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COURT OF JUSTICE

(2007/C 129/01)

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

OJ C 117, 26.5.2007

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 12 February 2007 by Luciano Lavagnoli against the judgment of the Court of First Instance (Third Chamber) delivered on 23 November 2006 in Case T-422/04 *Lavagnoli* v *Commission*

(Case C-74/07 P)

(2007/C 129/02)

Language of the case: French

Parties

Appellant: Luciano Lavagnoli (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: J. Curral and H. Kraemer, agents)

Form of order sought

— annul the judgment of the Court of First Instance of 23 November 2006 in Case T-422/04;

— grant the forms of order sought at first instance and, consequently, declare the application in Case T-422/04 to be admissible and well founded;

— in the alternative, remit the case to the Court of First Instance;

— make an order as to costs, expenses and fees and order the Commission to pay them.

Pleas in law and main arguments

The appellant relies on three submissions in support of his appeal.

In his first submission, the appellant claims the Court of First Instance erred in law in its interpretation of the general implementing provisions for Article 45 of the Staff Regulations of Officials of the European Communities and the administrative guide to appraisal and promotion of officials inasmuch as it held, in paragraphs 53 to 75 of the contested judgment, that the abovementioned general implementing provisions do not require an automatic link between the priority points allocated to the directorates general and the merit points, in this case, and then the priority points had been correctly attributed.

In his second submission, the applicant claims that the Court of First Instance erred in regard to procedure by refusing, in paragraphs 59 and 67 of its judgment, to accept his requests concerning the organisation of the procedure, which were to require the Commission to submit a comparison between the points awarded to officials eligible for promotion and their merit points, and the method of comparison used in order to make a comparative consideration of the merits of officials.

In his third submission, finally the applicant claims that the Court of First Instance erred in law, in paragraphs 76 to 100 of its judgment, by misconstruing the procedure for appraisal and promotion laid down in the general implementing provisions for Articles 43 and 45 of the Staff Regulations of Officials and the abovementioned administrative guide and by adopting an erroneous interpretation of Article 90 of the Staff Regulations of Officials.

Appeal brought on 21 February 2007 by É. R. and Others against the judgment delivered by the Court of First Instance (First Chamber) on 13 December 2006 in Case T-138/03 É.R. and Others v Council and Commission

(Case C-100/07 P)

(2007/C 129/03)

Language of the case: French

Parties

Appellants: É.R, J.R, A.R, B.R, O.O, T.D, V.D, J.M.D, D.D, D.F, E.E, C.F, M.R, I.R, B.R, M.R, C.S. (represented by: F. Honnorat, lawyer)

Other parties to the proceedings: Council of the European Union and Commission of the European Communities

Form of order sought

— declare the appeal admissible;

— declare the appeal to be well founded;

— set aside the judgment of the Court of First Instance of the European Communities (First Chamber) of 13 December 2006 in Case T-138/03;

— order the case to be referred back to the Court of First Instance to rule on the appellants' claims.

Pleas in law and main arguments

By their appeal, the appellants seek to have the contested judgment set aside in so far as it rejected their application as being partly inadmissible and partly unfounded.

First, as regards the admissibility of their appeal, the appellants submit that the reasoning of the Court is contradictory and that, by holding that the action for compensation resulting from the infection and death of Mr H.E.R was brought after the expiry of the 5-year limitation period, the Court violated both Article 46 of the Statute of the Court of Justice and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In that connection, the appellants submit that since at the time their applications were considered they did not have epidemiological data capable of accurately pinpointing the date of on which their relatives became infected, the Court could not declare that their action was time-barred.

Second, as regards the consideration of the substance of the case, the appellants submit that the Court also adopted contradictory reasoning and violated Article 6(1) of the convention cited above, on one hand, by basing its judgment on old reports and by failing to taken account of the most recent epidemiological data and, on the other hand, by holding that the existence of a causal link between the harm alleged and the alleged unlawful conduct by the Community institutions was not established.

Appeal brought on 21 February 2007 by Angel Angelidis against the judgment delivered by the Court of First Instance (Fifth Chamber) on 5 December 2006 in Case T-416/03 Angelidis v European Parliament

(Case C-103/07 P)

(2007/C 129/04)

Language of the case: French

Parties

Appellant: Angel Angelidis (represented by: E. Boigelot, lawyer)

Other party to the proceedings: European Parliament

Form of order sought

— declare the appeal admissible and well founded and, accordingly,

— set aside the judgment of the Court of First Instance of the European Communities of 5 December 2006 in Case T-416/03 *Angelidis* v *Parliament*;

— annul the staff report for 2001;

— award damages and interest for non material harm and harm to the his career, both on account of substantial irregularities and substantial delay in the writing of the staff report 2001 in a particularly distressing period for the appellant,

— order the defendant to pay the costs in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

By his appeal, the appellant criticises the Court of First Instance for having committed a number of errors of law in the interpretation of Articles 26 and 43 of the Staff Regulations of Officials of the European Communities and the general provisions implementing those articles. More specifically, those errors concerned the broad interpretation by the Court of the limited situations in which an exception may be made to the rule that the staff report must be drafted and countersigned by two different members of hierarchy of the official under appraisal, and the

interpretation by the Court that there is no need to consult the official's previous immediate hierarchical superior. As regards those two issues, the contested judgment suffers from numerous defects in the reasoning of the Court, which also misinterpreted the scope of several documents submitted to it by the appellant.

Appeal brought on 23 February 2007 by Ferrero Deutschland GmbH against the judgment delivered by the Court of First Instance (Third Chamber) on 15 December 2006 in Case T-310/04 Ferrero Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Cornu SA Fontain

(Case C-108/07 P)

(2007/C 129/05)

Language of the case: French

Parties

Appellant: Ferrero Deutschland GmbH (represented by: M. Schaeffer, Rechtsanwalt)

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

Form of order sought

— set aside the judgment of the Court of First Instance (Third Chamber) of 15 December 2006 in Case T-314/04 *Ferrero Deutschland* v *OHIM — Cornu SA Fontain*;

— order OHIM and the intervener to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant puts forward a single plea in law in support of its appeal, alleging an infringement of Community law by the Court of First Instance and, more specifically, that it incorrectly interpreted Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ([1]). In that connection, the applicant puts forward the following five arguments.

First, the Court failed to take account of the fact that the salted and sweet goods concerned are produced and marketed to a relevant extent by the same undertakings, including the intervener itself. Second, the Court committed an error of law by holding that the goods concerned are only slightly similar, whereas, in this case, it should have found at least an average degree of similarity. Third, the Court committed an error of law by attributing only 'a certain degree of similarity' to the marks 'Ferrero' and 'Ferro', whereas the arguments that the Court itself put forward in its judgment should have led to the conclusion that those marks have an average degree or even high degree of similarity. Fourth, the Court failed to take sufficient account of the documents submitted by the appellant in order to highlight the highly distinctive character of the mark 'Ferrero'. Finally, in its assessment of the likelihood of confusion, the Court committed an error of law by failing to take account of the many factors mentioned in the seventh recital in the preamble to Regulation (EC) No 40/94.

([1]) OJ 1994 L 11, p. 1.

Reference for a preliminary ruling from the Juzgado Contencioso-Administrativo No 22 of Madrid (Spain) of 12 March 2007 — Asociación Ecologistas en Acción-CODA v Ayuntamiento de Madrid

(Case C-142/07)

(2007/C 129/06)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 22 of Madrid

Parties to the main proceedings

Applicant: Spanish Government and the Autonomous Community of Madrid

Defendant: Ayuntamiento de Madrid

Questions referred

1) Are the procedural requirements relating to environmental impact assessments arising from Council Directive 85/377/EEC ([1]), as amended by Council Directive 97/11/EC, of 3 March 1977 applicable to urban road projects, having regard to their nature, size and effect on densely populated areas or on landscapes of historical, cultural or archaeological significance?

2) Are the procedural requirements relating to environmental impact assessments arising from Council Directive 85/377/EEC, as amended by Council Directive 97/11/EC, of 3 March 1997 ([2])applicable to the projects which form the subject-matter of this administrative appeal procedure, having regard to their nature, the nature of the road on which they are to be carried out, their characteristics, size, effect on the surrounding area, density of population, budget and the possible splitting up of a larger project which contemplates similar works on the same road?

3) Are the criteria set out in Case C-332/04 ([3]) *Commission* v *Spain*, and specifically those contained in paragraphs 69 to 88 of the judgment, applicable to the projects which are the subject-matter of these proceedings, having regard to their nature, the nature of the road on which they are to be carried out, their characteristics, size, effect on the surrounding area, budget and the possible splitting up of a larger project which contemplates similar works on the same road, such that there was a requirement to submit them to the prescribed environmental impact assessment procedure?

4) Do the relevant administrative records and, specifically, the studies and reports contained therein, demonstrate that the Spanish authorities have, in practice, complied with the obligations arising from Council Directive 85/377/EEC, as amended by Council Directive 97/11/EC, relating to the environmental assessment of the projects which are the subject-matter of these proceedings, even if the project was not formally subjected to the prescribed environmental assessment procedure set out in the Directive?

([1]) 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 L 175, 5.7.1985, p. 40).
([2]) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997, p. 5).
([3]) *Commission of the European Communities* v *Kingdom of Spain* [2006] ECR I-40.

Action brought on 15 March 2007 — Commission of the European Communities v Republic of Poland

(Case C-149/07)

(2007/C 129/07)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to establish a specific legal framework for the grant of authorisations for the parallel import of plant protection products into Poland, the Republic of Poland has failed to fulfil its obligations under Article 28 EC;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

Article 28 EC prohibits quantitative restrictions on imports between Member States and all measures having equivalent effect. The Commission submits that, by failing to establish a specific legal framework regarding the grant of authorisations for the placing on the market of plant protection products which are imported from other Member States, where those products have already obtained authorisation to be placed on the market, and which are identical (within the meaning of the case-law of the Court of Justice of the European Communities) to products already placed on the market in Poland, the Republic of Poland has failed to fulfil its obligations under Article 28 EC.

According to the Court of Justice's case-law, in the absence of harmonisation 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions'. The Court has also held that national rules or practices which result in imports being channelled in such a way that only certain traders can effect these imports, whereas others are prevented from doing so, constitute a measure having an effect equivalent to a quantitative restriction. A procedure under which prior authorisation is required for the sale of imported products must be established by means of rules which are of general application and which also explicitly bind the national authorities. That procedure must be easily accessible and carried out within a reasonable time. It is necessary for such general rules to exist in national law because they enable citizens to exercise the rights accorded to them by Community law.

While the new proposal for legislative amendment may be accepted by the Commission, it had not entered into force on expiry of the two-month period set in the Commission's reasoned opinion calling for elimination of the infringement. In accordance with settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the legal situation prevailing in that State at the end of the period laid down by the Commission in the reasoned opinion. The Court cannot take account of any subsequent changes in national law.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 March 2007 — Finanzamt für Körperschaften III in Berlin v Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH

(Case C-157/07)

(2007/C 129/08)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt für Körperschaften III in Berlin

Respondent: Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH

Questions referred

1. Does Article 31 of the Agreement on the European Economic Area ([1]) prohibit a legal provision of a Member State according to which, when calculating total income, a taxpayer resident and subject to unlimited taxation in one Member State is able under certain conditions to deduct losses incurred by a permanent establishment situated in another Member State which are exempt from income tax pursuant to a double taxation convention,

   — but according to which the sum deducted must, in the tax assessment period concerned, be added back in the calculation of total income, to the extent to which, in a subsequent tax assessment period, a positive amount of income from commercial activities which is exempt from tax pursuant to the double taxation convention is generated by permanent establishments in that other Member State,

   — subject in the latter case to an exception where the taxpayer can prove that, according to the provisions of the other Member State applicable to him, it is 'in general' not possible to claim deduction of losses in a year other than that in which those losses were incurred, which is not the case where, although a deduction of losses is in general possible according to the law of that State, it is not available to the taxpayer in the specific situation in which he finds himself?

2. If the answer to (1) is in the affirmative: is the position in the State of residence affected if the limitations on deduction of losses applicable in the other Member State (being the source State) themselves contravene Article 31 of the Agreement on the European Economic Area on the ground that they discriminate against a taxpayer with income from his permanent establishment who is subject only to limited taxation there compared with a taxpayer who is subject to unlimited taxation there?

3. Further assuming that the answer to (1) is in the affirmative: must the State of residence refrain from retroactive recovery of tax on losses incurred by a permanent establishment situated in another Member State, to the extent to which those losses cannot otherwise be deducted in any Member State on the ground that the permanent establishment in that other Member State has been disposed of?

([1]) OJ 1994 L 1, p. 1.

Action brought on 22 March 2007 — Commission of the European Communities v Portuguese Republic

(Case C-160/07)

(2007/C 129/09)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson and P. Andrade, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that, by failing to transpose into domestic law Article 7a, in conjunction with Part B of Annex XI, Article 9(2) and 12(1) in conjunction with Annex VII to Directive 95/21/EC ([1]), in its latest version under Directive 2002/84/EC ([2]), the Portuguese Republic has failed to fulfil its obligations under Directive 95/21/EC as subsequently amended (in particular by Directive 2001/106 ([3]));

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The period prescribed for transposition into domestic law of Directive 95/21/EC expired on 30 June 1996. The period prescribed for the transposition of Directive 2001/106/EC expired on 22 July 2003. The period prescribed for the transposition of Directive 2002/84/EC expired on 23 November 2003.

([1]) Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1).

([2]) Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships (OJ 2002 L 324, p. 53).

([3]) OJ 2002 L 19, p. 17.

Appeal brought on 26 March 2007 by Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar against the order of the Court of First Instance (Fourth Chamber) of 17 January 2007 in Case T-129/06 Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar v Commission of the European Communities

(Case C-163/07 P)

(2007/C 129/10)

Language of the case: German

Parties

Appellants: Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar (represented by: C. Şahin, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the order of the Court of First Instance of the European Communities of 17 January 2007 in Case T-129/06 ([1]), served on the appellants on 26 January 2007, and annul the contested decision of the respondent of 23 December 2005 No MK/KS/DELTUR/(2005)/SecE/D/1614;

— alternatively, to uphold the pleas in law raised by the appellant at first instance and to set aside the order of the Court of First Instance referred to above and annul the contested decision of the respondent of 23 December 2005 No MK/KS/DELTUR/(2005)/SecE/D/1614 in so far as incompatible with those pleas in law;

— in the further alternative, to set aside the order of the Court of First Instance referred to above and to refer the matter back to the Court of First Instance;

— order the respondent to pay the costs.

Pleas in law and main arguments

The appellants base their appeal against the order of the Court of First Instance on the following grounds.

The Court is not required, in appraising the facts in proceedings before, it to have regard only to the contentions of the parties and to decide the case solely on the basis of evidence put forward by them. Rather, Article 21 of the Statute of the Court of Justice makes it clear that the Courts of the European Communities are under an obligation to appraise the facts of the proceedings and can, on their own initiative, not only take active steps, but are also under a duty to do so when the circumstances require.

Since, in the present case, the Court of First Instance did not assess whether the respondent had set out proper reasons in the contested decision, and the appellants learned only of the failure to observe formal requirements only after one month had expired, that is to say, after the end of the prescribed period, it infringed Article 21 of the Statute of the Court of Justice, Article 64 of its Rules of Procedure and substantive Community law regarding the principles relating to the scope of the presumption of legality of legal acts and the doctrine of the apparent existence of an act. Where acts of the administration contain particularly serious and blatant errors, Community law requires that these be treated as null and void.

Had the appellants been properly informed of the remedies available to them, they would have instructed a qualified lawyer and accordingly brought proceedings within the prescribed period. The contention of the Court of First Instance that the appellants and their Turkish lawyers had not used the care that is required of an applicant who is aware of all relevant matters did not relieve the respondent of the duty to provide details of the remedies that were available.

([1]) OJ 2007 C 212, p. 29.

Reference for a preliminary ruling from the Tribunal de Grande Instance de Nantes (France) lodged on 27 March 2007 — James Wood v Fonds de Garantie

(Case C-164/07)

(2007/C 129/11)

Language of the case: French

Referring court

Tribunal de Grande Instance de Nantes

Parties to the main proceedings

Applicant: James Wood

Defendant: Fonds de Garantie

Question referred

In the light of the general principle of non-discrimination on grounds of nationality, set out in Article 7 of the Treaty of Rome, are the provisions of Article 706-3 of the French Code de Procédure Pénale compatible or not with Community law in that a citizen of the European Community, residing in France, the father of a child having French nationality who died outside [French] territory, does not have a right to compensation paid by the Fonds de Garantie on the sole ground of his nationality?

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 27 March 2007 — Skatteministeriet v Ecco Sko A/S

(Case C-165/07)

(2007/C 129/12)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: Ecco Sko A/S

Questions referred

'1. Is Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature ([1]), as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000 ([2]), to be interpreted as meaning that footwear such as that in question in the main proceedings should be classified as footwear with uppers of leather under CN heading 6403 or as footwear with uppers of textile materials under CN heading 6404?

2. Is Additional Note 1 to Chapter 64 of the CN, which was incorporated by Commission Regulation No 3800/92 of 23 December 1992 ([3]) amending Council Regulation No 2658/87, compatible with Note 4(a) to Chapter 64 of the CN?'

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

([2]) Commission Regulation (EC) No 2388/2000 of 13 October 2000 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2000 L 264, p. 1); corrigendum: OJ L 276, 28.10.2000, p. 92.

([3]) OJ 1992 L 384, p. 8.

Reference for a preliminary ruling from the Cour d'Appel, Brussels (Belgium) lodged on 29 March 2007 — AXA, Belgium SA, formerly AXA Royale Belge SA v (1) État Belge, administration de la TVA, de l'enregistrement et des domaines, (2) État Belge, administration de l'inspection spéciale des impôts

(Case C-168/07)

(2007/C 129/13)

Language of the case: French

Referring court

Cour d'Appel de Bruxelles (Court of Appeal, Brussels)

Parties to the main proceedings

Applicant: AXA, Belgium SA, formerly AXA Royale Belge SA

Defendants: (1) État Belge, administration de la TVA, de l'enregistrement et des domaines, (Belgian State, VAT, Land Registration and Estates Authority), (2) État Belge, administration de l'inspection spéciale des impôts (Belgian State, Special Tax Inspection Authority)

Question referred

Are the provisions 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 ([1]), in particular Article 13(A)(1)(f) thereof, to be interpreted as meaning that Member States may grant an exemption from the tax only where independent groups of persons supply services exclusively for the benefit of their members, to the exclusion of non-members?

([1]) 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).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Canarias (Spain) lodged on 2 April 2007 — Club Náutico de Gran Canaria v Comunidad Autónoma de Canarias

(Case C-186/07)

(2007/C 129/14)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Canarias

Parties to the main proceedings

Defendant: Comunidad Autónoma de Canarias

Applicant: Club Náutico de Gran Canaria

Question referred

Decides to refer the matter to the Court of Justice of the European Communities for the latter to give a preliminary ruling on the effects of its judgment of 7 May 1998 on Article 10.1.13 of Law 20/91 amending the fiscal aspects of the economic and fiscal rules applicable to the Canary Islands ([1]).

([1]) Case C-124/96 *Commission* v *Spain*, ECR [1998], p. I-2501.

Reference for a preliminary ruling from the Rechtbank Zutphen (Nederland) lodged on 3 April 2007 — Criminal proceedings against Dirk Endendijk

(Case C-187/07)

(2007/C 129/15)

Language of the case: Dutch

Referring court

Rechtbank Zutphen

Parties to the main proceedings

Dirk Endendijk

Questions referred

1. How is **tethered**, within the meaning of Directive 91/629/EEC ([1]), in conjunction with Decision 97/182/EC ([2]) to be interpreted?

2. Is the material, the length or the purpose of the tethering of any significance in that respect?

([1]) Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28).
([2]) Commission Decision of 24 February 1997 amending the Annex to Directive 91/629/EEC (OJ 1997 L 76, p. 30).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 April 2007 — Commune de Mesquer v Total France, SA, Total International Ltd.

(Case C-188/07)

(2007/C 129/16)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Appellant: Commune de Mesquer

Respondents: Total France, SA, formerly known as Total Raffinage Distribution, Total International Ltd.

Questions referred

1. Can heavy fuel oil, as the product of a refining process, meeting the user's specifications and intended by the producer to be sold as a combustible fuel, and referred to in Directive 68/414/EEC of 20 December 1968 ([1]) as amended by Directive 98/93/EC of 14 December 1998 ([2]) relating to strategic resources to which a stock-holding obligation attaches, be treated as waste within the meaning of Article 1 of Directive 75/442/EEC of 15 July 1975 ([3]) as amended by Directive 91/156/EEC of 18 March 1991 ([4]) and codified by Directive 2006/12/EC ([5])?

2. Does a cargo of heavy fuel oil, transported by a ship and accidentally spilled into the sea, constitute — either in itself or on account of being mixed with water and sediment — waste falling within Category Q4 in Annex I to Directive 2006/12/EC?

3. Where the first question is answered in the negative and the second in the affirmative, can the producer of heavy fuel oil (Total Raffinage) and/or the seller and carrier (Total International Ltd) be regarded as the producer and/or holder of waste within the meaning of Article 1(b) and (c) of Directive 2006/12/EC and for the purposes of applying Article 15 of that Directive, even though at the time of the accident which transformed it into waste the product was being transported by a third party?

(1) Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ, English Special Edition 1968(II), p. 586).
(2) Council Directive 98/93/EC of 14 December 1998 amending Directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ 1998 L 358, p. 100).
(3) Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39).
(4) Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32).
(5) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

Action brought on 3 April 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-189/07)

(2007/C 129/17)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by P. Oliver and F. Jimeno Fernández, Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that,

by failing to carry out satisfactorily the monitoring, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, including the landing and marketing of species subject to rules on minimum size under Regulations (EC) No 850/98 (1) and 2406/96 (2); and

by failing to act with sufficient diligence to ensure the adoption of appropriate measures against those responsible for infringing Community provisions, in particular by bringing administrative actions or criminal proceedings and imposing penalties which have a deterrent effect on those responsible;

the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) and Article 31(1) and (2) of Regulation (EEC) No 2847/93 (3).

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The regulatory framework applicable requires that Member States:

— implement an effective system for the monitoring, inspection and surveillance of landing and marketing activities in relation to species subject to rules on minimum size;

— impose penalties which have a deterrent effect on those responsible for infringing Community provisions;

— enforce effectively penalties capable of being imposed on those responsible in order to prevent unjust enrichment from illegal activity.

In the present case it has been duly established that Spain has failed to fulfil its obligations under Community legislation on controls and penalties for infringements relating to fishing activities. That failure to fulfil obligations is not only evidenced by the conclusions reached by the Community inspectors but is also accepted by the defendant.

(1) Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1).
(2) Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (OJ 1996 L 334, p. 1).
(3) Council Regulation (EC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1).

Action brought on 3 April 2007 — Commission of the European Communities v Italian Republic

(Case C-190/07)

(2007/C 129/18)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga, agent)

Defendant: Italian Republic

Form of order sought

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/117/EC [1] of 22 December 2004 amending Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards examinations carried out under official supervision and equivalence of seed produced in third countries, or by failing in any event to communicate such provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 8 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2004/117/EC expired on 1 October 2005.

[1] OJ 2005 L 14, p. 18.

Reference for a preliminary ruling from the Zala Megyei Bíróság lodged on 10 April 2007 — OTP Bank Rt. and Merlin Gerin Zala Kft. v Zala Megyei Közigazgatási Hivatal

(Case C-195/07)

(2007/C 129/19)

Language of the case: Hungarian

Referring court

Zala Megyei Bíróság

Parties to the main proceedings

Applicants: OTP Bank Rt. and Merlin Gerin Zala Kft.

Defendant: Zala Megyei Közigazgatási Hivatal

Questions referred

1. Must point 3(a) of Chapter 4 of Annex X to the 'Act of Accession' [1] (the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded), which is applicable pursuant to Article 24 of the Act of Accession, which provides that 'Hungary may apply, up to and including 31 December 2007, local business tax reductions of up to 2 % of the net receipts of undertakings, granted by local government for a limited period of time on the basis of Articles 6 and 7 of Act C of 1990 on Local Taxes', be interpreted as meaning that:

   — Hungary has been granted a temporary derogation which allows it to maintain local business tax, or that

   — by granting the possibility to maintain local business tax reductions, the Act of Accession also recognises that Hungary has the (provisional) right to maintain a tax on economic activities?

(2) Should Question 1 be answered in the negative, the referring court also asks the following question:

On a correct interpretation of Sixth Council Directive 77/388/EEC [2], what are the criteria on which a tax may be considered not to be characterised as a turnover tax for the purposes of Article 33 of the Sixth Directive?

[1] OJ 2003 L 236, p. 846.
[2] OJ 1977 L 145, p. 1.

Appeal brought on 12 April 2007 by Aktieselskabet af 21. november 2001 against the judgment of the Court of First Instance (First Chamber) delivered on 6 February 2007 in Case T-477/04: Aktieselskabet af 21. November 2001 v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), TDK Kabushiki Kaisha (TDK Corp.)

(Case C-197/07 P)

(2007/C 129/20)

Language of the case: English

Parties

Appellant: Aktieselskabet af 21. november 2001 (represented by: C. Barrett Christiansen, advokat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), TDK Kabushiki Kaisha (TDK Corp.)

Form of order sought

The appellant claims that the Court should:

— set aside in whole the decision of the Court of First Instance dated 6 February 2007, case T-477/04 (the contested decision)

— order the Office for Harmonization in the Internal Market (OHIM) to pay the costs of the proceedings before the Court of Justice.

— set aside the decision of the First Board of Appeal of the Office for the Harmonization in the Internal Market dated 7 October 2004, case R-364/2003-1

— order the Office for Harmonization in the Internal Market (OHIM) to pay the costs of the proceedings before the Court of First Instance and OHIM.

Pleas in law and main arguments

With the present appeal, the Appellant submits that:

in finding reputation under 8(5) CTMR for the earlier marks the Court of First Instance wrongly:

1. did not, in the contested decision, distinguish between the 36 earlier marks

2. took into account evidence which did not comply with official OHIM guidelines

3. took into account evidence with no reference to the earlier marks

4. took into account undated evidence

5. did not take into account that the relevant date for proving reputation is the filing date of the contested CTM application

6. confirmed reputation based on evidence which was not approximate in time to the filing date of the contested CTM application

7. took into account a market survey as evidence of reputation without any proof as to:

   (a) whether it has been conducted by an independent and recognised research institute or company

   (b) the number and profile (sex, age, occupation and background) of the interviewees

   (c) the method and circumstances under which the survey was carried out and the complete list of questions included in the questionnaire

   (d) whether the percentage reflected in the survey corresponds to the total amount of persons questioned or only to those who actually replied.

8. did not consider the individual evidential value of the evidence submitted before making an overall assessment.

In finding unfair advantage of reputation under 8(5) CTMR the Court of First Instance wrongly:

9. based its decision of unfair advantage on reputation — not repute — which does not comply with article 8(5) CTMR

10. found that a possibility which cannot be ruled out is sufficient to prove prima facie evidence of a future risk, which is not hypothetical, of the taking of unfair advantage by the applicant of the reputation of the earlier marks.

Appeal brought on 12 April 2007 by Donal Gordon against the judgment of the Court of First Instance (Third Chamber) delivered on 7 February 2007 in Case T-175/04: Donal Gordon v Commission of the European Communities

(Case C-198/07 P)

(2007/C 129/21)

Language of the case: English

Parties

Appellant: Donal Gordon (represented by: J. Sambon, P.-P. Van Gehuchten, and Ph. Reyniers, avocats)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— to annul the Judgment in Case T-175/04 and to make a ruling on the substance of this case

— to confirm the appellant's intrinsic interest in his CDR independent of the administration's interest therein;

— to recognise that invalidity is by definition reversible, and is so regarded and so treated by the Commission's Medical Service;

— to accord the appellant the right to judicial protection in respect of his CDR;

— to allow the claim to damages and to award the appellant €1.5 million in compensation;

— to make an appropriate award as to costs.

Pleas in law and main arguments

The appellant submits that the judgment of the Court of First Instance is based on false and/or arbitrary premises in that it:

— Denies the appellant's autonomous interest in his career development report;

— Misrepresents the legislation on invalidity and the application thereof;

— Denies the appellant judicial protection despite the unresolved issue of whether his invalidity is occupational or not;

— Makes a ruling on damages in disregard of the evolving realities of the appellant's situation.

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 12 April 2007 — Alfonso Luigi Marra v Edoardo De Gregorio

(Case C-200/07)

(2007/C 129/22)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Alfonso Luigi Marra

Defendant: Edoardo De Gregorio

Questions referred

1. In the event that a Member of the European Parliament does not act by exercising the right granted to him under Rule [6(3)] of the Rules of Procedure of the European Parliament ([1]) directly to request the President to defend privileges and immunities, is the court before which a civil action is pending in any event required to request the President to waive immunity for the purposes of pursuing proceedings and adopting a decision?

   or

2. In the absence of a communication by the European Parliament that it intends to defend the immunities and privileges of the Member concerned, may the court before which that civil action is pending rule as to the existence or otherwise of that privilege, regard being had to the specific circumstances of the case?

([1]) OJ L 44, 15.2.2005, p. 1.

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 13 April 2007 — Alfonso Luigi Marra v Clemente Antonio

(Case C-201/07)

(2007/C 129/23)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Alfonso Luigi Marra

Defendant: Antonio Clemente

Question referred

The questions are the same as those in Case C-200/07.

Action brought on 19 April 2007 — Commission of the European Communities v Portuguese Republic

(Case C-206/07)

(2007/C 129/24)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: L. Pignatero and M. Afonso, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2004/33/EC ([1]) of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components or, in any event, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive into domestic law expired on 8 February 2005.

(1) OJ 2004 L 91, p. 25.

Action brought on 20 April 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-210/07)

(2007/C 129/25)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by R. Vidal Puig and P. Dejmek, Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive 2004/49/EC (1) of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), or in any event by not communicating such measures to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 33 of that Directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2004/49/EC into national law expired on 30 April 2006.

(1) OJ 2004 L 164, p. 44.

Action brought on 25 April 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-216/07)

(2007/C 129/26)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and W. Bogensberger, acting as Agent)

Defendant: Federal Republic of Germany

Form of order sought

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to transpose Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (1) or in any event by failing to notify those provisions to the Commission the Federal Republic of Germany has failed to fulfil its obligations under the directive;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period within which Directive 2003/110/EC had to be transposed expired on 5 December 2005.

(1) OJ 2003 L 321, p. 26.

Action brought on 25 April 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-218/07)

(2007/C 129/27)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. Condou, W. Bogensberger, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that the Federal Republic of Germany has failed to fulfil its obligations under Council Directive 2003/109/EC ([1]) of 25 November 2003 concerning the status of third-country nationals who are long-term residents by not adopting the necessary legislative and administrative measures for the implementation of that directive, or by failing to communicate such measures to the Commission;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The prescribed period for implementing Directive 2003/109/EC expired on 23 January 2006.

([1]) OJ 2004 L 16, p. 44.

COURT OF FIRST INSTANCE

Action brought on 26 March 2007 — Imelios v Commission

(Case T-97/07)

(2007/C 129/28)

Language of the case: French

Parties

Applicant: Imelios SA (Vélizi Villacoublay, France) (represented by C. Curtil, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— In terms of procedure, to declare that the procedure followed by OLAF and the Commission was not adversarial in nature; that OLAF made use of anonymous sources, as OLAF itself has accepted; that OLAF and the Commission refused to communicate the enquiry report to the applicant; that the Commission's decision failed to state adequate reasons, and accordingly, to annul the debit note.

— In the alternative, to declare that the documentary evidence produced by the applicant was not taken into consideration; that no examination was made into the liability of the … group, and accordingly to annul the debit note as to its substance.

— In any event, to declare that the final instalment of the grant was not paid to the applicant, whereas the latter did not waive its right to its payment in any way; accordingly, to order the Commission to pay to the applicant the sum of EUR 34 368, together with interest from the date the action was raised; to order the Commission to pay to the applicant the sum of EUR 50 000 by way of damages; to order the Commission to pay to the applicant the sum of EUR 50 000 in respect of the costs of the procedure; to order the Commission to pay the costs.

Pleas in law and main arguments

On 21 December 1999, the applicant signed, together with the European Community, represented by the European Commission, a contract IST-1999-10934 — ASSIST relating to the 'Knowledge Management for Help Desk Operators' project, which was entered into under the fifth framework programme of the Community for research, technological development and demonstration activities (1998-2002), in the field of user-friendly information.

Following the enquiry carried out by OLAF and its audit report, the Commission sent the debit note to the applicant, requiring the repayment of the amount already paid by way of Community grant, pursuant to the relevant provision of the contract allowing the Commission to require such a repayment in the event of a finding of fraud or serious financial irregularities in the implementation of the project. That decision represents the contested decision in the present action. In addition, the applicant requests the Court of First Instance to order the Commission to pay the final instalment of the grant and to order the Commission to compensate it for the loss and damage it has suffered by reason, first, of the non-payment of the final instalment of the grant and, secondly, by reason of the procedures initiated, initially by OLAF, and subsequently by the Commission.

In support of its application for annulment, the applicant alleges an infringement of fundamental rights, in particular the right to a fair hearing, in the audit enquiry relating to the ASSIST project carried out by OLAF. It claims that it was not in a position to make relevant observations during the inquiry stage and that OLAF's final report, on which the Commission's decision was based, was not sent to it, thereby preventing it from replying to the accusations made against it.

In addition, the applicant claims that the decision failed to state adequate reasons and that the objections were notified to it out of time.

In the alternative, the applicant puts forward a number of pleas in law relating to the substance of the contested decision, and claims in particular that the Commission did not take into account the documentary evidence put forward by the applicant concerning expenditure incurred. In addition, it claims that it is the LA POSTE group, which was the real beneficiary of the grant, and not itself, which should be held liable for any irregularities that may have occurred.

Action brought on 4 April 2007 — UPS Europe and UPS Deutschland v Commission

(Case T-100/07)

(2007/C 129/29)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium) and UPS Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: T. Ottervanger and E. Henny, lawyers)

Defendant: Commission of the European Communities

Form of order sought

In light of their submissions, the applicants respectfully request the Court:

— to declare in accordance with Article 232 EC that the Commission has failed to act by not having delivered a decision on the applicants' complaint lodged with the Commission on 22 April 2004;

— to order the Commission to pay the costs incurred by the applicants in the proceedings;

— to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

By means of their application, the applicants initiate an action under Article 232 EC, claiming that the Commission failed to take a definitive decision on their complaint initially filed on 22 April 2004, followed by an invitation to act, lodged on 27 November 2006, with regard to an alleged abuse of dominance by Deutsche Post under Article 82 EC.

The applicants sustain that they have a legitimate interest to bring such a complaint in accordance with the requirement of Article 7(2) of Council Regulation 1/2003 ([1]) and are directly and individually concerned by the Commission's failure to act. In fact, the applicants claim to be affected by the excessive pricing of Deutsche Post in the downstream market, both as a consumer as well as a competitor.

The applicants further submit that in accordance with the Commission Notice on the handling of complaints under Article 81 and 82 EC ([2]), the Commission is required, upon receipt of a complaint that Article 82 EC has been infringed, either to initiate a procedure against the subject of the complaint or to adopt a definitive decision rejecting the complaint, after having given the complainant the opportunity to comment. However, the applicants claim that although they have submitted their comments on the preliminary rejection of the complaint within the given time-limit, the Commission did not take any definitive decision, in breach of Community law.

Finally, the applicants contend that, considering the circumstances of the case, the period of approximately three years that has lapsed during which they have repeatedly urged the Commission to take action is sufficiently long to enable it to take a definitive decision. In particular, the period of 18 months that has lapsed since the applicants submitted their final observations, is according to the applicants more than reasonable to enable the Commission to close the third stage of investigation.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25).
([2]) OJ C 101, 27.4.2004, p. 65-77.

Action brought on 26 March 2007 — Dada v OHIM — Dada (DADA)

(Case T-101/07)

(2007/C 129/30)

Language in which the application was lodged: Italian

Parties

Applicant: Dada SpA (Florence, Italy) (represented by: D. Caneva and G. Locurto, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dada Srl

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 12 June 2007 in Case R-1342/2005-1, notified to Dada SpA on 25 June 2007, and consequently allow application for registration No 1 903 111 lodged by Dada SpA also in respect of the services referred to in Class 42 of the Nice Agreement;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dada SpA

Community trade mark concerned: Figurative mark composed of the word DADA reproduced in capital letters on a rectangular black background surmounted by the image of an atom; registration No 1 903 111 in respect of services in Class 42.

Proprietor of the mark or sign cited in the opposition proceedings: DADA Srl

Mark or sign cited in opposition: Italian descriptive mark DADA, in respect of services in Classes 35, 37, 38 and 42, and the company name DADA, used in trade and commerce in Italy to denote the following activities: 'business management; business administration; office functions, real-estate affairs, telecommunications, education, training, legal services, computer programming'.

Decision of the Opposition Division: Opposition upheld and refusal of the application for registration for the services at issue.

Decision of the Board of Appeal: Contested decision upheld and dismissal of the appeal.

Pleas in law: Insufficient evidence of use of the national mark pleaded by the opponent and absence of likelihood of confusion.

Action brought on 5 April 2007 — Freistaat Sachsen v Commission of the European Communities

(Case T-102/07)

(2007/C 129/31)

Language of the case: German

Parties

Applicant: Freistaat Sachsen (Germany) (represented by C. von Donat and G. Quardt, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C(2007) 130 final of 24 January 2007 relating to State aid No C 38/2005 (formerly NN 52/2004) from Germany to the Biria Group in so far as it relates to what the decision terms measures 2 and 3, and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2007) 130 final of 24 January 2007 in which the Commission held that the three measures comprising State aid from Germany for the benefit of Bike Systems GmbH & Co., Thüringer Zweiradwerk KG, Sachsen Zweirad GmbH and Biria GmbH (now Biria AG) is incompatible with the common market.

The applicant claims that it is directly and individually concerned by the Commission's decision, because measures 2 and 3, which relate to guarantees in favour of Sachsen Zweirad GmbH and Biria GmbH (now Biria AG), were granted by it from its own resources on the basis of the guarantee guidelines of the Freistaat Sachsen.

In support of its claim, the applicant claims, first, that there was an infringement of Community law by reason of an incorrect interpretation of an approved aid measure. In that regard, the applicant claims that the defendant misconstrued the corresponding definition in the approved aid measure so as to treat the undertakings concerned as undertakings in financial difficulties. Since, in the applicant's opinion, that was not the case, measures 2 and 3 relate to approved aid.

In addition, the applicant claims that the defendant wrongly assessed the factual position in proceeding on the basis that the undertakings concerned were undertakings in financial difficulties.

Lastly, the applicant alleges that the contested decision fails to state adequate reasons.

Action brought on 6 April 2007 — BVGD v Commission

(Case T-104/07)

(2007/C 129/32)

Language of the case: English

Parties

Applicant: Belgische Vereniging van handelaars in- en uitvoerders geslepen diamant (Antwerpen, Belgium) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision dated 26 January 2007 by which the European Commission rejected the complaint lodged by BVGD for the reason that there are insufficient grounds for acting on it (Case COMP/39.221/B-2-BVGD/De Beers);

— order the European Commission to pay all the costs.

Pleas in law and main arguments

The applicant contests the Commission's decision of 26 January 2007 in competition Case COMP/39.221/B-2 — BVGD/De Beers, by which the Commission rejected the applicant's complaint regarding violations of Articles 81 and 82 EC in connection with the Supplier of Choice system applied by the De Beers Group for the distribution of rough diamonds, with the reasoning that there is not sufficient Community interest to act further on the applicant's complaint.

The applicant alleges that De Beers — a producer of rough diamonds who, according to the applicant, was mainly involved upstream with the sale of rough diamonds — is trying through its Supplier of Choice system to extend its control of the market to cover the entire diamond pipeline from mine to consumer, i.e. also the downstream markets.

In support of its application, the applicant firstly claims a violation of its procedural rights as complainant. The applicant alleges i) that the Commission prevented it from exercising its right to have access under Article 8(1) of Regulation No 773/2004 [1] to the documents on which the Commission based its provisional assessment, ii) that the Commission put undue pressure on the applicant by its management of the time-limits in the case, iii) that the Commission created, in its correspondence with the applicant, confusion as to the stage of the procedure, and iv) that the Commission did not associate the applicant closely with the procedure.

Secondly, the applicant submits that the Commission violated the notion of Community interest and committed manifest errors of appraisal, erred in law and violated its duty to state reasons.

(1) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

Action brought on 2 April 2007 — MarketTools v OHIM — Optimus-Telecomunicações (ZOOMERANG)

(Case T-105/07)

(2007/C 129/33)

Language in which the application was lodged: English

Parties

Applicant: MarketTools, Inc. (San Francisco, United-States) (represented by: W. von der Osten-Sacken and A. González Hähnlein, lawyers)

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

Other party to the proceedings before the Board of Appeal: Optimus-Telecomunicações, SA (Maia, Portugal)

Form of order sought

— Annul the decision of the Second Board of Appeal of 25 January 2007 (Appeal No R 253/2006-2);

— order Optimus-Telecomunicações S.A. to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'ZOOMERANG' for goods and services in classes 9, 35 and 42 — application No 1 603 950

Proprietor of the mark or sign cited in the opposition proceedings: Optimus-Telecomunicações, SA

Mark or sign cited: The national word and figurative marks 'BOOMERANG' for goods and services in classes 9, 16, 35, 37, 38 and 42

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal did not correctly assess the similarity of the goods and services and the trade marks in question.

Action brought on 11 April 2007 — Alcon v OHIM — *Acri.Tec (BioVisc)

(Case T-106/07)

(2007/C 129/34)

Language in which the application was lodged: English

Parties

Applicant: Alcon, Inc. (Hünenberg, Switzerland) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: *Acri.Tec AG Gesellschaft für ophthalmologische Produkte (Hennigsdorf, Germany)

Form of order sought

— The decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 February 2007 in Case R 660/2006-2 Alcon, Inc. v. OHIM (BioVisc) be annulled insofar as it dismissed the opposition of Alcon, Inc. against CTM application 3 651 809 'BioVisc';

— the Office for Harmonisation be ordered to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: *Acri.Tec AG Gesellschaft für ophthalmologische Produkte

Community trade mark concerned: The word mark 'BioVisc' for goods in class 5 — application No 3 651 809

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

Mark or sign cited: The Community and international word marks 'PROVISC' and 'DUOVISC' for goods in class 5

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and rejection of the opposition in its entirety

Pleas in law: The trade marks in question are confusingly similar and the goods applied for are identical to those covered by the opposition trade marks.

Appeal brought on 16 April 2007 by Francisco Rossi Ferreras against the judgment of the Civil Service Tribunal delivered on 1 February 2007 in Case F-42/05 *Rossi Ferreras* v *Commission*

(Case T-107/07 P)

(2007/C 129/35)

Language of the case: French

Parties

Appellant: Francisco Rossi Ferreras (Luxemburg, Grand Duchy of Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— set aside the judgment of the Civil Service Tribunal of 1 February 2007 in Case F-42/05;

— grant the forms of order sought by the appellant at first instance and, primarily, declare the application in Case F-42/05 to be admissible and well founded;

— in the alternative, remit the case to the Civil Service Tribunal;

— make an order as to costs, expenses and fees and order the Commission to pay them.

Pleas in law and main arguments

In his appeal, the appellant seeks the annulment of the judgment of the Civil Service Tribunal dismissing his application for the annulment of his career development report for the period from 1 January to 31 December 2003 and an order requiring the Commission to compensate him for the damage that he claims to have suffered.

In support of his appeal, the appellant claims that the Civil Service Tribunal made several errors of law in its consideration of the two pleas in law put forward at first instance.

Action brought on 8 April 2007 — Spira v Commission

(Case T-108/07)

(2007/C 129/36)

Language of the case: English

Parties

Applicant: Diamanthandel A. Spira BVBA (Antwerpen, Belgium) (represented by: J. Bourgeois, Y. van Gerven, F. Louis and A. Vallery, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission decision of 26 January 2007, pursuant to Article 7(2) of Council Regulation No 773/2004, in case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant contests the Commission's decision of 26 January 2007 in competition Case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice, by which the Commission rejected the applicant's complaint regarding violations of Articles 81 and 82 EC in connection with the Supplier of Choice system applied by the De Beers Group for the distribution of rough diamonds, with the reasoning that there is not sufficient Community interest to act further on the applicant's complaint.

The applicant alleges that De Beers — a producer of rough diamonds who, according to the applicant, was mainly involved upstream with the sale of rough diamonds — is trying through its Supplier of Choice system to extend its control of the market to cover the entire diamond pipeline from mine to consumer, i.e. also the downstream markets.

In support of its application, the applicant invokes three pleas in law.

Firstly, the applicant claims that the Commission failed to honour its duty to conduct a careful and impartial investigation of the complaint and to examine with proper care and impartiality the anticompetitive practices denounced in the complaint.

Secondly, the applicant alleges that the Commission could not claim that there was a lack of sufficient Community interest to act on the complaint, in light of the size of the undertaking involved, the geographic scope of the anticompetitive practices and the damage to competition and the internal market caused by the infringements.

Thirdly and finally, the applicant submits that the Commission concluded to the absence of sufficient Community interest on the basis of an erroneous assessment, in fact and in law, of the circumstances of the case since:

1) the Commission failed to take into account the manifest publicly stated anticompetitive object of De Beers' limited selective distribution system;

2) the Commission could not assess the anticompetitive effects of the De Beers' distribution system without first assessing De Beers' dominance and market power;

3) the Commission failed to take into account the numerous elements brought to its attention in the complaint demonstrating the inherently abusive and anticompetitive nature of the system;

4) the Commission wrongly assessed the effectiveness of the revised Terms of Reference for the Ombudsman that De Beers had introduced to resolve disputes as to the implementation of the distribution system; and

5) the Commission made an error of law and a manifest error of assessment of the facts in finding that De Beers' distribution system does not foreclose the market.

Action brought on 13 April 2007 — Agrofert Holding v Commission

(Case T-111/07)

(2007/C 129/37)

Language of the case: English

Parties

Applicant: Agrofert Holding a.s. (Praha, Czech Republic) (represented by: R. Pokorný, lawyer)

Defendant: The Commission of the European Communities

Form of order sought

— Annulment of Commission Decision SG.E.3/MIB/md D (2007) 1360 of 13 February 2007 relating to the request for access to documents in merger Case No COMP/M.3543 — PKN Orlen/Unipetrol and Commission Decision 16796/16797 of 2 August 2006;

— order the Commission to produce the documents in question;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of its application, the applicant seeks the annulment, under Article 230 EC, of Commission's Decision of 2 August 2006 (hereinafter 'Decision I') as well as the Commission's subsequent confirmatory decision of 13 February 2007 (hereinafter 'Decision II') relating to the request for access to all unpublished documents relating to the notification and pre-notification phases of the merger at stake.

The applicant claims that both decisions are contrary to Regulation (EC) No 1049/2001 ([1]), regarding public access to European Parliament, Council and Commission documents (hereinafter 'The Regulation') as they do not fall within the exceptions enshrined in its Article 4(2), relating to protection of commercial interests, protection of the purpose of investigation, protection of Legal Advice or its Article 4(3) relating to protection of decision-making process.

The applicant further submits that Article 4(2), first indent, of the Regulation should not be interpreted as if the exceptions applied to the entirety of the documents but only to the parts due to contain business secrets or commercially sensitive information. Thus, according to the applicant, the defendant could have either released to the public parts of the requested documents or blackened the parts containing the sensitive information without undermining the purpose of inspections, investigations and audits, the notifying parties and third parties right's, the protection of legal advice or the institution's decision-making process.

Moreover, the applicant contends that the defendant, instead of conducting individual examination of each document falling, in its view, under the exception of Article 4(2), third indent, of the Regulation, has generally refused the requested access on the basis of the sole fact that all documents contain business secrets and cannot be disclosed according to Article 17 of the Council Regulation (EC) No 139/2004 ([2]). Such generalisation would be contrary to Article 4(6) of the Regulation.

Besides, the applicant submits that the above-mentioned exceptions apply only if they are not waived by an overriding public interest in disclosure. According to the applicant, such interest to disclose the requested documents, deriving from the damage suffered by the applicant and minority shareholders of the acquired company, exists and outweighs the exceptions to the right of access.

The applicant, moreover, claims that Decision I and II are contrary to Article 1 EU, second subparagraph, enshrining the principle of openness.

Finally, the applicant submits that the defendant did not handle the confirmatory application promptly according to Article 8(1) of the Regulation but exceeded the time-limit for replying by 100 working days.

([1]) OJ L 145, 31.5.2001, p. 43-48.

([2]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1-22).

Action brought on 17 April 2007 — Hitachi and Others v Commission

(Case T-112/07)

(2007/C 129/38)

Language of the case: English

Parties

Applicants: Hitachi Ltd (Tokyo, Japan), Hitachi Europe Ltd (Maidenhead, United Kingdom), Japan AE Power Systems Corp. (Tokyo, Japan) (represented by: M. Reynolds, P. Mansfield and D. Arts, laywers)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully request the Court:

— to annul the contested decision in so far as it concerns each of them;

— as a consequence, to cancel the fines imposed on each of them;

— in the alternative, to annul Article 2 of the contested decision in so far as it concerns each of them, or, at least to cancel or reduce the fines imposed on each of them;

— to order the Commission to pay the costs.

Pleas in law and main arguments

The applicants lodged an action for annulment, under Articles 225 and 230 EC against Commission decision of 24 January 2007 (Case COMP/F/38.899 — Gas Insulated Switchgear — C(2006) 6762 final), on the basis of which the Commission found the applicants, among other undertakings, liable to have infringed Article 81 EC and Article 53 EEA in the gas insulated switchgear sector (hereinafter 'GIS'), through a set of agreements and concerted practices consisting of (a) market sharing, (b) the allocation of quotas and maintenance of the respective market shares, (c) the allocation of individual GIS projects (bid-rigging) to designated producers and the manipulation of the bidding procedure for those projects, (d) price fixing, (e) agreements to cease licence agreements with non-cartel members and (f) exchanges of sensitive market information. In the alternative, the applicants apply, on the basis of Article 31 of Council Regulation (EC) No 1/2003 ([1]), for cancellation or reduction of the fines imposed on each of them.

The grounds on which the applicants rely may be summarised as follows. The applicants submit that the Commission has breached the fundamental rules on protection of the rights of defence, Article 2 of Regulation 1/2003 and Article 81 EC, as well as the general principles of Community law in the following respects:

First, it is submitted that the Commission violated the applicant's rights of defence through its failure to grant access to certain allegedly inculpatory evidence as well as to certain potentially exculpatory documents.

Second, the applicants claim that the Commission has failed to prove the existence of an infringement of Article 81(1) EC to the legal standard required by Article 2 of Regulation 1/2003. In this respect, the applicants submit in particular that the Commission has failed to prove the existence of a common understanding between the European and Japanese undertakings concerned in the manner alleged in the decision, or that any common understanding constituted a restrictive agreement and/or restrictive practice.

Third, the applicants contend that the Commission failed to prove that the applicants took part in a single and continuous infringement.

Fourth, the Commission has allegedly committed manifest errors in its assessment of the fines imposed on the applicants by failing to assess the specific weight of the alleged infringement committed by the applicants.

Fifth, according to the applicants, the Commission has committed a manifest error by failing to take into account factors relating to duration when assessing the applicants' fines.

Finally, the applicants claim that the method used by the Commission for assessing the fines with regard to the deterrent multiplier violates the general Community law principles of equal treatment and proportionality, both as to the risk that the applicants could cause any significant damage on the European market and so as to the non taking into account of recidivism.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25).

Action brought on 13 April 2007 — Last Minute Network v OHIM — Last Minute Tour (LAST MINUTE TOUR)

(Case T-114/07)

(2007/C 129/39)

Language in which the application was lodged: English

Parties

Applicant: Last Minute Network Ltd (London, United Kingdom) (represented by: P. Brownlow, solicitor)

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

Other party to the proceedings before the Board of Appeal: Last Minute Tour SpA (Milan, Italy)

Form of order sought

— Quash in its entirety the decision of the Second Board of Appeal of the respondent, the Office for Harmonisation in the Internal Market (Trade Marks and Designs), dated 8 February 2007;

— declare CTM No 1 552 231 invalid in respect of classes 39 and 42;

— award the costs against the respondent.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'LAST MINUTE TOUR' for products and services in classes 16, 39 and 42 — Community trade mark No 1 552 231

Proprietor of the Community trade mark: Last Minute Tour SpA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national non-registered word mark 'LASTMINUTE.COM' for services in classes 39 and 42

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark for the services in classes 39 and 42 and rejection of the request for a declaration of invalidity for the goods in class 16

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision and rejection of the request for a declaration of invalidity

Pleas in law: Infringement of Article 8(1)(b) and (4) of Council Regulation No 40/94 as the Board of Appeal wrongly decided that the applicant's non registered trade mark did not confer on him the right to prohibit the use in the United Kingdom of the trade mark applied for and as the Board of Appeal wrongly applied the test to establish likelihood of confusion.

Action brought on 13 April 2007 — Last Minute Network v OHIM — Last Minute Tour (LAST MINUTE TOUR)

(Case T-115/07)

(2007/C 129/40)

Language in which the application was lodged: English

Parties

Applicant: Last Minute Network Ltd (London, United Kingdom) (represented by: P. Brownlow, solicitor)

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

Other party to the proceedings before the Board of Appeal: Last Minute Tour SpA (Milan, Italy)

Form of order sought

— Quash in its entirety the decision of the Second Board of Appeal of the respondent, the Office for Harmonisation in the Internal Market (Trade Marks and Designs), dated 8 February 2007;

— declare CTM No 1 552 231 invalid in respect of class 16;

— award the costs against the respondent.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'LAST MINUTE TOUR' for products and services in classes 16, 39 and 42 — Community trade mark No 1 552 231

Proprietor of the Community trade mark: Last Minute Tour SpA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national non-registered word mark 'LASTMINUTE.COM' for services in classes 39 and 42

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark for the services in classes 39 and 42 and rejection of the request for a declaration of invalidity for the goods in class 16

Decision of the Board of Appeal: Dismissal of the appeal lodged by the applicant asking the partial annulment of the Cancellation Division's decision in order to obtain a declaration of invalidity also for the goods in class 16

Pleas in law: Infringement of Article 8(1)(b) and (4) of Council Regulation No 40/94 as the Board of Appeal wrongly decided that the applicant's non registered trade mark did not confer on him the right to prohibit the use in the United Kingdom of the trade mark applied for and as the Board of Appeal wrongly applied the test to establish likelihood of confusion.

Action brought on 16 April 2007 — Italy v Commission

(Case T-119/07)

(2007/C 129/41)

Language of the case: Italian

Parties

Applicant: Italian Republic (Rome, Italy) (represented by: G. Aiello, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C (2007) 286 final of 7 February 2007;

— order the Commission to pay the costs.

Pleas in law and main arguments

The action is brought against Decision C (2007) 286 final of 7 February 2007 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in the Gardanne region, in the Shannon region and in Sardinia applied by France, Ireland and Italy respectively. That decision declared lawful 80 % of the amount of the tax exemptions granted by the Italian Government to Euroallumina SpA, requiring recovery of the remaining 20 % of the amount of relief accorded to the beneficiary from 1 January 2004.

In support of its claims, the applicant pleads:

— Infringement of Article 87(1) of the Treaty, in so far as the contested decision held that the exemption from the excise duty provided for in the Italian system is State aid. It is stated in that respect that, as confirmed by the wording of Directive 2003/96/EC [1], the exemptions from excise duty in question do not constitute State aid but come within the nature and the logic of the national tax system. In fact, if they were State aid the directive cited expressly authorises said aid, at least for a period until 31 December 2006. With regard to the alleged selective character of the measures under consideration, it is observed that the same are addressed in general to all businesses using mineral oils for the production of aluminium oxide. The fact that there is only one plant in Italy at which such mineral oils are used in the production cycle is of purely factual relevance and is not capable of undermining the general scope of the provision.

— Infringement of Article 87(3) of the Treaty and of the Community guidelines on national regional aid for 1998, since the contested exemption from excise duty in issue in the present case is to be regarded as necessary for the economic development of the region of Sardinia.

— Infringement of point 51 of E. 3.2 of the Community guidelines on State aid for environmental protection (2001/C 37/03), in so far as in the present case there were specific agreements between the State granting the aid and the recipient firm on the improvement of environmental results.

— Finally, infringement of the principle of the protection of legitimate expectations and the presumption of the legality of Community provisions.

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[1] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283 of 31.10.2003, p. 51).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 2 May 2007 — Giraudy v Commission

(Case F-23/05) ([1])

(Officials — Actions — Action for damages — Investigation by the European anti-Fraud Office (OLAF) — Reassignment — Regulation (EC) No 1073/1999 — Decision 1999/396/EC, ECSC, Euratom — Fault — Damage — Occupational disease — Account to be taken of the benefits provided for under Article 73 of the Staff Regulations)

(2007/C 129/42)

Language of the case: French

Parties

Applicant: Jean-Louis Giraudy (Paris, France) (represented by: D. Voillemot, lawyer)

Defendant: Commission of the European Communities (represented by: J. Curral and G. Berscheid, lawyer)

Re:

First, annulment of the Commission's decision refusing to acknowledge the liability of its departments and the damage allegedly suffered by the applicant in the context of an investigation carried out by the European Anti-Fraud Office (OLAF) in the Commission's Office in France and, second, a claim for damages.

Operative part of the judgment

1. *The Commission of the European Communities is ordered to pay Mr Giraudy damages in the amount of EUR 15 000 by way of compensation for the non-material damage suffered by him in the form of an attack on his reputation and integrity.*

2. *The remainder of the application is dismissed.*

3. *The Commission of the European Communities shall bear its own costs and two thirds of Mr Giraudy's costs*

4. *Mr Giraudy shall bear one third of his own costs.*

([1]) OJ C 171 of 9.7.2005, p. 29 (case initially registered at the Court of First Instance of the European Communities under number T-169/05 and transferred to the Civil Service Tribunal of the European Union by order of 15 December 2005).

Order of the Civil Service Tribunal (Second Chamber) of 3 May 2007 — Bracke v Commission

(Case F-123/05) ([1])

(Officials — Competitions — Internal competition — Eligibility conditions — Competition notice — Seniority requirement — Temporary staff — Article 27 of the Staff Regulations — Principle of sound administration — Principle of non-discrimination)

(2007/C 129/43)

Language of the case: French

Parties

Applicant: Jean-Marc Bracke (Etterbeeck, Belgium) (represented by: P. Bruwier, lawyer)

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

Re:

First, the inapplicability, under article 241 EC, of point III.1 of the notice of competition COM/PC/04 on account of infringement of the principle of non-discrimination, and, second, annulment of the decision of the Appointing Authority not to recruit the applicant, and of the measures taken in consequence of that decision, on the grounds that it infringes Article 27 of the Staff Regulations, the principle of non-discrimination, the principle of sound administration, the principle of independence of the selection board, the principle of the protection of legitimate expectations, and that it is founded on an illegal provision of the notice.

Operative part of the order

1. *The application is dismissed as being manifestly unfounded.*

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

([1]) OJ C 60 of 11.3.2006, p. 53.

Action brought on 27 February 2007 — Dragoman v Commission

(Case F-16/07)

(2007/C 129/44)

Language of the case: Romanian

Parties

Applicant: Adriana Dragoman (Brussels, Belgium) (represented by: G. Dinulescu, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the verbal decision of the selection board of Competition EPSO/AD/34/06 of 28 November 2006 by which that selection board awarded the applicant an 'eliminating mark' for the first oral interpretation test, which mark, pursuant to the notice of that competition, did not permit the applicant to take the following oral interpretation tests or the final oral test;

— Annul the written decision confirming the abovementioned decision, which was added to the applicant's EPSO file on 12 December 2006;

— Run the competition again especially for the applicant, in strict compliance with all the provisions of Community law and the provisions of the notice of competition;

— Find and declare that Article 6 of Annex III to the Staff Regulations of Officials is unlawful;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of her claim, the applicant raises three pleas in law, the first of which alleges infringement of the principle of equality and non-discrimination. In the first part of that plea, the applicant alleges that she was the subject of discrimination by reason of nationality, contrary inter alia to Article 27 of the Staff Regulations. After having supplied evidence of her Belgian nationality, she was requested to prove her Romanian nationality. In the second part, she argues that the selection board discriminated against candidates who, like her, did not already work for the institutions as temporary or contractual agents.

In her second plea, the applicant alleges infringement of the provisions of the notice of competition and of the principle of sound administration. Firstly, during her test, she was asked to speak about her professional experience even though no professional experience was required of candidates who, like her, held a university degree in conference interpreting. Secondly, the selection board established and applied pass quotas based on the linguistic combinations chosen by the candidates without such a possibility being provided for in the notice of competition.

In her third plea, the applicant alleges infringement of the duty to give reasons.

Action brought on 10 April 2007 — Alberto Toronjo Benitez v Commission of the European Communities

(Case F-33/07)

(2007/C 129/45)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Declare the unlawfulness of Article 2 of the Commission's decision on the promotion procedure for officials whose remuneration falls under the 'Research' credits of the general budget (both in the version of 16 June 2004 and that of 20 July 2005) ('the first contested decision');

— Annul the Commission's decision to remove the 44.5 points from the applicant's balance which he had accumulated as a temporary agent ('the second contested decision');

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, who took up his post at the Commission on 16 January 2000 as a temporary agent in the 'Research' Directorate-General ('DG'), was appointed as an official in the same DG with effect from 16 April 2004. On 1 May 2005 he was transferred to DG 'Relex'. By letter of 16 June 2006, he was informed that the points which he had acquired as a temporary agent had been annulled, by application of the first contested decision, since he had moved to a post falling under the 'Operational' part of the general budget before two years had expired following his recruitment as a probationary official to a post falling under the 'Research' part of that budget.

In support of his action, the applicant relies first on infringement of the principles of legal certainty, administrative legality and protection of acquired rights, since the withdrawal by the Appointing Authority (AIPN) of an unlawful decision constituting subjective rights should have taken place within a reasonable time, which is not the case in respect of the second contested decision.

Furthermore, the applicant submits that Article 2 of the second contested decision is discriminatory against officials whose remuneration falls under the 'Research' credits and who apply for a transfer before two years has expired following their recruitment, since those officials lose their points following the transfer whereas officials who are transferred automatically or who occupy posts considered sensitive retain their points.

Action brought on 13 April 2007 — Skareby v Commission

(Case F-34/07)

(2007/C 129/46)

Language of the case: French

Parties

Applicant: Carina Skareby (Bichkek, Kirghizistan) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the applicant's Career Development Report (CDR) for 2005;

— Annul, in so far as necessary, the decision of the Appointing Authority (AIPN) rejecting the applicant's appeal;

— Indicate to the AIPN the effects of annulment of the contested decisions and in particular the adoption of a new CDR for 2005, this time in compliance with the statutory rules;

— Order the AIPN to pay to the applicant: i) a sum fixed *ex aequo et bono* at EUR 15 000 in respect of compensation for her non-material damage; ii) a sum fixed *ex aequo et bono* at EUR 15 000 in respect of compensation for the professional injury suffered by her; iii) a sum to be fixed in equity by the Tribunal in respect of her financial loss, late payment interest to run on each of those sums at the legal rate with effect from the date on which they become payable;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of her claim, the applicant first alleges failure to comply with the rules governing establishment of the CDR. The administration infringed the rules of procedure established by the general implementing provisions of Article 43 of the Staff Regulations and committed manifest errors of assessment.

The applicant then alleges infringement of the rights of the defence, the principle of sound administration and the duty to have regard for the welfare of officials.

Finally, she alleges that the administration misused its powers and misused the procedure.

Action brought on 19 April 2007 — Lebedef v Commission

(Case F-36/07)

(2007/C 129/47)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the applicant's career development report for the period from 1 January 2005 to 31 December 2005, in particular that part of the report drawn up by Eurostat for that period;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant relies on a single plea in law alleging an infringement of the general measures for the application of Article 43 of the Staff Regulations, specifically, the measures concerning union and statutory staff representatives, breach of the principle of legitimate expectations and of the rule '*patere legem quam ipse fecisti*'.

Action brought on 23 April 2007 — Cros v Court of Justice

(Case F-37/07)

(2007/C 129/48)

Language of the case: French

Parties

Applicant: Alexia Cros (Howald, Luxembourg) (represented by: E. Reveillaud, lawyer)

Defendant: Court of Justice of the European Communities

Form of order sought

— Annul the decision of the Appointing Authority (AIPN) of 19 July 2006 appointing the applicant probationary official as a lawyer-linguist with effect from 1 September 2006 in that she is classified at grade AD7;

— Declare and hold that, retroactively to the date of appointment of 1 September 2006, the applicant is to be classified at grade A*10 corresponding to grade LA6 before the entry into force 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];

— Order the full reconstitution of her career with effect retroactively to 1 September 2006;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant submits that the contested decision, based on Article 12 of Annex XIII to the Staff Regulations, infringes:

— notice of open competition CJ/LA/24 [2], pursuant to which the recruitment of successful candidates would be made at grade LA7/LA6;

— the principle of equal treatment;

— the principle of legitimate expectations and the principles of sound administration, transparency and the duty to have regard to the welfare of officials.

[1] OJ L 124, 27.4.2004, p. 1.
[2] OJ C 182 A, 31.7.2002, p. 1.

Action brought on 23 April 2007 — Campos Valls v Council

(Case F-39/07)

(2007/C 129/49)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

— annul the decision of the Appointing Authority (AIPN) to reject the applicant's candidature for the post of head of the Spanish Language Unit of DG A, Directorate 3 — Translation and Document Production — Language Service and the decision appointing another candidate to that post;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant relies on a single plea based on infringement of vacancy notice No 60/06, manifest error of assessment and infringement of Article 45 of the Staff Regulations, inasmuch as the candidate selected to fill the position does not have, unlike the applicant, the technical knowledge of translation required by the vacancy notice. In particular, the argument relied on by the Council that that knowledge had to be assessed in the light of the staff management functions which the head of unit has to carry out fails to have regard to the vacancy notice.

Action brought on 30 April 2007 — Baudelet-Leclaire v Commission

(Case F-40/07)

(2007/C 129/50)

Language of the case: French

Parties

Applicant: Cécile Baudelet-Leclaire (Brussels, Belgium) (represented by: M. Korving, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare that there has been discrimination between candidates 'internal' to the European institutions and external candidates in Competition EPSO/AST/7/05 ([1]);

— Declare that the defendant has produced no evidence of the absence of discrimination between candidates 'internal' to the European institutions and external candidates in that competition;

— Annul the said competition on the ground of a breach of the fundamental principle of equal opportunity between the candidates;

— In the alternative, order the defendant to produce evidence including, if necessary, the proceedings of the selection board covered by the obligation of secrecy contained in Article 6 of Annex III to the Staff Regulations, showing that the selection board did not favour certain candidates on account of their professional background;

— In the absence of evidence produced by the defendant, order a revision of the classification of all candidates on the sole basis of merit, as indicated in the competition notice and as required by the impartial application of the principle of equal opportunity between candidates;

— Order the defendant to pay the costs.

Pleas in law and main arguments

By letter of 29 January 2007, the applicant was informed that her name was not on the reserve list inasmuch as the marks she had obtained, although above the required minimum, were not among the 110 highest marks awarded.

In support of her application, the applicant relies, in particular, on a breach of the principle of equal opportunity, inasmuch as the selection board discriminated between candidates in favour of those who already had work experience in the Community institutions, in particular in the directorate general to which the president of the selection board belongs.

([1]) OJ 2005 C 178, p. 22.