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I

(Information)

COURT OF JUSTICE

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Judgment of the Court (Third Chamber) of 11 May 2006 — Commission of the European Communities v Italian Republic

(Case C-197/03) [1]

(Failure of a Member State to fulfil obligations — Directive 69/335/EEC — Articles 10 and 12 — Indirect taxes on the raising of capital — Principles of Community law relating to recovery of undue payment)

(2006/C 165/01)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa, Agent)

Defendan): Italian Republic (represented by: I.M. Braguglia, Agent, and by M.P. Gentili, lawyer)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 10(c) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969(II), p. 412) — National law introducing retrospectively flat-rate annual charges on the registration of documents other than companies instruments of incorporation and laying down a discriminatory and restrictive system for reimbursement of the annual charge on registration of companies instruments of incorporation

Operative part of the judgment

The Court:

1. *Declares that, by introducing retroactive charges which do not constitute duties paid by way of permitted fees or dues where the registrations in the register of companies for which they are charged have already given rise to charges for which the retroactive charges are intended to be a substitute but which are not reimbursed to those who have paid them, or where those retroactive charges relate to years in which no registration in the register was made justifying their being levied, and by adopting provisions making repayment of a tax held to be contrary to Community law by a judgment of the Court, or whose incompatibility with Community law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to repayment of the tax in question, the Italian Republic has failed to fulfil its obligations under Articles 10 and 12(1)(b) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital and under the principles identified by the Court in relation to recovery of undue payment;*

2. *Dismisses the action as to the remainder;*

3. *Orders the Italian Republic to bear three quarters of the total costs and the Commission of the European Communities to bear the other quarter.*

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[1] OJ C 171, 19.07.2003.

Judgment of the Court (First Chamber) of 4 May 2006 (reference for a preliminary ruling from the House of Lords (United Kingdom)) — Diane Barker v London Borough of Bromley

(Case C-290/03) [1]

(Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Crystal Palace development project — Projects falling within Annex II to Directive 85/337 — Grant of consent comprising more than one stage)

(2006/C 165/02)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Diane Barker

Defendant: London Borough of Bromley

Intervener: First Secretary of State

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Articles 1(2) and 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment — No assessment before the grant of consent for a project likely to have effects on the environment — Obligation to subject the project to subsequent assessment — Development of the Crystal Palace site for leisure purposes

Operative part of the judgment

1. *Classification of a decision as a 'development consent' within the meaning of Article 1(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment must be carried out pursuant to national law in a manner consistent with Community law.*

2. *Articles 2(1) and 4(2) of Directive 85/337 are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of consent comprising more than one stage, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.*

([1]) OJ C 213, 6.9.2003.

Judgment of the Court (First Chamber) of 18 May 2006 — Archer Daniels Midland Co., Archer Daniels Midland Ingredients Ltd v Commission of the European Communities

(Case C-397/03 P) ([1])

(Appeals — Competition — Cartels — Synthetic lysine market — Fines — Guidelines on the method of setting fines — Non-retroactivity — Non bis in idem principle — Equal treatment — Turnover which may be taken into account)

(2006/C 165/03)

Language of the case: English

Parties

Appellants: Archer Daniels Midland Co., Archer Daniels Midland Ingredients Ltd (represented by: C.O. Lenz, Rechtsanwalt, E. Batchelor, L. Martin Alegi and M. Garcia, Solicitors)

Other party to the proceedings: Commission of the European Communities (represented by: R. Lyal, Agent, and by J. Flynn QC)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 9 July 2003 in Case T-224/00 *Archer Daniels Midland Company and Archer Daniels Midland Ingredients Ltd* v *Commission* dismissing in part an application for annulment of, or a reduction in the fine imposed by, Commission Decision 2001/418/EC of 7 June 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/36.545/F3 — Amino Acids).

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Archer Daniels Midland Co. and Archer Daniels Midland Ingredients Ltd to pay the costs.*

([1]) OJ C 275, 15.11.2003.

Judgment of the Court (Grand Chamber) of 30 May 2006 — Commission of the European Communities v Ireland

(Case C-459/03) ([1])

(Failure of a Member State to fulfil obligations — United Nations Convention on the Law of the Sea — Part XII — Protection and preservation of the marine environment — Dispute-settlement system provided for under that convention — Arbitration proceedings initiated on the basis of that system by Ireland against the United Kingdom — Dispute relating to the MOX plant at Sellafield (United Kingdom) — Irish Sea — Articles 292 EC and 193 EA — Undertaking not to submit a dispute relating to the interpretation or application of the Treaty to a method of settlement other than those provided for by the Treaty — Mixed agreement — Community competence — Articles 10 EC and 192 EA — Duty of cooperation)

(2006/C 165/04)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P.J. Kuijper and B. Martenczuk, Agents)

Intervener in support of the applicant: The United Kingdom of Great Britain and Northern Ireland (represented by: C. Jackson and C. Gibbs Agents, and by R. Plender QC)

Defendant: Ireland (represented by: R. Brady and D. O'Hagan, Agents, and by P. Sreenan and E. Fitzsimons, SC, P. Sands QC, and N. Hyland, BL)

Intervener in support of the defendant: Kingdom of Sweden (represented by: K. Wistrand, Agent)

Re:

Failure of a Member State to fulfil obligations — Bringing of an action by Ireland against the United Kingdom before the Arbitral Tribunal established under the United Nations Convention on the Law of the Sea — Infringement of the exclusive jurisdiction of the European Court of Justice — Breach of the duty of cooperation

Operative part of the judgment

The Court:

1. *Declares that, by instituting dispute-settlement proceedings against the United Kingdom of Great Britain and Northern Ireland under the United Nations Convention on the Law of the Sea concerning the MOX plant located at Sellafield (United Kingdom), Ireland has failed to fulfil its obligations under Articles 10 EC and 292 EC and under Articles 192 EA and 193 EA;*

2. *Orders Ireland to pay the costs;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Sweden to bear their own respective costs.*

([1]) OJ C 7, 10.01.2004.

Judgment of the Court (First Chamber) of 4 May 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-508/03) ([1])

(Failure of a Member State to fulfil obligations — Admissibility — Subject-matter of the case — Jurisdiction of national courts — Action devoid of purpose — Legal certainty and legitimate expectations of developers — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — White City development project — Crystal Palace development project — Projects falling within Annex II to Directive 85/337 — Obligation to assess projects likely to have significant effects on the environment — Burden of proof — Transposition of Directive 85/337 into national law — Grant of consent comprising more than one stage)

(2006/C 165/05)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: F. Simonetti and X. Lewis, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: K. Manji, acting as Agent, D. Elvin QC and J. Maurici, Barrister)

Re:

Failure of a Member State to fulfil obligations — Incorrect implementation of Articles 2(1), 4(2), 5(2) and 8 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment — Failure to carry out an impact assessment in respect of urban development projects at White City and Crystal Palace

Operative part of the judgment

The Court:

1. *Declares that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Community law by incorrectly transposing into domestic law Articles 2(1) and 4(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, as a result of the national rules under which, in the case of outline planning permission with a requirement of subsequent approval of the reserved matters, an assessment may be carried out only at the initial stage of granting such permission, and not at the later reserved matters stage;*

2. *Dismisses the action as to the remainder;*

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

([1]) OJ C 47, 21.2.2004.

Judgment of the Court (Second Chamber) of 4 May 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-98/04) ([1])

(Failure to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Project carried out without prior application for development consent or assessment — Action inadmissible)

(2006/C 165/06)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Shotter and F. Simonetti, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: K. Manji, and subsequently by M. Bethell, Agents, and by P. Sales and J. Maurici, Barristers)

Re:

Infringement of Article 2(1) and Article 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — Consent given without assessment

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders the Commission of the European Communities to pay the costs*

([1]) OJ C 106, 30.4.2004.

Judgment of the Court (Third Chamber) of 4 May 2006 (reference for a preliminary ruling from the VAT and Duties Tribunal, London — United Kingdom) — Abbey National plc (with the Inscape Investment Fund as joined party) v Commissioners of Customs & Excise

(Case C-169/04) ([1])

(Sixth VAT Directive — Article 13B(d)(6) — Management of special investment funds — Exemption — Meaning of 'management' — Functions of a depositary — Delegation of administrative management function)

(2006/C 165/07)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicants: Abbey National plc (with the Inscape Investment Fund as joined party)

Defendants: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, London — Interpretation of Article 13B(d)(6) 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) — Exemption for management of special investment funds — Scope

Operative part of the judgment

1. *The concept of 'management' of special investment funds in Article 13B(d)(6) 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 has its own independent meaning in Community law whose content the Member States may not alter.*

2. *Article 13B(d)(6) of Sixth Directive 77/388 is to be interpreted as meaning that the concept of 'management of special investment funds' referred to in that provision covers the services performed by a third-party manager in respect of the administrative management of the funds, if, viewed broadly, they form a distinct whole, and are specific to, and essential for, the management of those funds.*

   On the other hand, services corresponding to the functions of a depositary, such as those set out in Articles 7(1) and (3) and 14(1) and (3) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), are not covered by that concept.

([1]) OJ C 146, 29.05.2004.

Judgment of the Court (Second Chamber) of 18 May 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-221/04) ([1])

(Failure by a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species — Hunting using stopped snares in private hunting areas — Castilla y León)

(2006/C 165/08)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: G. Valero Jordana and M. van Beek, Agents)

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Re:

Failure by a Member State to fulfil its obligations — Art. 12(1) of and Annex VI to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Authorisation by the authorities of Castilla y León of hunting with snares in private hunting areas

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 179, 10.07.2004.

Judgment of the Court (First Chamber) of 11 May 2006 (Reference for a preliminary ruling from the Tribunale amministrativo regionale della Lombardia (Italy)) — Carbotermo SpA, Consorzio Alisei v Comune di Busto Arsizio, AGESP SpA

(Case C-340/04) ([1])

(Directive 93/36/EEC — Public supply contracts — Award of contract without a call for tenders — Award of the contract to an undertaking in which the contracting authority has a shareholding)

(2006/C 165/09)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale della Lombardia

Parties to the main proceedings

Applicants: Carbotermo SpA, Consorzio Alisei

Defendants: Comune di Busto Arsizio, AGESP SpA

Intervener: Associazione Nazionale Imprese Gestione servizi tecnici integrati (AGESI)

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale della Lombardia (Italy) — Interpretation of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and of Article 13 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) — Direct award of a contract for the supply and management of fuel and heating for heating appliances in buildings belonging to a municipality — Award to a company the shares of which are held by another company in which the municipality is a majority shareholder

Operative part of the judgment

The Court rules:

1. *Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts precludes the direct award of a public supply and service contract, the main value of which lies in supply, to a joint stock company whose Board of Directors has ample managerial powers which it may exercise independently and whose share capital is, at present, held entirely by another joint stock company whose majority shareholder is, in turn, the contracting authority.*

2. *Article 13 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectorsmust not be applied in the assessment of the requirement relating to the inapplicability of Directive 93/36, according to which the undertaking to which a supply contract was awarded directly must carry out the essential part of its activities with the controlling authority.*

3. *In order to determine whether an undertaking carries out the essential part of its activities with the controlling authority, for the purpose of deciding on the applicability of Directive 93/36, account must be taken of all the activities which that undertaking carries out on the basis of an award made by the contracting authority, regardless of who pays for those activities, whether it be the contracting authority itself or the user of the services provided; the territory where the activities are carried out is irrelevant.*

([1]) OJ C 251, 09.10.2004.

Judgment of the Court (First Chamber) of 18 May 2006 (reference for a preliminary ruling from the Oberster Gerichtshof) — Land Oberösterreich v ČEZ a.s.

(Case C-343/04) ([1])

(Brussels Convention — Article 16(1)(a) — Exclusive jurisdiction in matters relating to property — Action for cessation of a nuisance caused, or likely to be caused, to land by the activities of a nuclear power station situated on the territory of a neighbouring State — Not applicable)

(2006/C 165/10)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Land Oberösterreich

Defendant: ČEZ a.s.

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Article 16(1)(a) of the Brussels Convention — Exclusive jurisdiction for 'proceedings which have as their object rights *in rem* in immovable property' — Action for cassation of a nuisance caused, or likely to be caused to agricultural land by a neighbouring nuclear plant located on the territory of a non-contracting State

Operative part of the judgment

The Court:

Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended most recently by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that an action which, like that brought under Paragraph 364(2) of the Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code) in the main proceedings, seeks to prevent a nuisance affecting or likely to affect land belonging to the applicant, caused by ionising radiation emanating from a nuclear power station situated on the territory of a neighbouring State to that in which the land is situated, does not fall within the scope of that provision.

([1]) OJ C 251, 9.10.2004.

Judgment of the Court (Grand Chamber) of 16 May 2006 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) — The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust, Secretary of State for Health

(Case C-372/04) ([1])

(Social security — National health system funded by the State — Medical expenses incurred in another Member State — Articles 48 EC to 50 EC and 152(5) EC — Article 22 of Regulation (EEC) No 1408/71)

(2006/C 165/11)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Applicants: The Queen, on the application of Yvonne Watts

Defendants: Bedford Primary Care Trust, Secretary of State for Health

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Articles 48, 49, 50, 55 and 152(5) EC and Article 22 of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, and of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 118/97 — Conditions for reimbursement of the costs of hospital treatment incurred without prior authorisation in a Member State other than that of the competent authority

Operative part of the judgment

1. *The second subparagraph of Article 22(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, must be interpreted as meaning that, in order to be entitled to refuse to grant the authorisation referred to in Article 22(1)(c)(i) of that regulation on the ground that there is a waiting time for hospital treatment, the competent institution is required to establish that that time does not exceed the period which is acceptable on the basis of an objective medical assessment of the clinical needs of the person concerned in the light of all of the factors characterising his medical condition at the time when the request for authorisation is made or renewed, as the case may be.*

2. *Article 49 EC applies where a person whose state of health necessitates hospital treatment goes to another Member State and there receives such treatment for consideration, there being no need to determine whether the provision of hospital treatment within the national health service with which that person is registered is in itself a service within the meaning of the Treaty provisions on the freedom to provide services.*

   Article 49 EC must be interpreted as meaning that it does not preclude reimbursement of the cost of hospital treatment to be provided in another Member State from being made subject to the grant of prior authorisation by the competent institution.

   A refusal to grant prior authorisation cannot be based merely on the existence of waiting lists intended to enable the supply of hospital care to be planned and managed on the basis of predetermined general clinical priorities, without carrying out an objective medical assessment of the patient's medical condition, the history and probable course of his illness, the degree of pain he is in and/or the nature of his disability at the time when the request for authorisation was made or renewed.

Where the delay arising from such waiting lists appears to exceed an acceptable time having regard to an objective medical assessment of the abovementioned circumstances, the competent institution may not refuse the authorisation sought on the grounds of the existence of those waiting lists, an alleged distortion of the normal order of priorities linked to the relative urgency of the cases to be treated, the fact that the hospital treatment provided under the national system in question is free of charge, the obligation to make available specific funds to reimburse the cost of treatment to be provided in another Member State and/or a comparison between the cost of that treatment and that of equivalent treatment in the competent Member State.

3. *Article 49 EC must be interpreted as meaning that where the legislation of the competent Member State provides that hospital treatment provided under the national health service is to be free of charge, and where the legislation of the Member State in which a patient registered with that service was or should have been authorised to receive hospital treatment at the expense of that service does not provide for the reimbursement in full of the cost of that treatment, the competent institution must reimburse that patient the difference (if any) between the cost, objectively quantified, of equivalent treatment in a hospital covered by the service in question up to the total amount invoiced for the treatment provided in the host Member State and the amount which the institution of the latter Member State is required to reimburse under Article 22(1)(c)(i) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, on behalf of the competent institution pursuant to the legislation of that Member State.*

Article 22(1)(c)(i) of Regulation No 1408/71 must be interpreted as meaning that the right which it confers on the patient concerned relates exclusively to the expenditure connected with the healthcare received by that patient in the host Member State, namely, in the case of hospital treatment, the cost of medical services strictly defined and the inextricably linked costs relating to his stay in the hospital.

Article 49 EC must be interpreted as meaning that a patient who was authorised to go to another Member State to receive there hospital treatment or who received a refusal to authorise subsequently held to be unfounded is entitled to seek from the competent institution reimbursement of the ancillary costs associated with that cross-border movement for medical purposes provided that the legislation of the competent Member State imposes a corresponding obligation on the national system to reimburse in respect of treatment provided in a local hospital covered by that system.

4. *The obligation of the competent institution under both Article 22 of Regulation No 1408/71, as amended and updated by Regulation No 118/97, and Article 49 EC to authorise a patient registered with a national health service to obtain, at that institution's expense, hospital treatment in another Member State where the waiting time exceeds an acceptable period having regard to an objective medical assessment of the condition and clinical requirements of the patient concerned does not contravene Article 152(5) EC.*

([1]) OJ C 273, 6.11.2004.

Judgment of the Court (Third Chamber) of 11 May 2006 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) — Commissioners of Customs & Excise, Attorney General v Federation of Technological Industries and Others

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

(Sixth VAT Directive — Articles 21(3) and 22(8) — National measures to combat fraud — Joint and several liability for the payment of VAT — Provision of security for VAT payable by another trader)

(2006/C 165/12)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Appellants: Commissioners of Customs & Excise, Attorney General

Respondents: Federation of Technological Industries and Others

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation 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) — Scope of Article 21(3) whereby Member States may provide that a person other than the taxpayer is jointly and severally liable for payment of the tax — 'Carousel' type frauds

Operative part of the judgment

1. *Article 21(3) 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, as amended by Council Directives 2000/65/EC of 17 October 2000 and 2001/115/EC of 20 December 2001, is to be interpreted as allowing a Member State to enact legislation, such as that in issue in the main proceedings, which provides that a taxable person, to whom a supply of goods*

or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the value added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for payment of that tax. Such legislation must, however, comply with the general principles of law which form part of the Community legal order and which include, in particular, the principles of legal certainty and proportionality.

2. *Article 22(8) of Sixth Directive 77/388, as amended by Directives 2000/65 and 2001/115, is to be interpreted as not allowing a Member State to enact either legislation, such as that in issue in the main proceedings, which provides that a taxable person, to whom a supply of goods or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the value added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for payment of that tax, or legislation which provides that a taxable person may be required to provide security for the payment of that tax which is or could become payable by the taxable person to whom he supplies those goods or services or by whom they are supplied to him.*

By contrast, that provision does not preclude a national measure which imposes on any person who is, pursuant to a national measure adopted on the basis of Article 21(3) of Sixth Directive 77/388, jointly and severally liable for payment of value added tax, a requirement to provide security for the payment of that tax which is due.

([1]) OJ C 273, 16.11.2004.

Judgment of the Court (First Chamber) of 11 May 2006 — The Sunrider Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-416/04 P) ([1])

(Appeal — Community trade mark — Articles 8(1)(b), 15(3) and 43(2) and (3) of Regulation (EC) No 40/94 — Likelihood of confusion — Application for Community word mark VITAFRUIT — Opposition by the proprietor of the national word mark VITAFRUT — Genuine use of the earlier trade mark — Proof of consent of the proprietor for the use of the earlier trade mark — Similarity of goods)

(2006/C 165/13)

Language of the case: English

Parties

Appellant: The Sunrider Corp. (represented by: A. Kockläuner, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and A. Folliard-Monguiral, Agents,)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 8 July 2004 in Case T-203/02 *Sunrider* v *OHIM* dismissing an action for annulment brought by the applicant for registration of the word mark 'VITAFRUIT' for products in classes 5, 29 and 32 against the decision of the First Board of Appeal of The Office for Harmonisation in the Internal Market (OHIM) of 8 April 2002 in Case R 1046/2000-1 dismissing the appeal against the decision of the Opposition Division refusing in part to register that mark in the opposition proceedings brought by the proprietor of the national word mark 'VITAFRUT' for certain products in classes 30 and 32

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders The Sunrider Corp. to pay the costs.*

([1]) OJ C 300, 04.12.2004.

Judgment of the Court (Second Chamber) of 4 May 2006 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Massachusetts Institute of Technology

(Case C-431/04) ([1])

(Patent law — Medicinal products — Regulation (EEC) No 1768/92 — Supplementary protection certificate for medicinal products — Concept of 'combination of active ingredients')

(2006/C 165/14)

Language of the case: German

Referring court

Bundesgerichtshof (Germany)

Parties to the main proceedings

Applicant: Massachusetts Institute of Technology

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 1(b) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1) — Concept of 'combination of active ingredients of a medicinal product' — Medicinal product composed of an active ingredient and an excipient, which constitutes a necessary form of administration of the active ingredient in order to avoid toxic effect

Operative part of the judgment

Article 1(b) of Council Regulation No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products, in the version resulting from the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, must be interpreted so as not to include in the concept of 'combination of active ingredients of a medicinal product' a combination of two substances, only one of which has therapeutic effects of its own for a specific indication, the other rendering possible a pharmaceutical form of the medicinal product which is necessary for the therapeutic efficacy of the first substance for that indication.

([1]) OJ C 300, 4.12.2004.

Judgment of the Court (First Chamber) of 18 May 2006 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Magpar VI BV v Staatssecretaris van Financiën

(Case C-509/04) ([1])

(Indirect taxes on the raising of capital — Directive 69/335/EEC — Article 7(1)(b) and (bb) — Capital duty — Exemption — Requirements — Retention for a period of five years of shares acquired)

(2006/C 165/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Magpar VI BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 7(1)(bb) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ English Special Edition 1969 (II), p.412), inserted by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the Directive concerning indirect taxes on the raising of capital — Shares in a company which are no longer retained by another company following a merger — Five-year period — Disposal of shares

Operative part of the judgment

The Court:

1. *Article 7(1)(b) and (bb) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 73/79/EEC of 9 April 1973 and by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as meaning that, where a first capital company, within five years after the acquisition of shares in a second capital company in the course of a share merger that is exempt from capital duty, ceases to hold those shares because the second company has itself merged with a third capital company and has, as a result, ceased to exist, the first company having acquired shares in the third company by way of consideration, the requirement to retain for a period of five years the shares initially acquired, laid down by subparagraph (bb) of the provision in question, is not transferred to the shares the first company holds in the third company.*

2. *The fact that the second sentence of the second sub-subparagraph of Article 7(1)(bb) of Directive 69/335, as amended by Directives 73/79 and 85/303, refers to a 'transfer' of shares held as a result of a transaction that is exempt from capital duty is not relevant to the first question.*

([1]) OJ C 31, 05.02.2005.

Judgment of the Court (Third Chamber) of 11 May 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands)) — Friesland Coberco Dairy Foods BV, trading as Friesland Supply Point Ede v Inspecteur van de Belastingdienst/Douane Noord/kantoor Groningen

(Case C-11/05) ([1])

(Community Customs Code — Arrangements for processing under customs control — Refusal by the national customs authorities of an application for authorisation for processing under customs control — Binding nature of the conclusions of the Customs Code Committee — None — Jurisdiction of the Court to rule on the validity of those conclusions in the context of Article 234 EC — None — Interpretation of Article 133(e) of the Customs Code — Interpretation of Articles 502(3) and 504(4) of Regulation (EEC) No 2454/93 — Overall assessment of all the circumstances of the application for authorisation)

(2006/C 165/16)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Friesland Coberco Dairy Foods BV, trading as Friesland Supply Point Ede

Defendant: Inspecteur van de Belastingdienst/Douane Noord/kantoor Groningen

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 133(e) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p.1) — Meaning of 'without adversely affecting the essential interests of Community producers of similar goods' (economic situation) — Arrangements for processing under customs control — Interpretation of Articles 502(3), 504(4) and 552 of Commission Regulation (EEC) No 2454/93 of 2 July 2003 laying down provisions for the implementation of Regulation (EEC) No 2913/92 (OJ 1993 L 253, p.1), as amended by Regulation (EC) No 993/2001 (OJ 2001 L 141, p.1), and of Annex 76, Part B, thereto — Authorisation –Committee's conclusions — Assessment by the Court of Justice — Jurisdiction

Operative part of the judgment

The Court:

1. *In the assessment of an application for authorisation for processing under customs control pursuant to Article 133(e) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, account must be taken not only of the market for the finished products but also of the economic situation of the market for the raw materials used to produce those products.*

2. *The criteria to be taken into consideration when assessing 'processing activities to be created or maintained' within the meaning of Article 133(e) of Regulation No 2913/92, as amended by Regulation No 2700/2000, and Article 502(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as amended by Commission Regulation (EC) No 993/2001 of 4 May 2001, may include the criterion relating to the creation of a minimum number of jobs on account of the processing activities envisaged, but is not limited to that criterion. Those criteria depend on the nature of the processing activity concerned, and the national customs authority responsible for examining the economic conditions under those provisions must make an overall assessment of all the relevant factors, including those concerning the number of jobs created, the value of the investment made and the permanence of the activity envisaged.*

3. *The validity of conclusions of the Customs Code Committee issued in accordance with Article 133(e) of Regulation No 2913/92, as amended by Regulation No 2700/2000, cannot be examined within the framework of Article 234 EC.*

4. *The Customs Code Committee's conclusion is not binding on national customs authorities when they are determining an application for authorisation for processing under customs control.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Fifth Chamber) of 18 May 2006 — Commission of the European Communities v Italian Republic

(Case C-122/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Failure to transpose within the prescribed period)

(2006/C 165/17)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: U.Wölker and D. Recchia, Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and by M.G. Aiello, lawyer)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose, within the prescribed period, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p.32)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, the Italian Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 115, 14.05.2005.

Judgment of the Court (Fourth Chamber) of 4 May 2006 (reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg — Germany) — Reinhold Haug v Land Baden-Württemberg

(Case C-286/05) ([1])

(Protection of the European Communities' financial interests — Regulation (EC, Euratom) No 2988/95 — Repayment of Community aid — Retroactive application of less severe administrative penalties)

(2006/C 165/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: Reinhold Haug

Defendant: Land Baden-Württemberg

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Administrative Court) Baden-Württemberg — Interpretation of Arts. 2(2), second sentence, 4(1) and (4) and 5(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) and Article 31(3) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11) — Retroactive application of a less strict provision — Meaning of 'administrative measure' and 'administrative penalty' — Repayment of area aid unduly received

Operative part of the judgment

The second sentence of Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests does not apply if, a difference of more than 20 % of the determined area within the meaning of Article 9(2) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes having been found, full repayment of the Community aid initially granted, together with interest, is sought whereas the economic operator concerned contends that the amount of the aid to be repaid might be lower under Article 31(3) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92.

([1]) OJ C 229, 17.9.2005.

Judgment of the Court (Fifth Chamber) of 18 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-354/05) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2003/55/EC — Internal market in natural gas)

(2006/C 165/19)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M. Heller and B.Schima, agents)

Defendant: Grand-Duchy of Luxembourg (represented by: S. Schreiner, acting as agent)

Re:

Failure by a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, p. 57)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that Directive;*

2. *Orders the Grand-Duchy of Luxembourg to pay the costs.*

([1]) OJ C 281 of 12.11.2005.

Appeal brought on 21 March 2005 by Theodoros Papoulakos against the order of the Court of First Instance (First Chamber) made on 26 November 2001 in Case T-248/01 Theodoros Papoulakos v Italian Republic and Commission of the European Communities

(Case C-215/05 P)

(2006/C 165/20)

Language of the case: Greek

Parties

Appellant: Theodoros Papoulakos (represented by: D. Koutouvalis, dikigoros)

Other parties to the proceedings: Italian Republic and Commission of the European Communities

By order of 2 February 2006, the Court of Justice (Fifth Chamber) dismissed the appeal as inadmissible.

Reference for a preliminary ruling from the Oberlandesgerichts Wien lodged on 7 April 2006 — Renate Ilsinger v Martin Dreschers (administrator in the insolvency of Schlank & Schick GmbH)

(Case C-180/06)

(2006/C 165/21)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Renate Ilsinger

Defendant: Martin Dreschers (administrator in the insolvency of Schlank & Schick GmbH)

Questions referred

1. Does the provision in Paragraph 5j of the Konsumentenschutzgesetz (Law on consumer protection; KSchG), BGBl 1979/140, in the version of Art I, para. 2 of the Fernabsatz-Gesetz (Law on distance selling), BGBl I 1999/185, which entitles certain consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, constitute, in circumstances where the claiming of that prize was not made conditional upon actually ordering goods or placing a trial order and where no goods were actually ordered but the recipient of the communication is nevertheless seeking to claim the prize, for the purposes of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the regulation' ([1]) a contractual, or equivalent, claim under Article 15(1)(c) of the regulation?

If the answer to question 1 is in the negative:

2. Does a claim falling under Article 15(1)(c) of the regulation arise if the claim for payment of the prize was not made conditional upon ordering goods but the recipient of the communication has actually placed an order for goods?

([1]) OJ L 12 of 16.1.2001, p. 1.

Appeal brought on 12 April 2006 by Schneider Electric SA against the order of the Court of First Instance (Fourth Chamber) made on 31 January 2006 in Case T-48/03, Schneider Electric SA v Commission of the European Communities

(Case C-188/06 P)

(2006/C 165/22)

Language of the case: French

Parties

Appellant: Schneider Electric SA (represented by A. Winckler, I. Girgenson and M. Pittie, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside, in accordance with Article 225(1) EC and Article 61 of the Statute of the Court of Justice of the European Communities, the order made by the Court of First Instance on 31 January 2006 in Case T-48/03 *Schneider Electric SA* v *Commission of the European Communities*;

— Refer the case back to the Court of First Instance for a decision on the substance of the case;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The appellant submits that the order misinterprets the relevant facts and is vitiated by errors of law.

Firstly, contrary to what the Court of First instance maintains, the transfer of Legrand to the Wendel/KKR consortium did not occur 'spontaneously' and did not 'become irrevocable' before the decision of 4 December 2002 ([1]) was taken. In any event, the fact that the operation was abandoned did not deprive Schneider of its interest in bringing proceedings against the decision.

Secondly, the decision of 4 December 2002 constitutes in reality a prohibition decision, particularly in light of the instructions given by the Court of First Instance to the Commission. Indeed, in its judgment of 22 October 2002 in *Schneider* v *Commission*, the Court of First Instance clearly stated that the Commission was to resume the control procedure from the statement of objections stage.

Thirdly, on the assumption that the decision of 4 December 2002 does indeed constitute a decision to open Phase II, it is still amenable to an action for annulment. Indeed, in so far as it produces adverse effects, a decision taken on the basis of Article 6(1)(c) of Regulation No 4064/89 ([2]) may be the subject of an action for annulment. In the very specific circumstances of the present case, the decision of 4 December 2002 was in any event liable to give rise to an action. Any other interpretation would lead to a veritable denial of justice.

Finally, the decision to close proceedings may also be the subject of an action for annulment, on the same basis as any decision whereby the Commission significantly alters the legal situation of the affected party.

([1]) Commission Decision of 4 December 2002 on opening the close examination phase in respect of the merger operation between Schneider and Legrand (Case COMP/M. 2283-Schneider/Legrand II)

([2]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1)

Appeal brought on 13 April 2006 by TEA-CEGOS, SA and Services techniques globaux (STG) SA against the judgment of the Court of First Instance (Second Chamber) delivered on 14 February 2006 in Joined Cases T-376/05 and T-383/05 TEA-CEGOS, SA, STG SA and GHK Consulting Ltd v Commission of the European Communities

(Case C-189/06 P)

(2006/C 165/23)

Language of the case: French

Parties

Appellants: TEA-CEGOS, SA, Services techniques globaux (STG) SA (represented by: G. Vandersanden and L. Levi, lawyers)

Other parties to the proceedings: GHK Consulting Ltd, Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of 14 February 2006 of the Court of First Instance in Joined Cases T-376/05 and T-383/05;

— consequently, grant the appellants the relief they claimed at first instance and, therefore,

— annul the decision of 12 October 2005 rejecting the candidature and bid of the TEA-CEGOS consortium and withdrawing the decision awarding the framework contract to the TEA-CEGOS consortium under the call for tenders EuropeAid — 2/119860/C-LOT No 7;

— annul all the other decisions taken by the defendant under that call for tenders following the decision of 12 October 2005 and, in particular, the award decisions and the contracts concluded by the Commission implementing those decisions;

— order the defendant to pay all the costs at first instance and on appeal.

Pleas in law and main arguments

The appellants base their appeal on breach of Community law by, and on procedural irregularities before, the Court of First Instance. The appellants submit that the Court of First Instance disregarded the principle of legal certainty, its obligation to state reasons and the principle of sound administration and distorted the evidence.

Reference for a preliminary ruling from the Tribunale di Lecce — Sezione distaccata di Gallipoli — lodged on 14 April 2006 — Criminal proceedings against Aniello Gallo and Gianluca Damonte

(Case C-191/06)

(2006/C 165/24)

Language of the case: Italian

Referring court

Tribunale di Lecce — Sezione distaccata di Gallipoli

Parties to the main proceedings

Aniello Gallo and Gianluca Damonte

Question referred

Is Article 4(4 bis) of Law No 401/89 incompatible — with resultant effects on the domestic legal system — with the principles laid down in Articles 43 and 49 of the EC Treaty on establishment and freedom to provide cross-border services, also in light of the conflict between the interpretations in the decisions of the European Court of Justice (in particular in the judgment in Case C-243/01 *Gambelli and Others* [2003] ECR I-13031) and decision No 23271/04 of the Suprema Corte di Cassazione a Sezioni Unite (United Chambers of the Supreme Court of Cassation)? In particular, clarification is sought as to the applicability of the criminal provisions set out in the charge brought against Aniello GALLO and Gianluca DAMONTE in the Italian State.

Appeal brought on 24 April 2006 by Société des Produits Nestlé SA against the judgment of the Court of First Instance (First Chamber) delivered on 22 February 2006 in Case T-74/04 Société des Produits Nestlé SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), intervener: Quick restaurants SA

(Case C-193/06 P)

(2006/C 165/25)

Language of the case: French

Parties

Appellant: Société des Produits Nestlé SA (represented by: D. Masson, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Quick restaurants SA

Form of order sought

— Set aside the CFI judgment of the Court of First Instance of 22 February 2006; and

— Order OHIM to pay the costs in their entirety

Pleas in law and main arguments

According to the applicant the Court of First Instance made an error of law in that it failed to assess the trade mark in question in its entirety and in concreto, whereas the trade mark in question is composed of a particularly distinctive character and its name, the figurative and verbal elements of that complex trade mark cannot be separated in this instance.

The Court of Instance also disregarded the provisions of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 10 December 1993 on the Community trade mark [1] by failing to take account, when assessing the likelihood of confusion, of all the relevant elements in question, as regards both the trade mark sought by the applicant and the word mark of the intervener.

Finally, by examining only some of the rights invoked by the intervener in its opposition, the Court of First Instance disregarded the rules applicable to trade mark oppositions.

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[1] OJ 1994 L 11 p. 1

Reference for a preliminary ruling from the Rechtbank van Koophandel te Hasselt (Belgium) lodged on 3 May 2006 — Confederatie van Immobilien-Beroepen van Belgie VZW and het Beroepsinstituut van Vastgoedmakelaars v Willem Van Leuken

(Case C-197/06)

(2006/C 165/26)

Language of the case: Dutch

Referring court

Rechtbank van Koophandel te Hasselt (Belgium)

Parties to the main proceedings

Claimants: Confederatie van Immobilien-Beroepen van Belgie VZW and het Beroepsinstituut van Vastgoedmakelaars

Defendant: Willem Van Leuken

Question(s) referred

(a) Must Articles 3 and 4 of Directive 89/48/EEC [1] be interpreted as meaning that a real estate agent who is established in the Netherlands and organises agency activities in Belgium in respect of real property is no longer obliged to comply with the conditions laid down by the Belgian legislature pursuant to the aforementioned directive (Article 2 of the Royal Decree of 6 September 1993, Article 3 of the Framework Law of 1 March 1976) in the case where he has concluded a cooperation agreement with a real estate agent who is established in Belgium and is certified by the Belgian Professional Association of Real Estate Agents (BIV) and organises his activities in such a way that (i) consumers may always have recourse to this real estate agent registered in Belgium for purposes of activities in Belgium and (ii) this collaboration is made clear in publicity, in particular through reference to the intermediary role played by this real estate agent certified in Belgium by the BIV in connection with activities carried out pursuant to Belgian law?;

or

Must Articles 3 and 4 of Directive 89/48/EEC be interpreted as meaning that a real estate agent who is established in the Netherlands and organises agency activities in Belgium in respect of real property is *in every case* obliged to comply with the conditions laid down by the Belgian legislature pursuant to the aforementioned directive (Article 2 of the Royal Decree of 6 September 1993, Article 3 of the Framework Law of 1 March 1976), *notwithstanding* any cooperation agreement with a real estate agent who is certified in Belgium and provides intermediary services in regard to activities governed by Belgian law?

(b) Should the Court of Justice take the view that Articles 3 and 4 of Directive 89/48 must be interpreted as meaning that a real estate agent who is established in the Netherlands and organises agency activities in Belgium in respect of real property is in every case obliged to comply with the conditions laid down by the Belgian legislature pursuant to the aforementioned directive (Article 2 of the Royal Decree of 6 September 1993, Article 3 of the Framework Law of 1 March 1976), *notwithstanding* any cooperation agreement with a real estate agent who is certified in Belgium and provides intermediary services in regard to activities governed by Belgian law, does it not then follow that that directive and the national provisions adopted to implement it are contrary to Article 49 EC setting out the principle of freedom to provide cross-border services inasmuch as, on the basis of the foregoing construction, that directive and the national provisions adopted to implement it protect the market for estate agency activity in respect of real property situate in Belgium, in a manner which is objectionable, artificial and lacking objective justification, against cooperation agreements entered into by independent real estate agents established in different Member States (Belgium and the Netherlands), at least one of whom (the Belgian real estate agent) satisfies the conditions laid down by the directive and the national provisions, with the result that the requirement that the Netherlands real estate agent must additionally also satisfy those conditions (as set out in the directive and the national provisions) is tantamount to indirect discrimination on grounds of nationality and constitutes at the very least a prohibited non-discriminatory restriction?

[1] Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p.16).

Action brought on 2 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-198/06)

(2006/C 165/27)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and F. Simonetti, Agents)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— Declare that, by failing to draw up or, in any event, to transmit the report required under Article 9 of Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars [1], the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 9 of that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Grand-Duchy of Luxembourg was required to transmit to the Commission, no later than 31 December 2003, a report on the effectiveness of the provisions of the directive, covering the period from 18 January 2001 to 31 December 2002.

[1] OJ 2000 L 12, p. 16.

Reference for a preliminary ruling from the Tribunal de Première Instance de Bruxelles lodged on 4 May 2006 — Raffinerie Tirlemontoise SA v Bureau d'Intervention et de Restitution Belge (BIRB)

(Case C-200/06)

(2006/C 165/28)

Language of the case: French

Referring court

Tribunal de Première Instance de Bruxelles

Parties to the main proceedings

Applicant: Raffinerie Tirlemontoise SA

Defendant: Bureau d'Intervention et de Restitution Belge (BIRB)

Questions referred

1) Does Commission Regulation 314/2002 [1] provide, with regard to calculation of the production levy, for exclusion from the financing needs of the quantities of sugar contained in processed products which are exported without export refunds? Is this legislation invalid in the light of Article 15 of Council Regulation (EC) No 1260/2001 on the common organisation of the markets in the sugar sector [2] and in the light of the principles of proportionality and non-discrimination?

2) Do Commission Regulations Nos 1775/2004 [3], 1762/2003 [4], 1837/2002 [5], 1993/2001 [6] and 2267/2000 [7] lay down a production levy for sugar calculated on the basis of the 'average loss' per tonne exported, which does not take into account the quantities exported without a refund, although these quantities are included in the total used to evaluate the overall loss to be financed? Are these Regulations invalid in the light of Commission Regulation No 314/2002, Article 15 of Council Regulation No 1260/2001 and the principle of proportionality?

[1] Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40)

[2] Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1)

[3] Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year (OJ 2004 L 316, p. 64)

[4] Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year (OJ 2003 L 254, p. 4)

[5] Commission Regulation (EC) No 1837/2002 of 15 October 2002 fixing the production levies and the coefficient for the additional levy in the sugar sector for the marketing year 2001/02 (OJ 2002 L 278, p. 13)

[6] Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the 2000/01 marketing year (OJ 2001 L 271, p. 15)

[7] Commission Regulation (EC) No 2267/2000 of 12 October 2000 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year (OJ 2000 L 259, p. 29)

Action brought on 4 May 2006 — Commission of the European Communities v French Republic

(Case C-201/06)

(2006/C 165/29)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky, Agent)

Defendant: French Republic

Form of order sought

— Declare that, by requiring that a parallel imported plant protection product and a reference product have a common origin, the French Republic has failed to fulfil its obligations under Article 28 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

In France, the grant and continuation of an import authorisation in respect of parallel imports of plant protection products from another Member State where they are lawfully placed on the market are subject to the requirement that parallel imported plant protection products and reference products have a common origin.

This constitutes a restriction on the free movement of plant protection products that is incompatible with Article 28 EC, is not justified on grounds of the protection of public health, animal health or the environment and is disproportionate in relation to the goal to be achieved.

Action brought on 5 May 2006 — Commission of the European Communities v Republic of Austria

(Case C-205/06)

(2006/C 165/30)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and B. Martenczuk, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by not taking suitable measures to eliminate incompatibilities in relation to the provisions concerning transfers in the bilateral investment agreements with Korea, Cape Verde, China, Malaysia, the Russian Federation and Turkey, the Republic of Austria has failed to fulfil its obligations under second paragraph of Article 307 of the EC Treaty;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

Article 307 of the EC Treaty requires the Member States to take all appropriate steps to eliminate the incompatibilities established with the EC Treaty of the agreements concluded by them prior to 1 January 1958 or before accession to the European Community.

The Commission considers that the provisions on the free transfer of investment related payments in the bilateral investment agreements which the Republic of Austria concluded with Korea, Cape Verde, China, Malaysia, the Russian Federation and Turkey before its accession to the European Community are incompatible with the EC Treaty. This is because they do not allow the Republic of Austria to apply restrictions on capital or payments which the Council of the European Union may adopt on the basis of Articles 57(2), 59 and 60(1) of the EC Treaty.

The Austrian Government's argument that the way in which it votes in the Council is not predetermined by the agreements is irrelevant. The only relevant issue is whether the Republic of Austria can carry out — in conformity with its obligations under international law — the restrictive measures in a particular case. The provisions of the Austrian investment agreements in dispute show that this is not the case. Likewise, the argument that Austria alone cannot prevent the Council from adopting a decision by a qualified majority is not decisive for the same reason.

Since, in the present case, an incompatibility with the EC Treaty exists, Austria is under an obligation to take appropriate steps to eliminate it. If no other means are available, however, Austria could — according to the case-law of the Court of Justice — be obliged to abrogate the agreement at issue.

Reference for a preliminary ruling from the Szegedi Ítélőtábla (Court of Appeal Szeged) lodged on 5 May 2006 — CARTESIO Oktató és Szolgáltató Betéti Társaság

(Case C-210/06)

(2006/C 165/31)

Language of the case: Hungarian

Referring court

Szegedi Ítélőtábla (Court of Appeal Szeged)

Parties to the main proceedings

Applicant: CARTESIO Oktató és Szolgáltató Betéti Társaság

Question(s) referred

1. Is a court of second instance which has to give a decision on an appeal against a decision of a commercial court (cégbíróság) in proceedings to amend a registration, entitled to make a reference for a preliminary ruling under Article 234 of the Treaty of Rome, where neither the action before the commercial court nor the appeal procedure is inter parties?

2. In so far as an appeal court is included in the concept of 'court or tribunal which is entitled to make a reference for a preliminary ruling' under Article 234 of the Treaty of Rome, must that court be regarded as a court against whose decisions there is no judicial remedy, which has an obligation, under Article 234 of the Treaty of Rome, to submit questions on the interpretation of community law to the Court of Justice of the European Communities?

3. Does a national measure which, in accordance with national law, confers a right to bring an appeal against an order for a preliminary reference, limit the power of the Hungarian courts to refer questions for a preliminary ruling or could it limit that power — derived directly from Article 234 of the Treaty of Rome — if, in appeal proceedings the national superior court may amend the order, render the request for a preliminary ruling inoperative and order the court which issued the order for reference to resume the national proceedings which had been suspended?

4. A. If a company, constituted in Hungary under Hungarian company law and entered in the Hungarian commercial register, wishes to transfer its registered office to another Member State of the European Union, is the regulation of this field within the scope of Community law or, in the absence of the harmonisation of laws, is national law exclusively applicable?

   B. May a Hungarian company request transfer of its registered office to another Member State of the European Union relying directly on community law (Articles 43 and 48 of the Treaty of Rome)? If the answer is affirmative, may the transfer of the registered office be made subject to any kind of condition or authorisation by the Member State of origin or the host Member State?

   C. May Articles 43 and 48 of the Treaty of Rome be interpreted as meaning that a national rules or national practices which differentiate between commercial companies with respect to the exercise of their rights, according to the Member State in which their registered office is situated, is incompatible with Community law?

Appeal brought on 9 May 2006 by Herta Adam against the judgment delivered on 22 February 2006 by the Court of First Instance (First Chamber) in Case T-342/04 Herta Adam v Commission of the European Communities

(Case C-211/06P)

(2006/C 165/32)

Language of the case: French

Parties

*Appellant:*Herta Adam (represented by: S. Orlandi, A. Coolen, J.-N Louis, E. Marchal, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment of the Court of First Instance (First Chamber) of 22 February 2006 in Case T-342 *Herta Adam* v *Commission of the European Communities* in its entirety;

— Annul the Commission's decision of 22 September 2003 refusing the applicant the benefit of the expatriation allowance provided for by Article 4 of Annex VII to the Staff Regulations of officials of the European Communities;

— Order the defendant to pay the costs of appeal and at first instance.

Pleas in law and main arguments

The appeal is based on the allegation that the Court of First Instance erred in law in interpreting the concept of 'circumstances arising from work done for another State' set out in the second indent of Article 4(1)(a) of Annex VII of the Staff Regulations.

Action brought on 11 May 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-216/06)

(2006/C 165/33)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and F. Simonetti, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC ([1]) or, in any event, by failing to inform the Commission thereof, has failed to comply with its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The time-limit prescribed for implementation in national law of Directive 2003/35/EC expired on 25 June 2005.

([1]) OJ L 156, p. 17.

Action brought on 12 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-218/06)

(2006/C 165/34)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Maidani, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council ([1]), or, in any event, by failing to notify the Commission of such measures, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for implementing the directive expired on 11 August 2004.

([1]) OJ 2003 L 35, p.1.

Action brought on 12 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-219/06)

(2006/C 165/35)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— A declaration that, by failing to adopt measures to comply with the judgment delivered by the Court on 30 September 2004 in Case C-481/03 ([1]) concerning the failure to communicate measures for the implementation of Directives 2001/12/EC ([2]) and 2001/13/EC ([3]), the Grand-Duchy of Luxembourg has failed to fulfil its obligations under those directives and under Article 228(1) EC;

— an order that the Grand-Duchy of Luxembourg pay the Commission a penalty payment of EUR 4 800 for each day of delay in complying with judgment in Case C-481/03 with regard to Directive 2001/12/EC and a penalty payment of EUR 4 800 for each day of delay in complying with the judgment in Case C-481/03 with regard to Directive 2001/13/EC from the date of judgment herein until the judgment in Case C-481/03 has been complied with;

— an order that the Grand-Duchy of Luxembourg pay the Commission a lump sum, to be calculated by multiplying the daily sum of EUR 1 000 by the number of days the infringement continues, from the date of judgment in Case C-481/03 until the date of judgment herein in relation to Directive 2001/12/EC, together with the same sum in relation to Directive 2001/13/EC; and

— an order that the Grand-Duchy of Luxembourg pay the costs.

Pleas in law and main arguments

The Grand-Duchy of Luxembourg has failed to communicate to the Commission any measure adopted following the judgment of the Court in Case C-481/03.

([1]) Not reported.

([2]) Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 75, p. 1).

([3]) Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L 75, p. 26).

Action brought on 16 May 2006 — Commission of the European Communities v French Republic

(Case C-222/06)

(2006/C 165/36)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Maidani and G. Braun, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering ([1]), the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 15 June 2003.

([1]) OJ 2001 L 344, p. 76.

Action brought on 16 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-223/06)

(2006/C 165/37)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Braun, Agent)

Defendant): Grand-Duchy of Luxembourg

Form of order sought

— Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings ([1]), or, in any event, by failing to notify the Commission of such measures, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for implementing the directive expired on 1 January 2005.

(1) OJ L 178, p. 16.

Action brought on 16 May 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-224/06)

(2006/C 165/38)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2004/72/EC (1) of 29 April 2004 implementing Directive 2003/6/EC (2) of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions and, in any event, by failing to inform the Commission thereof, has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The time-limit prescribed for the implementation in national law of Directive 2004/72/EC expired on 12 October 2004.

(1) OJ L 162, 30.4.2004, p. 70.
(2) OJ L 96, 12.4.2003, p. 16.

Action brought on 17 May 2006 — Commission of the European Communities v French Republic

(Case C-226/06)

(2006/C 165/39)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and I. Kaufmann-Bühler, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 2, 10(1) and 12(3) and (4) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (1), the French Republic has failed to fulfil its obligations under that directive and Articles 10 EC and 249 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 89/391/EEC expired on 31 December 1992.

The Commission complains that the French Republic has failed to fulfil its obligations under Articles 2, 10(1) and 12(3) and (4) of Directive 83/391 by failing to adopt all the provisions necessary to transpose the directive correctly into French law.

(1) OJ 1989 L 183, p. 1.

Action brought on 17 May 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-227/06)

(2006/C 165/40)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and B. Stromsky, agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by introducing a de facto obligation on economic operators wishing to market in Belgium construction products legally produced and/or marketed in another Member State of the European Union to obtain 'BENOR' or 'ATG' marks denoting conformity for the marketing of these products in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Articles 28 and 30 EC;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The national measures at issue can be classified as State measures impeding free movement of goods not justified by considerations laid down in Article 30 EC or by imperative requirements of public interest and not satisfying the principle of proportionality.

Action brought on 24 May 2006 — Commission of the European Communities v Republic of Austria

(Case C-235/06)

(2006/C 165/41)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

— declare that, by failing to lay down sanctions within the meaning of Article 16 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]), the Republic of Austria has failed to fulfil its obligations under that regulation;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

Article 16 of Regulation No 261/2004 provides that, in the event that no compensation is paid, no re-routing offered or no right to reimbursement granted, sanctions are to be imposed on airlines. The sanctions laid down by the Member States for infringements of the regulation must be effective, proportionate and dissuasive.

According to the information available to the Commission, Austria has not yet laid down effective, proportionate and dissuasive sanctions for infringements of the regulation.

([1]) OJ L 46 of 17.2.2004, p. 1.

Action brought on 24 May 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-236/06)

(2006/C 165/42)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Maidani and G. Braun, acting as Agents)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ([1]) and, in any event, by failing to communicate them to the Commission, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 12 October 2004.

(1) OJ 2003 L 96, p. 16.

Appeal brought on 28 May 2006 by Guido Strack against the order made on 22 March 2006 by the Court of First Instance (First Chamber) in Case T-4/05, Guido Strack v Commission of the European Communities

(Case C-237/06 P)

(2006/C 165/43)

Language of the case: German

Parties

Appellant: Guido Strack (represented by: L. Füllkrug, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the order of the Court of First Instance (First Chamber) of 22 March 2006 in Case T-4/05 *Guido Strack* v *Commission of the European Communities* (1)

— Annul the decision of 5 February 2004 to close the OLAF investigation number OF/2002/0356 and the final case report (NT/sr D(2003)-AC-19723-01687 of 5 February 2004) on which that decision was based

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

Pleas in law and main arguments

In his appeal the appellant submits that the Court of First Instance made procedural errors and infringed the rule of Community law in Article 3(3) of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal. The Court of First Instance did not have jurisdiction at the time the order was made as it should already have referred Case T-4/05 to the European Union Civil Service Tribunal in December 2005 on the basis of the abovementioned provision.

Furthermore, the appellant submits that the Court of First Instance erred in procedure as it did not substantiate the contested order with reference to a number of independent grounds on which the action was based.

Moreover, the Court of First Instance infringed Community law by wrongly interpreting the concept of 'an act adversely affecting him' which is used in Article 90(2) and 90a of the Staff Regulations. It did this by wrongly interpreting the concept itself and not taking into consideration previous case-law, wrongly interpreting the rules in Articles 22a, 22b and 43 of the Staff Regulations, the fundamental right to physical and mental integrity and the principle of effective judicial protection, and by misjudging the nature of claims for damages.

Lastly, the appellant also submits that the Court of First Instance made procedural errors, which are apparent from the case-file due to incorrect findings of fact and an incorrect legal assessment of the facts as regards the OLAF investigations, and also the illogical presentation thereof in the statement of reasons in the order.

(1) OJ C 121, 20.05.2006, p. 12

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

(Case C-21/05) (1)

(2006/C 165/44)

Language of the case: Italian

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

(1) OJ C 69, 19.03.2005.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 10 May 2006 — Galileo International Technology and Others v Commission

(Case T-279/03) ([1])

(Action for damages — Non-contractual liability of the Community — Community project relating to a global satellite radio navigation system (Galileo) — Harm alleged by the proprietors of trade marks and business names containing the word 'Galileo' — Liability of the Community in the absence of unlawful conduct by its bodies — Unusual and special damage)

(2006/C 165/45)

Language of the case: French

Parties

Applicants: Galileo International Technology LLC (Bridgetown, Barbados), Galileo International LLC (Wilmington, Delaware, United States), Galileo Belgium SA (Brussels, Belgium), Galileo Danmark A/S (Copenhagen, Denmark), Galileo Deutschland GmbH (Frankfurt am Main, Germany), Galileo España, SA (Madrid, Spain), Galileo France SARL (Roissy-en-France, France), Galileo Nederland BV (Hoofdorp, Netherlands), Galileo Nordiska AB (Stockholm, Sweden), Galileo Portugal Ltd (Alges, Portugal), Galileo Sigma Srl (Rome, Italy), Galileo International Ltd (Langley, Berkshire, United Kingdom), The Galileo Co. (London, United Kingdom) and Timas Ltd (Dublin, Ireland) (represented by: C. Delcorde, J.-N. Louis, J.-A. Delcorde and S. Maniatopoulos, lawyers)

Defendant: Commission of the European Communities (represented by: N. Rasmussen and M. Huttunen, Agents, assisted by A. Berenboom and N. Van den Bossche, lawyers)

Re:

Action for (i) an order prohibiting the Commission from using the word 'Galileo' in connection with the Community project relating to a global satellite radio navigation system and from encouraging third parties to use that word and (ii) compensation for the applicants for the damage which they claim to have suffered owing to the use of and promotion by the Commission of that word, which they allege to be identical to trade marks registered by the applicants and also to their business names

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 251 of 18.10.2003

Judgment of the Court of First Instance of 17 May 2006 — Kallianos v Commission

(Case T-93/04) ([1])

(Officials — Deductions from salary — Maintenance payments in divorce proceedings — Enforcement of a judgment of a national court)

(2006/C 165/46)

Language of the case: French

Parties

Applicant: Theodoros Kallianos (Kraainem, Belgium) (represented by: G. Archambeau, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and D. Martin, Agents, assisted by D. Waelbroeck, lawyer)

Re:

Application for annulment of the Commission's decision relating to some of the deductions from the applicant's pay pursuant to interim measures ordered by a Belgian court, for reimbursement of those sums and for the payment of damages

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 106, 30.04.2004.

Judgment of the Court of First Instance of 17 May 2006 — Lavagnoli v Commission

(Case T-95/04) ([1])

(Officials — Staff report — Regularity of the assessment procedure — Carrying on of activities by staff and union representative — Obligation to state reasons — Action for annulment)

(2006/C 165/47)

Language of the case: French

Parties

Applicant: Luciano Lavagnoli (Berchem, Luxembourg) (represented by: G. Bounéou and F. Frabetti, lawyers)

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

Re:

Application for annulment of the assessment exercise for the period from 1 July 1999 to 30 June 2001 as regards the applicant and of the decision adopting the applicant's definitive staff report for that period

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 106, 30.4.2004.

Judgment of the Court of First Instance of 10 May 2006 — R v Commission

(Case T-331/04) ([1])

(Officials — Appointment — Classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 165/48)

Language of the case: German

Parties

Applicant: R (Chaumont-Gistoux, Belgium) (represented by: B. Arians, lawyer)

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

Re:

Application for the annulment of the decision relating to the applicant's classification in grade

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 284, 20.11.2004.

Judgment of the Court of First Instance of 10 May 2006 — Air One SpA v Commission of the European Communities

(Case T-395/04) ([1])

(State aid — Air transport — Complaint — Failure by the Commission to define its position — Action for failure to act — Time-limit — Admissibility)

(2006/C 165/49)

Language of the case: Italian

Parties

Applicant: Air One SpA (Chieti, Italy) (represented by: G. Belotti and M. Padellaro, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci and E. Righini, Agents)

Re:

Application Action under Article 232 EC for a declaration that the Commission has unlawfully failed to define its position on the applicant's complaint concerning aid granted to the air carrier Ryanair by the Italian authorities

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs*

([1]) OJ C 300, 4.12.2004.

Judgment of the Court of First Instance of 16 May 2006 — Martin Magone v Commission

(Case T-73/05) ([1])

(Officials — Career development report — Action for annulment — Action for compensation — Manifest error of assessment — Duty to state reasons — Misuse of powers — Psychological harassment)

(2006/C 165/50)

Language of the case: French

Parties

Applicant: Alejandro Martin Magone (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

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

Re:

First, an application for annulment of the applicant's career development report for the 2003 assessment exercise, and, second, an application for compensation for material and non-material damage assessed on an equitable basis at EUR 39 169,67

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 106, 30.4.2005.

Order of the Court of First Instance of 2 May 2006 — Belgium v Commission

(Case T-134/05) ([1])

(European Social Fund — Recovery by means of set-off against Community debts — Time-barred — Interest for late payment — Action for annulment — Objection of inadmissibility — Challengeable act — Inadmissible)

(2006/C 165/51)

Language of the case: French

Parties

Applicant: Kingdom of Belgium (represented by: J. Devadder, Agent, and J.P. Buyle and C. Steyaert, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris, G. Wilms and A. Weimar, Agents)

Re:

Application for annulment of the Commission's decision contained in its letter of 19 January 2005, by which the Commission replied to the letters from the Kingdom of Belgium regarding funds paid to various Belgian bodies under the European Social Fund.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Kingdom of Belgium is ordered to pay the costs.*

([1]) OJ C 132, 28.5.2005.

Order of the Court of First Instance of 5 May 2006 — Tesoka v EUROFOUND

(Case T-398/05) ([1])

(Referral to the Civil Service Tribunal)

(2006/C 165/52)

Language of the case: French

Parties

Applicant: Sabrina Tesoka (Overijse, Belgium) (represented by: J.-L. Fagnart, lawyer)

Defendant: European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) (represented by: C. Callanan, lawyer)

Re:

Action under Article 236 EC

Operative part of the order

Case T-398/05 is referred to the Civil Service Tribunal.

([1]) OJ C 10, 14.1.2006.

Order of the President of the Court of First Instance of 12 May 2006 — Gollnisch v Parliament

(Case T-42/06 R)

(Application for Interim measures — Act of the Parliament — Defence of immunity of a Member of Parliament — Application for suspension of operation — Admissible)

(2006/C 165/53)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Limonest, France) (represented: by W. de Saint Just, lawyer)

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

Re:

Application for suspension of the operation of the European Parliament's Decision of 13 December 2005 not to defend the immunity and privileges of Mr. Gollnisch.

Operative part of the order

1. *The application for interim relief is rejected.*

2. *The costs are reserved.*

Action brought on 3 May 2006 — Drax Power and others v Commission

(Case T-130/06)

(2006/C 165/54)

Language of the case: English

Parties

Applicants: Drax Power Ltd (Selby, United Kingdom), Great Yarmouth Power Ltd (Swindon, United Kingdom), International Power Plc (London, United Kingdom), Npower Copgen Ltd (Swindon, United Kingdom), RWE Npower Plc (Swindon, United Kingdom), ScottishPower Generation Ltd (Glasgow, United Kingdom), Scottish and Southern Energy Plc (Perth, United Kingdom) (represented by: I. Glick, QC, and M. Cook, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C (2006) 426 final of 22 February 2006 concerning the proposed amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom of Great Britain and Northern Ireland;

— order the Commission to bear the applicants' costs of these proceedings.

Pleas in law and main arguments

On 10 November 2004, the United Kingdom notified its intention to amend its provisional national allocation plan for the allocation of greenhouse gas emission allowances to the Commission. The Commission decision finding the proposed amendment inadmissible was challenged by the United Kingdom following which the decision was annulled by the Court of First Instance in its judgment in Case T-178/05 ([1]).

Following this annulment, the Commission adopted a new decision concluding that the proposed amendment was inadmissible. This decision is now being challenged by the applicants.

The applicants own, directly or through their subsidiaries, electricity generating facilities covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ([2]). The proposed amendment to the national allocation plan would result in them receiving significantly more allowances than those currently allocated.

In support of their application, the applicants submit that the contested decision is in contradiction with the judgment of the Court of First Instance in Case T-178/05 and that the issues raised in the contested decision form res judicata.

According to the applicants, the Commission wrongly concludes that the date of 30 September 2004 specified in Article 11(1) of the Directive is a cut-off deadline, and that Member States are not permitted to propose any amendments to their national allocation plans after that deadline, other than those required by a Commission decision.

The applicants furthermore claim that the concerns expressed about the functioning of the emissions trading scheme are overstated and could not justify the rejection of the proposed amendment.

([1]) Case T-178/05 *United Kingdom v Commission* [2005] ECR II-0000

([2]) OJ 2003 L 275, p.32.

Action brought on 4 May 2006 — Sonia Rykiel Création et Diffusion de Modèles v OHIM — Cuadrado (SONIA SONIA RYKIEL)

(Case T-131/06)

(2006/C 165/55)

Language in which the application was lodged: English

Parties

Applicant: Sonia Rykiel Création et Diffusion de Modèles (Paris, France) (represented by: E. Baud, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cuadrado S.A. (Paterna, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office of Harmonization in the Internal Market (Trade Marks and Designs) of 30 January 2006 in Case R 329/2005-1;

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

Pleas in law and main arguments

Applicant for the Community trade mark: Sonia Rykiel Création et Diffusion de Modèles.

Community trade mark concerned: The figurative mark 'SONIA SONIA RYKIEL' for goods in classes 3, 9, 14, 18 and 25 (Community trade mark application No 1035625)

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

Mark or sign cited: The national trade marks 'SONIA' for goods in classes 24 and 25.

Decision of the Opposition Division: Rejection of the opposition with respect to the goods covered in class 25.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and rejection of the mark applied for, for all goods covered by it in class 25.

Pleas in law: Infringement of Article 43(3) of Regulation No 40/94 and of Article 8(1)(b) of Regulation No 40/94.

Action brought on 12 May 2006 — Gorostiaga Atxalandabaso v Parliament

(Case T-132/06)

(2006/C 165/56)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

— annul the contested decision of the Secretary-General of 22 March 2006;

— order the defendant to bear its own costs and pay those of the applicant.

Pleas in law and main arguments

On 22 December 2005, in an action brought by the applicant, a former Member of the European Parliament, the Court of First Instance of the European Communities gave a judgment (Case T-146/04 *Koldo Gorostiaga Atxalandabaso* v *Parliament* [1]) in which it annulled, on the ground of procedural irregularity, the decision of the Secretary-General of the European Parliament of 24 February 2004 concerning the recovery of sums paid to the applicant as parliamentary expenses and allowances in so far as it provided that the sum owed by the applicant would be recovered by offsetting. The remainder of the application was dismissed. Following that judgment, the Secretary-General of the Parliament adopted a new decision on 22 March 2006 for recovery of the sums paid to the applicant by offsetting. That is the contested decision.

In support of his action for annulment, the applicant submits first an argument relating to infringement of *res judicata* in so far as the procedure for adopting the contested decision is not, in his opinion, in accordance with the Court of First Instance's judgment of 22 December 2005. The second argument relates to alleged infringement of the Rules governing the payment of expenses and allowances to Members of the European Parliament, in particular Article 27(3) and (4) thereof. Furthermore, the applicant submits that there is *force majeure* in that it is impossible for him to gain access to his accounts and the authorities of one of the Member States refuse to return to him a sum attached during other proceedings. The applicant also submits infringement of essential procedural requirements in so

far as the consultation procedures were not followed correctly in taking the contested decision. The applicant claims that the contested decision infringes the principles of objectivity, impartiality, equality and non-discrimination. In addition, he advances arguments relating to infringement of the obligation to state reasons and failure to comply with the rules relating to the notification of decisions by institutions in breach of the Code of Good Administrative Behaviour. Lastly, in support of his action, the applicant submits an argument relating to misuse of powers and errors of appreciation of the facts.

([1]) Not yet published in the ECR

Action brought on 11 May 2006 — Xentral v OHIM — Pages Jaunes (Word mark 'PAGESJAUNES.COM')

(Case T -134/06)

(2006/C 165/57)

Language in which the application was lodged: French

Parties

Applicant: Xentral LLC (Miami, United States of America) (represented by: A. Bertrand, lawyer)

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

Other party to the proceedings before the Board of Appeal: Pages Jaunes SA (Sèvres, France)

Form of order sought

The applicant asks the Court to:

— set aside Decision R 708/2005-1 dated 15 February 2006;

— uphold the Community trade mark 'PAGESJAUNES.COM'

— declare that all costs are the responsibility of the Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Xentral LLC

Community trade mark concerned: Word mark 'PAGESJAUNES.COM' for goods in Class 16 (application no 1 880 871)

Proprietor of the mark or sign cited in the opposition proceedings: Pages Jaunes SA

Mark or sign cited in opposition: National word mark 'LESPAGESJAUNES' for goods in Class 16, the business name and the commercial name 'PAGES JAUNES'

Decision of the Opposition Division: Opposition upheld for all the goods disputed

Decision of the Board of Appeal: Appeal rejected

Pleas in law: The applicant relies on its previous right to the domain name 'PAGESJAUNES.COM' which, in its view, is enforceable against the opposing party's trade mark and business name.

It also relies on an infringement of Article 7(1)(c) and (d) of Council Regulation 40/94, in that the opposing party's trade mark is customary and has very little distinctive character.

It claims that its trade mark, in respect of which registration was sought, does not compromise the business name or commercial name of the opposing party.

The applicant also disputes the renown of the opposing party's trade mark.

Action brought on 5 May 2006 — Al-Faqih v Council

(Case T-135/06)

(2006/C 165/58)

Language of the case: English

Parties

Applicant: Al-Bashir Mohammed Al-Faqih (Birmingham, United Kingdom) (represented by: N. Garcia, Solicitor, S. Cox, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annulment of Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 as amended by Council Regulation (EC) 561/2003 of 27 March 2003 and Commission Regulation (EC) No 246/2006 of 10 February 2006 and of the reference to the applicant in Annex I;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant is a Libyan citizen residing in the United Kingdom. He seeks the annulment of among others Regulation No 246/2006 ([1]) by which his name was added to the list of persons, groups and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, to whom a freeze of funds and other financial resources apply pursuant to Article 2 of Regulation No 881/2002 ([2]).

The applicant submits that the Council was not competent to adopt Article 2 of Regulation No 881/2002 as amended in that Articles 60 EC, 301 EC and 308 EC do not confer on the Council the power to do so. Furthermore, the Council and the Commission misused their powers in that Article 2 of Regulation No 881/2002 as amended does not pursue the objectives of Articles 60 EC, 301 EC and 308 EC.

The applicant further alleges that Article 2 of Regulation No 881/2002 as amended infringes the fundamental principles of Community law, in particular the principles of subsidiarity, proportionality and respect for fundamental rights.

Finally the applicant pleads infringement of an essential procedural requirement in the adoption of Article 2 of Regulation No 881/2002 as amended, namely the requirement that the Council and the Commission state adequate reasons why the measures considered necessary cannot be determined by individual Member States.

([1]) Commission Regulation (EC) No 246/2006 of 10 February 2006 amending for the 63rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2006 L 40, p. 13).

([2]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freezing of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L, p. 9).

Action brought on 5 May 2006 — Sanabel Relief Agency v Council

(Case T-136/06)

(2006/C 165/59)

Language of the case: English

Parties

Applicant: Sanabel Relief Agency Ltd (Birmingham, United Kingdom) (represented by: N. Garcia, Solicitor, S. Cox, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annulment of Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 as amended by Council Regulation (EC) 561/2003 of 27 March 2003 and Commission Regulation (EC) No 246/2006 of 10 February 2006 and of the reference to the applicant in Annex I;

— order the Council to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are identical to those relied on in Case T-135/06 *Al-Faqih v Council*.

Action brought on 5 May 2006 — Abdrabbah v Council

(Case T-137/06)

(2006/C 165/60)

Language of the case: English

Parties

Applicant: Ghunia Abdrabba (Birmingham, United KIngdom) (represented by: N. Garcia, Solicitor, S. Cox, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annulment of Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 as amended by Council Regulation (EC) No 561/2003 of 27 March 2003 and Commission Regulation (EC) No 246/2006 of 10 February 2006 and of the reference to the applicant in Annex I;

— order the Council to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are identical to those relied on in Case T-135/06 *Al-Faqih v Council*.

Action brought on 5 May 2006 — Nasuf v Council

(Case T-138/06)

(2006/C 165/61)

Language of the case: English

Parties

Applicant: Taher Nasuf (Manchester, United Kingdom) (represented by: N. Garcia, Solicitor, S. Cox, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annulment of Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 as amended by Council Regulation (EC) No 561/2003 of 27 March 2003 and Commission Regulation (EC) No 246/2006 of 10 February 2006 and of the reference to the applicant in Annex I;

— order the Council to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are identical to those relied on in Case T-135/06 *Al-Faqih v Council*.

Action brought on 12 May 2006 — France v Commission

(Case T-139/06)

(2006/C 165/62)

Language of the case: French

Parties

Applicant: French Republic (Paris, France) (represented by: E. Belliard, acting as Agent, G. de Bergues, acting as Agent, S. Gasri, acting as Agent)

Defendant: Commission of the European Communities

Form of order sought

— Principally, annul the contested decision due to the Commission's lack of competence;

— Alternatively, annul the contested decision on the ground of a procedural irregularity due to infringement of the rights of the defence;

— In the further alternative, annul the contested decision in that it contains an incorrect assessment of the measures taken by France to execute fully the judgment of 12 July 2005;

— In the even further alternative, annul the contested decision in that it should have contained a lower amount of periodic penalty payment;

— In the further alternative again, reduce the amount of the periodic penalty payment;

— Order the Commission to pay the costs or, if the amount of the periodic penalty payment is reduced by the Court of First Instance, order each party to bear its own costs.

Pleas in law and main arguments

By judgment of 11 June 1991 ([1]), the Court of Justice of the European Communities found that the applicant had failed to fulfil the obligations imposed on Member States by Community law in the area of fisheries policy. Since that judgment was not implemented, the Commission brought an action before the Court of Justice based on Article 228 EC and by judgment of 12 July 2005 ([2]) the applicant was ordered to pay to the Commission a penalty payment for each period of six months as from delivery of the judgment as well as a fixed sum. Following that judgment, the Commission carried out examinations as to the extent of the applicant's implementation of the judgment of the Court of 11 June 1991 and, on finding that the applicant had not executed it fully, the Commission directed a decision at it requesting the payment of the financial penalties imposed on it by the Court of Justice in the judgment of 12 July 2005. The decision in question is the contested decision.

In support of its action the applicant is relying on several pleas.

Principally, it submits that the contested decision should be annulled due to the Commission's lack of competence in that the Commission cannot adopt a decision which imposes on a Member State the recovery of a periodic penalty payment imposed by the Court of Justice in the context of Article 228 EC. It submits that under Article 228 EC only the Court of Justice has jurisdiction to call for such a payment in that that implies a prior finding that the failure to fulfil obligations is persisting.

Alternatively, the applicant submits the procedural irregularity of the taking of a decision by the Commission owing to infringement of the rights of the defence inasmuch as the French authorities did not have the opportunity of properly presenting their observations before the contested decision was taken.

In the further alternative, the applicant submits an argument as to the incorrect assessment by the Commission of the measures taken by France to execute fully the judgment of the Court of Justice.

In the even further alternative, it submits that, given the implementing measures which it has introduced since the Court of Justice's judgment, the Commission should have set the amount of the periodic penalty payment at a lower level.

Lastly, in the further alternative again, the applicant submits that if the Court of First Instance considers that the Commission did not itself have the power to reduce the amount of the periodic penalty payment imposed in the judgment of the Court of Justice, it is for the Court of First Instance to do so itself in the context of its unlimited jurisdiction.

([1]) Case C-64/88 *Commission* v *France* [1991] ECR I-2727

([2]) Case C-304/02 *Commission* v *France* [2005] ECR I-6263

Action brought on 8 May 2006 — Philip Morris Products v OHIM (Shape of a packet of cigarettes)

(Case T-140/06)

(2006/C 165/63)

Language in which the appeal was lodged: French

Parties

Applicant: Philip Morris Products SA (Neuchâtel, Switzerland) (represented by T. van Innis and C.S. Moreau, lawyers)

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

Form of order sought

— principally, annulment of the contested decision and an order that OHIM bear the costs;

— in the alternative, appointment of an expert or a board of experts entrusted with the tasks proposed by the applicant and order that OHIM will be required to advance the costs incurred in the performance of those tasks.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional trade mark representing a packet of cigarettes for goods in Class 34 (application No. 2 681 351)

Decision of the Examiner: registration refused

Decision of the Board of Appeal: appeal rejected

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94. The applicant contends that the trade mark has a sufficiently distinctive character and cannot be said to be common to all the goods in question.

Action brought on 18 May 2006 — Omya v Commission

(Case T-145/06)

(2006/C 165/64)

Language of the case: English

Parties

Applicant: Omya AG (Oftringen, Switzerland) (represented by: C. Ahlborn, C. Berg, Solicitors, C. Pinto Correira, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Decision adopted by the European Commission on 8 March 2006, in case COMP/M.3796 — Omya/J.M. Huber PCC;

— declare that the concentration forming the subject matter of case COMP/M.3796 — Omya/J.M. Huber PCC is deemed to have been declared compatible with the common market; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of the Commission's Decision C (2006)795 of 8 March 2006 in merger case COMP/M.3796 according to which the applicant pursuant to Article 11(3) of the EC Merger Regulation [1] is requested to supply the Commission with correct and complete information concerning the applicant's take over of the precipitated calcium carbonate business from J.M. Huber Corporation ('the contested decision'). As a result of the contested decision, the merger timetable was suspended prolonging the deadline for a final decision on the notified concentration from 31 March 2006 to 28 June 2006.

The Commission states in the contested decision that, in response to an earlier information request, the applicant had provided at least in part incorrect information. The applicant claims that this stands in contradiction to a previous letter from the Commission in which the Commission acknowledged that the complete information had been provided.

In support of its application, the applicant invokes an infringement of Article 11(1) and (3) of the EC Merger Regulation because (i) the information requested by the contested decision was not necessary for the assessment of the concentration, (ii) the requested information had been provided in full earlier, and (iii) contrary to the principle of legal certainty, the Commission did not act without delay.

The applicant further submits that the contested decision constitutes a misuse of the powers of the Commission under Article 11(3) of the EC Merger Regulation as the Commission's main goal in adopting the contested decision, according to the applicant, was to obtain an extension of the time limits under the EC Merger Regulation, rather than the collection of necessary information.

Finally, the applicant alleges that the contested decision is in breach of the legitimate expectation of the applicant that it had discharged its obligation to provide the requested information and that the deadline for a final decision on the notified concentration was 31 March 2006. The applicant states that this expectation arose from the Commission's previous letter in which it acknowledged that the complete information had been provided and from the Commission's subsequent conduct.

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[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (Second Chamber) of 15 May 2006 — Schmit v Commission

(Case F-3/05) ([1])

(Community officials — Promotion — Assessment — Time-limit for complaint — Interest in bringing proceedings — Inadmissibility)

(2006/C 165/65)

Language of the case: French

Parties

Applicant: Nadine Schmit ((Ispra, Italy) (represented by: P.-P. Van Gehuchten, P. Jadoul and Ph. Reyniers, lawyers)

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

Re:

First, application for annulment of the decision of 3 December 2003 by which the Commission did not include the applicant among the officials promoted in the 2003 procedure; second, application for annulment of the decision according to which the applicant's competence, performance and conduct in the service were not the subject of a career development report for the 2001-2002 period; third, application for damages for the losses allegedly caused as a result of those decisions.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The parties are ordered to bear their own costs.*

([1]) OJ C 6 of 8.1.2005 (case initially registered before the Court of First Instance of the European Communities under Case T-419/04 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Order of the Civil Service Tribunal (Third Chamber) of 18 May 2006 –Corvoisier and Others v European Central Bank

(Case F-13/05) ([1])

(Staff of the European Central Bank — Vacancy notice — Act adversely affecting staff — Pre-litigation procedure — Inadmissibility)

(2006/C 165/66)

Language of the case: French

Parties

Applicants: Sandrine Corvoisier, Roberta Friz, Hundjy Peurd'Homme and Elvira Rosati (Frankfurt-am-Main, Germany) (represented by: G. Vandersanden and L. Levi, lawyers)

Defendant: European Central Bank (represented by: H. Weenink and K. Sugar, agents, assisted by B. Wägenbaur, lawyer)

Re:

First, application for annulment of European Central Bank vacancy notice ECB/156/04 aimed at filling six posts as Record Management Specialists; second, application for annulment of all decisions taken in implementation of the vacancy notice; third, application for damages for the losses allegedly caused as a result of all of the aforementioned decisions.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The parties are ordered to bear their own costs.*

([1]) OJ C 132 of 28.5.2005 (case initially registered before the Court of First Instance of the European Communities under Case T-126/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Order of the Civil Service Tribunal of 31 May 2006 — Frankin and Others v Commission

(Case F-91/05) ([1])

(Pension — Transfer of pension rights acquired in Belgium — Dismissal of the applicants' requests for assistance)

(2006/C 165/67)

Language of the case: French

Parties

Applicants: Frankin and Others (Sorée, Belgium) (represented by: F. Frabetti, lawyer)

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

Re:

First, annulment of the implicit refusal by the Commission to offer the applicants its assistance pursuant to Article 24 of the Staff Regulations of Officials of the European Communities and, second, damages for losses the applicants claim to have suffered as a result of that refusal.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The parties are ordered to bear their own costs.*

([1]) OJ C 315 of 10.12.2005 (case initially registered before the Court of First Instance of the European Communities under Case T-359/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005)

Order of the President of the Civil Service Tribunal of 31 May 2006 — Bianchi v European Training Foundation

(Case F-38/06 R)

(Proceedings for interim relief — Application for suspension of operation and fot interim measures)

(2006/C 165/68)

Language of the case: French

Parties

Applicant: Irène Bianchi (Turin, Italy) (represented by: M.-A. Lucas, lawyer)

Defendant: European Training Foundation (represented by: M. Dunbar, Director, assisted by G. Vandersanden, lawyer)

Re:

First, suspension of execution of the decision of 24 October 2005 by which the European Training Foundation refused to renew the applicant's temporary agent contract and, second, the granting of interim measures.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 8 May 2006 — Kerstens v Commission

(Case F-59/06)

(2006/C 165/69)

Language of the case: French

Parties

Applicant: Petrus J.F. Kerstens (Overijse, Belgium) (represented by: C. Mourato, 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 11 July 2005 adopting the applicant's Career Development Report (CDR) for the year 2004;

— Annul the Appointing Authority's express decision of 6 February 2006 rejecting the applicant's complaint No R/769/05;

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

Pleas in law and main arguments

The applicant, a Commission official, challenges the merit points and markings contained in his CDR for the year 2004. He pleads infringement of the appraisal procedure rules and of the General Provisions Implementing Article 43 of the Staff Regulations, a manifest error of assessment and infringement of Article 43 of the Staff Regulations. The applicant reserves, lastly, the right to expound a third plea in law alleging misuse of powers.

Action brought on 12 May 2006 — Stump and Camba Constenla v Court of Justice

(Case F-60/06)

(2006/C 165/70)

Language of the case: French

Parties

Applicants: Krisztina Stump and Carmen Camba Constenla (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Court of Justice of the European Communities

Form of order sought

The applicants claim that the Tribunal should:

— Annul the decisions appointing the applicants officials of the European Communities in so far as the decisions set their grade of recruitment in accordance with Article 12 or 13 of Annex XIII to the Staff Regulations;

— Order the Court of Justice to pay the costs.

Pleas in law and main arguments

In support of their action, the applicants rely upon pleas in law very similar to those put forward in Case F-12/06 ([1]).

([1]) OJ C 86, 8.4.2006, p. 48.

Action brought on 12 May 2006 — Sapara v Eurojust

(Case F-61/06)

(2006/C 165/71)

Language of the case: English

Parties

Applicant: Cathy Sapara (The Hague, The Netherlands) (represented by: G. Vandersanden and C. Ronzi, lawyers)

Defendant: Eurojust

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 6 July 2005 to terminate the applicant's contract and order her reintegration in Eurojust from that date;

— order the compensation of the prejudice suffered by the applicant, evaluated on a provisional basis ex aequo et bono at EUR 200 000 for the moral prejudice and the payment of the salary of the applicant from July 2005 to 15 October 2009 for the material prejudice;

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

Pleas in law and main arguments

The applicant, a former temporary agent of Eurojust, challenges the decision to terminate her contract at the end of the probationary period.

In support of her claims, she relies on the following pleas:

— infringement of Article 14 of the Conditions of Employment of Other Servants of the Communities (CEOS) and of Article 9 of the Staff Regulations;

— breach of the general principle of law imposing the motivation of any act affecting the applicant's interests;

— flagrant errors in the appraisal of facts leading to errors in law;

— breach of the general principle of good administration and of the rights of defence;

— misuse of power.

As regards the request for compensation, the applicant considers that she has been the victim of harassment an that she has been defamed on several occasions.

Action brought on 23 May 2006 — Guarnieri v Commission

(Case F-62/06)

(2006/C 165/72)

Language of the case: French

Parties

Applicant: Daniela Guarnieri (St-Stevens-Woluwe, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Commission's decision of 5 August 2005 adversely affecting the applicant in that, pursuant to the rule against overlapping allowances laid down in Article 67(2) of the Staff Regulations, it deducts the Belgian orphans' pension from the family allowance and declares, as a result, that a given amount will be withheld from her pay in accordance with Article 85 of the Staff Regulations;

— Annul the Appointing Authority's decision of 14 February 2006 rejecting the applicant's complaint against the contested decision;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a Commission official and mother of two children, received dependent child allowance under Article 67(2) of the Staff Regulations. Following her spouse's death on 10 April 2005, she was informed that because of the amendment to Article 80 of the Staff Regulations, the Commission would not pay her any orphans' pension. On the other hand, she obtained family allowances and orphans' pension from the Belgian authorities. As the total amount of the benefits paid by the latter exceeded the amount of the Community family allowances, the Commission decided that the applicant was no longer entitled to the latter allowances.

In support of her action, the applicant alleges, first, infringement of Article 67(2) of the Staff Regulations. The allowances which she receives from the Belgian authorities are not allowances of like nature to those paid by the Community and so should not give rise to the deduction provided for by that provision.

The applicant next pleads breach of the obligation, laid down in Article 25 of the Staff Regulations, to state the grounds on which any decision relating to a specific individual is based, breach of the principles of the protection of legitimate expectations, legal certainty, equal treatment and sound administration, and of the duty to have regard for the welfare of officials.

She also raises a plea of illegality against the part of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities [1] which amends Article 80(4) of the Staff Regulations without providing for transitional measures. According to the applicant, the withdrawal of the orphans' pension for children whose deceased parent was not an official or member of the temporary staff should have been accompanied by transitional measures enabling officials to make a full actuarial calculation of their position.

[1] OJ L 124, 27.4.2004, p. 1

Action brought on 22 May 2006 — Bergström v Commission

(Case F-64/06)

(2006/C 165/73)

Language of the case: French

Parties

Applicant: Ragnar Bergström (Linkebeek, Belgium) (represented by: T. Bontinck and J. Feld, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— Annul the specific decision on a transfer from temporary staff status to official status reflected in an instrument of appointment taking effect on 16 September 2005, notified on 28 September 2005;

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

Pleas in law and main arguments

The applicant was informed on 26 April 2004 that he had been successful in open competition COM/A/3/02, the notice for which was published on 25 July 2002, to form a reserve list for the recruitment of administrators in career bracket A7/A6. After the entry into force of the new Staff Regulations, he was appointed as an official in the same post he occupied as a member of the temporary staff in Grade A*6, step 2, in accordance with Annex XIII to the Staff Regulations.

In support of his action, the applicant pleads infringement of Articles 31 and 62 of the Staff Regulations and Articles 5 and 2 of Annex XIII to the Staff Regulations.

The applicant also claims infringement of the principle of the protection of legitimate expectations, the principle of the protection of acquired rights and the principle of equal treatment between officials in the same grade or career bracket.

Action brought on 22 May 2006 — Pereira Sequeira v Commission

(Case F-65/06)

(2006/C 165/74)

Language of the case: French

Parties

Applicant: Rosa Maria Pereira Sequeira (Brussels, Belgium) (represented by: T. Bontinck and J. Feld, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the individual decision relating to a change of category, effective as from 16 August 2005, notified on 19 September 2005;

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

Pleas in law and main arguments

The applicant is a successful candidate of the internal competition COM/PC/04, published before the new Staff Regulations entered into force. She was appointed an official thereunder and classified in grade C*1, that is, the same grade in which she had been classified during her last temporary agent contract. Although previously she had enjoyed a more advantageous classification, she had been downgraded to grade C*1 prior to her appointment as an official.

In support of her action, the applicant alleges breach of Articles 31 and 62 of the Staff Regulations and Articles 5 and 2 of Annex XIII to the Staff Regulations.

The applicant also alleges violation of the principle of protection of legitimate expectations and the principle of protection of acquired rights.

Order of the Civil Service Tribunal of 13 June 2006 — Maccanti v CESE

(Case F -81/05) ([1])

(2006/C 165/75)

Language of the case: French

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

([1]) OJ C 281, 12.11.2005.

III

(Notices)

(2006/C 165/76)

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

OJ C 154, 1.7.2006

Past publications

OJ C 143, 17.6.2006

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

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