespective of their place of residence. In the same way, they do not enjoy purchasing power equivalent to that of their colleagues with the same income in active employment, their pension being multiplied by a country-related correction coefficient while that of their colleagues in active employment is multiplied by a capital-related correction coefficient.

The applicants also allege breach of their vested rights and the principle of the protection of legitimate expectations, in that they were entitled to expect their pension entitlements to be calculated in accordance with the rules which were in force when they joined the service and throughout almost all their career.

Lastly, they allege breach of the principle of freedom of movement and establishment for workers, on the ground that the withdrawal of the correction coefficient applicable to their entire pension means that they are no longer guaranteed freedom of establishment for their centre of interests, if they are not, in some circumstances, to be penalised by a reduction in their purchasing power as against that of their colleagues resident in places with a lower cost of living.

Action brought on 2 May 2006 — de Albuquerque v Commission

(Case F-55/06)

(2006/C 154/65)

Language of the case: French

Parties

Applicant: Augusto de Albuquerque (Brussels, Belgium) (represented by: C. Mourato, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 23 September 2005 of the Director-General of DG INFSO to transfer the applicant in the interest of the service as head of unit INFSO.G.2 'Micro and nanosystems';

— annul the appointing authority's express decision of 2 February 2006 giving a negative response to the applicant's complain R/764/05;

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

Pleas in law and main arguments

The applicant, an official of the Commission transferred in the interest of the service to the post of head of unit INFSO.G.2 'Micro and nanosystems', claims that that transfer is contrary to the interest of the service. He relies on a breach of Article 7 of the Staff Regulations and a manifest error of assessment of the concept of 'interest of the service', a misuse of powers and a breach of the principle of equal treatment.

Action brought on 9 May 2006 — Chassagne v Commission

(Case F-56/06)

(2006/C 154/66)

Language of the case: French

Parties

Applicant: Olivier Chassagne (Brussels, Belgium) (represented by: S. Rodriques, Y. Minatchy and A. Jaume, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicant's career development report for 2004;

— annul the Directorate-General's decision allocating priority points during the 2005 promotion exercise;

— annul the appointing authority's decisions of 30 January 2006 and 14 March 2006 rejecting the applicant's complains against the abovementioned decisions;

— award nominal damages of one euro for professional harm and one euro for non-pecuniary harm arising from the adoption of the contested decisions;

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

Pleas in law and main arguments

In support of his action, the applicant relies first of all on the unlawfulness of the General implementing provisions of Articles 43 and 44 of the Staff Regulations.

He claims, next, that there has been a breach of a number of procedural requirements, such as the rights of the defence, the obligation to state reasons and compliance with the rules of procedure.

The applicant further maintains that the administration has made a number of manifest errors of assessment, notably in the context of considering comparative merits and in allocating priority points.

Last, in the applicant's submission, the defendant has infringed the principle of sound administration.

Order of the Civil Service Tribunal of 18 May 2006 — Eerola v Commission

(Case F -110/05) [1]

(2006/C 154/67)

Language of the case: French

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

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[1] OJ C 48, 25.2.2006.

III

(Notices)

(2006/C 154/68)

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

OJ C 143, 17.6.2006

Past publications

OJ C 131, 3.6.2006

OJ C 121, 20.5.2006

OJ C 108, 6.5.2006

OJ C 96, 22.4.2006

OJ C 86, 8.4.2006

OJ C 74, 25.3.2006

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