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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 128/01)

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

OJ C 116, 9.5.2008

Past publications

OJ C 107, 26.4.2008

OJ C 92, 12.4.2008

OJ C 79, 29.3.2008

OJ C 64, 8.3.2008

OJ C 51, 23.2.2008

OJ C 37, 9.2.2008

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 8 April 2008 — Commission of the European Communities v Kingdom of Sweden

(Case C-167/05) [1]

(Failure of a Member State to fulfil obligations — Second paragraph of Article 90 EC — Internal taxes imposed on products from other Member States — Taxation liable to protect other products indirectly — Prohibition on discrimination between imported products and competing domestic products — Excise duties — Different tax treatment of beer and wine — Burden of proof)

(2008/C 128/02)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: L. Ström van Lier, K. Gross, K. Simonsson and R. Lyal, Agents)

Defendant: Kingdom of Sweden (represented by: K. Wistrand, Agent)

Intervener in support of the defendant: Republic of Latvia (represented by: E. Balode-Buraka and E. Broks, Agents)

Re:

Failure of Member State to fulfil its obligations — Infringement of the second paragraph of Article 90 EC — Internal taxation of alcohol and alcoholic drinks affecting wine more heavily than beer

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Republic of Latvia to bear its own costs.*

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[1] OJ C 171, 9.7.2005.

Judgment of the Court (Grand Chamber) of 8 April 2008 — Commission of the European Communities v Italian Republic

(Case C-337/05) [1]

(Failure of a Member State to fulfil obligations — Public supply contracts — Directives 77/62/EEC and 93/36/EEC — Award of public contracts without prior publication of a notice — Absence of competitive tendering — Agusta and Agusta Bell helicopters)

(2008/C 128/03)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and X. Lewis, avocat)

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

Re:

Failure of a Member State to fulfil obligations — Council Directives 93/36/EEC of 14 June 1993 (OJ 1993 L 199, p. 1) and 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts — Failure to show existence of grounds which may justify recourse by the contracting authority to the negotiated procedure without prior publication of a contract notice — Agusta and Agusta Bell helicopters purchased for the requirements of the State Forestry Corps, the Coastguard, the Carabinieri, etc.

Operative part of the judgment

The Court:

1. *Declares that, by adopting a procedure, which has been in existence for a long time and is still followed, of directly awarding to Agusta SpA contracts for the purchase of Agusta and Agusta Bell helicopters to meet the requirements of several military and civilian corps, without any competitive tendering procedure, and, in particular, without complying with the procedures provided for by Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, and previously, by Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts, as amended and supplemented by Council Directives 80/767/EEC of 22 July 1980 and 88/295/EEC of 22 March 1988, the Italian Republic has failed to fulfil its obligations under those directives;*

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

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Second Chamber) of 3 April 2008 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Finanzamt Oschatz v Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien

(Case C-442/05) ([1])

(Sixth VAT Directive — Articles 4(5) and 12(3)(a) — Annexes D and H — Concept of 'supply of water' or 'water supplies' — Reduced rate of VAT)

(2008/C 128/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Oschatz

Defendant: Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien

Intervener: Bundesministerium der Finanzen

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of point 2 of Annex D and Category 2 of Annex H to Directive 77/388/EEC: Sixth Council Directive 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) — Reduced rate for the supply of water — Payment for the installation of mains connections to end users

Operative part of the judgment

1. *Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment and point 2 of Annex D thereto must be interpreted as meaning that the laying of a mains connection which consists, as in the main proceedings, in the installation of piping permitting the connection of a building's water system to the fixed water supply network forms part of the supply of water, listed in that annex, so that a body governed by public law acting as a public authority is a taxable person in respect of that transaction.*

2. *Article 12(3)(a) of Sixth Directive 77/388 and Category 2 of Annex H thereto must be interpreted as meaning that the laying of a mains connection which consists, as in the main proceedings, in the installation of piping permitting the connection of a building's water system to the fixed water supply network forms part of water supplies. Furthermore, Member States may apply a reduced rate of value added tax to concrete and specific aspects of water supplies, such as the laying of mains connections at issue in the main proceedings, provided that they comply with the principle of fiscal neutrality inherent in the common system of value added tax.*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court (Third Chamber) of 3 April 2008 (reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale de Paris (France)) — Philippe Derouin v Union pour le recouvrement des cotisations de sécurité sociale et d'allocations familiales de Paris — Région parisienne (Urssaf)

(Case C-103/06) ([1])

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Self employed workers living and working in France — General social contribution — Social debt repayment contribution — Account taken of income received in another Member State and taxable in that State under a double taxation treaty)

(2008/C 128/05)

Language of the case: French

Referring court

Tribunal des affaires de sécurité sociale de Paris

Parties to the main proceedings

Applicant: Philippe Derouin

Defendant: Union pour le recouvrement des cotisations de sécurité sociale et d'allocations familiales de Paris — Région parisienne (Urssaf)

Re:

Reference for a preliminary ruling — Tribunal des affaires de sécurité sociale de Paris (France) — Interpretation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2), as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6) — Account taken for the purpose of calculating the 'contribution sociale généralisée' (general social contribution) and the 'contribution pour le remboursement de la dette sociale' (social debt repayment contribution) payable by a self-employed worker subject to French social legislation of income earned in another Member State and taxable in that State under a double-taxation convention.

Operative part of the judgment

Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 307/1999 of 8 February 1999, is to be interpreted as meaning that it does not preclude a Member State whose social legislation is alone applicable to a resident self employed worker, from excluding from the tax base for contributions such as the General Social Contribution and the Social Debt Repayment Contribution income earned by the worker in another Member State, by application, in particular, of a convention for the avoidance of double taxation with respect to taxes on income.

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (Grand Chamber) of 1 April 2008 (reference for a preliminary ruling from the Cour constitutionnelle (formerly the Cour d'arbitrage) — Belgium) — Government of the French Community and Walloon Government v Flemish Government

(Case C-212/06) ([1])

(Care insurance scheme established by a federated entity of a Member State — Exclusion of persons residing in part of the national territory other than that falling within the competence of that entity — Articles 18 CE, 39 EC and 43 EC — Regulation (EEC) No 1408/71)

(2008/C 128/06)

Language of the case: French

Referring court

Cour constitutionnelle (formerly Cour d'arbitrage)

Parties to the main proceedings

Applicants: Government of the French Community and Walloon Government

Defendant: Flemish Government

Re:

Reference for a preliminary ruling — Cour constitutionnelle (formerly Cour d'arbitrage) (Belgium) — Interpretation of Articles 18 EC, 39 EC and 43 EC and Articles 2, 3, 4, 13, 18, 19, 20, 25 and 28 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of

their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as amended — Applicability of the Flemish care insurance scheme to persons employed in the Dutch-speaking region or in the bilingual region of Bruxelles-Capitale (Brussels Capital) and residing either in one of those regions or in another Member State, to the exclusion of persons residing in another part of the national territory.

Operative part of the judgment

1. *Benefits provided under a scheme such as the care insurance scheme established by the Decree of the Flemish Parliament on the organisation of care insurance (Decreet houdende de organisatie van de zorgverzekering) of 30 March 1999, in the version contained in the Decree of the Flemish Parliament amending the Decree of 30 March 1999 (Decreet van de Vlaamse Gemeenschap houdende wijziging van het decreet van 30 maart 1999 houdende de organisatie van de zorgverzekering) of 30 April 2004, fall within the scope ratione materiae of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 307/1999 of 8 February 1999.*

2. *On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing the care insurance scheme established by the Flemish Community by the decree of 30 March 1999, as amended by the Decree of the Flemish Parliament of 30 April 2004, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State, is contrary to those provisions, in so far as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.*

3. *On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme only to persons residing in that entity's territory is contrary to those provisions, in so far as such limitation affects nationals of other Member States working in that entity's territory or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.*

(1) OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 3 April 2008 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy), Militzer & Münch GmbH v Ministero delle Finanze

(Case C-230/06) (1)

(Customs union — Community transit — Recovery of a customs debt — Competent Member State — Proof of the regularity of the operation or of the place of the offence — Time-limits — Liability of the principal)

(2008/C 128/07)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Militzer & Münch GmbH

Defendant: Ministero delle Finanze,

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Article 11a of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1987 L 107, p. 1) and Article 215(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Discharge by the customs office of destination evidenced by forged documents — Period prescribed for notifying the fact that a consignment has not been presented at the office of destination — Applicability

Operative part of the judgment

1. *In order to verify whether the Member State which recovered customs duties has jurisdiction, it is for the referring court to determine whether, at the time when it came to light that the consignment had not been presented at the office of destination, it was possible to establish the place where the offence or irregularity occurred. If that is the case, the Member State in which the first offence or irregularity capable of being classified as a removal from customs surveillance was committed can be identified as the State with jurisdiction to recover the customs debt, pursuant to Articles 203(1) and 215(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. On the other hand, if the place where the offence or irregularity was committed cannot be thus established, the Member State to which the office of departure belongs has jurisdiction to recover the customs duties, in accordance with Articles 378 and 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92.*

2. *Where a consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, it is for the office of departure alone to make the notification required within the 11-month and 3-month time-limits laid down by Article 379(1) and (2) of Regulation No 2454/93.*

3. *It is not contrary to the principle of proportionality to hold a customs clearance agent, in his capacity as principal, liable for a customs debt.*

([1]) OJ C 190, 12.8.2006.

Judgment of the Court (Third Chamber) of 10 April 2008 — Commission of the European Communities v Portuguese Republic

(Case C-265/06) ([1])

(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Articles 11 and 13 of the EEA Agreement — Quantitative restrictions on imports — Measures having equivalent effect — Motor vehicles — Affixing of tinted film to windows)

(2008/C 128/08)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros, P. Guerra e Andrade and M. Patakia, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent, and by A. Duarte de Almeida, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 28 EC and 30 EC — National legislation prohibiting the affixing of tinted film to the windows of passenger or goods vehicles

Operative part of the judgment

The Court:

1) *Declares that, by prohibiting in Article 2(1) of Decree-Law No 40/2003 of 11 March 2003 the affixing of tinted film to the windows of motor vehicles, the Portuguese Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC and Articles 11 and 13 of the Agreement of 2 May 1992 on the European Economic Area;*

2) *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 212, 2.9.2006.

Judgment of the Court (Grand Chamber) of 1 April 2008 (Reference for a preliminary ruling from the Bayerisches Verwaltungsgericht München (Germany)) — Tadao Maruko v Versorgungsanstalt der deutschen Bühnen

(Case C-267/06) ([1])

(Equal treatment in employment and occupation — Directive 2000/78/EC — Survivors' benefits under a compulsory occupational pensions scheme — Concept of 'pay' — Refusal because the persons concerned were not married — Same-sex partners — Discrimination based on sexual orientation)

(2008/C 128/09)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Tadao Maruko

Defendant: Versorgungsanstalt der deutschen Bühnen

Re:

Reference for a preliminary ruling — Bayerisches Verwaltungsgericht München — Interpretation of Articles 1, 2(2)(a), 3(1)(c) and (3) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Meaning of pay — Registered partner excluded from receipt of a survivor's pension

Operative part of the judgment

1) *A survivor's benefit granted under an occupational pension scheme such as that managed by the Versorgungsanstalt der deutschen Bühnen falls within the scope of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;*

2) *The combined provisions of Articles 1 and 2 of Directive 2000/78 preclude legislation such as that at issue in the main proceedings under which, after the death of his life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse, even though, under national law, life partnership places persons of the same sex in a situation comparable to that of spouses so far as concerns that survivor's benefit. It is for the referring court to determine whether a surviving life partner is in a situation comparable to that of a spouse who is entitled to the survivor's benefit provided for under the occupational pension scheme managed by the Versorgungsanstalt der deutschen Bühnen.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (First Chamber) of 3 April 2008 (reference for a preliminary ruling from the Oberlandesgericht Köln, Germany) — 01051 Telecom GmbH v Deutsche Telekom AG

(Case C-306/06) ([1])

(Directive 2000/35/EC — Combating of late payment in commercial transactions — Article 3(1)(c)(ii) — Late payment — Bank transfer — Date on which payment is to be regarded as having been made)

(2008/C 128/10)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: 01051 Telecom GmbH

Defendant: Deutsche Telekom AG

Re:

Reference for a preliminary ruling — Oberlandesgericht Köln — Interpretation of Article 3(1)(c)(ii) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35) — Whether a creditor may claim default interest — 'Receipt' by the creditor of the amount due — National rule under which the time of payment is considered to be the time when the debtor gives the transfer order to the bank and not the time when the creditor's account is credited

Operative part of the judgment

Article 3(1)(c)(ii) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions is to be interpreted as meaning that it requires, in order that a payment by bank transfer may avoid or put an end to the application of interest for late payment, that the sum due be credited to the account of the creditor within the period for payment.

([1]) OJ C 249, 14.10.2006.

Judgment of the Court (Third Chamber) of 10 April 2008 (reference for a preliminary ruling from the House of Lords — United Kingdom) — Marks & Spencer plc v Her Majesty's Commissioners of Customs and Excise

(Case C-309/06) ([1])

(Taxation — Sixth VAT Directive — Exemption with refund of tax paid at the preceding stage — Erroneous taxation at the standard rate — Right to zero rate — Entitlement to refund — Direct effect — General principles of Community law — Unjust enrichment)

(2008/C 128/11)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Marks & Spencer plc

Defendant: Her Majesty's Commissioners of Customs and Excise

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Article 28(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Existence of Community law capable of being relied on by a supplier of a product (teacakes) in respect of which national legislation maintains an exemption with refund of input tax — VAT incorrectly paid by reason of a

misconstruction of the national legislation by the competent authorities — Application of the general principles of Community law, including that of fiscal neutrality — Possibility for an individual to rely on those general principles for the purpose of recovering the sums wrongly levied

Operative part of the judgment

1. *Where, under Article 28(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, both before and after the insertion of the amendments made to that provision by Council Directive 92/77/EEC of 19 October 1992, a Member State has maintained in its national legislation an exemption with refund of input tax in respect of certain specified supplies, a trader making such supplies does not have any directly enforceable Community-law right to have those supplies taxed at a zero rate of value added tax.*

2. *Where, under Article 28(2) of Sixth Directive 77/388, both before and after the insertion of the amendments made to that provision by Directive 92/77, a Member State has maintained in its national legislation an exemption with refund of input tax in respect of certain specified supplies but has mistakenly interpreted its national legislation, with the consequence that certain supplies benefiting from exemption with refund of input tax under its national legislation have been subject to tax at the standard rate, the general principles of Community law, including that of fiscal neutrality, apply so as to give a trader who has made such supplies a right to recover the sums mistakenly charged in respect of them.*

3. *Although the principles of equal treatment and fiscal neutrality apply in principle to the case in the main proceedings, an infringement of those principles is not constituted merely by the fact that a refusal to make repayment was based on the unjust enrichment of the taxable person concerned. By contrast, the principle of fiscal neutrality precludes the concept of unjust enrichment from being applied only to taxable persons such as 'payment traders' (taxable persons for whom, in a given prescribed accounting period, the output tax collected exceeds the input tax) and not to taxable persons such as 'repayment traders' (taxable persons whose position is the inverse of that of payment traders), in so far as those taxable persons have marketed similar goods. It will be for the national court to determine whether that is the position in the present case. Furthermore, the general principle of equal treatment, the infringement of which may be established, in matters relating to tax, by discrimination affecting traders who are not necessarily in competition with each other but are nevertheless in a similar situation in other respects, precludes discrimination between 'payment traders' and 'repayment traders', which is not objectively justified.*

4. *The answer to the third question is not affected where there is evidence that a trader who has been refused repayment of value added tax which was wrongly levied has not suffered any financial loss or disadvantage.*

5. *It is for the national court itself to draw any conclusions with respect to the past from the infringement of the principle of equal treatment referred to in point 3 of the operative part of this judgment, in accordance with the rules relating to the temporal effects of the national legislation applicable in the main proceedings, in compliance with Community law and, in particular, with the principle of equal treatment and the principle that it must ensure that the remedies which it grants are not contrary to Community law.*

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Second Chamber) of 3 April 2008 (reference for a preliminary ruling from the Rechtbank te Amsterdam, Netherlands) — K.D. Chuck v Raad van Bestuur van de Sociale Verzekeringsbank

(Case C-331/06) ([1])

(Old-age insurance — Worker who is a national of a Member State — Social security contributions — Separate periods — Different Member States — Calculation of periods of insurance — Application for a pension — Residence in a non-Member State)

(2008/C 128/12)

Language of the case: Dutch

Referring court

Rechtbank te Amsterdam

Parties to the main proceedings

Applicant: K.D. Chuck

Defendant: Raad van Bestuur van de Sociale Verzekeringsbank

Re:

Reference for a preliminary ruling — Rechtbank Amsterdam — Interpretation of Article 48 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) — Old-age pension insurance — Calculation of insurance periods of a national of a Member State who has worked in two other Member States — Residence in a non-member State at the date of retirement

Operative part of the judgment

Article 48(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004, requires the competent institution of the last Member State in which a worker who is a national of a Member State resided to take into account, in calculating the old age pension of that worker, who, when he submits his pension claim, is resident in a non-Member State, of the periods worked in another Member State under the same conditions as if that worker still resided in the European Community.

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (Second Chamber) of 3 April 2008 (reference for a preliminary ruling from the Oberlandesgericht Celle (Germany)) — Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen

(Case C-346/06) ([1])

(Article 49 EC — Freedom to provide services — Restrictions — Directive 96/71/EC — Posting of workers in the context of the provision of services — Procedures for the award of public works contracts — Social protection of workers)

(2008/C 128/13)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG

Defendant: Land Niedersachsen

Re:

Preliminary reference — Oberlandesgericht Celle (Germany) — Interpretation of Article 49 EC — National legislation requiring undertakings involved in the tendering procedure for public-works contracts to give a commitment that they will comply with, and ensure compliance by their subcontractors with, the provisions on minimum pay prescribed by the collective agreement in force at the place where the services in question are to be provided.

Operative part of the judgment

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, interpreted in the light of Article 49 EC, precludes an authority of a Member State, in a situation such as that at issue in the main proceedings, from adopting a measure of a legislative nature requiring the contracting authority to designate as contractors for public works contracts only those undertakings which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the remuneration prescribed by the collective agreement the minimum wage in force at the place where those services are performed.

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (Fourth Chamber) of 10 April 2008 (reference for a preliminary ruling from the Vergabekontrollsenat des Landes Wien, Austria) — Ing. Aigner, Wasser-Wärme-Umwelt GmbH v Fernwärme Wien GmbH

(Case C-393/06) ([1])

(Public contracts — Directives 2004/17/EC and 2004/18/EC — Contracting entity pursuing activities falling in part within the field of application of Directive 2004/17/EC and in part within that of Directive 2004/18/EC — Body governed by public law — Contracting authority)

(2008/C 128/14)

Language of the case: German

Referring court

Vergabekontrollsenat des Landes Wien

Parties to the main proceedings

Applicant: Ing. Aigner, Wasser-Wärme-Umwelt GmbH

Defendant: Fernwärme Wien GmbH

Re:

Reference for a preliminary ruling — Vergabekontrollsenat des Landes Wien — Interpretation of Article 2(1) and of Article 3 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) and interpretation of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Award of contract for heating equipment — The contracting authority is an undertaking controlled by the City of Vienna providing public services (district heating) — Body governed by public law — Assessment of the condition of competition — Application of European market award procedures also to activities carried out under competitive conditions (in the present case, air conditioning systems) — Contamination theory — No cross-subsidies

Operative part of the judgment

1. *A contracting entity, within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is required to apply the procedure laid down in that directive only for the award of contracts which relate to activities carried out by that entity in one or more of the sectors listed in Articles 3 to 7 of that directive.*

2. *An entity such as Fernwärme Wien GmbH is to be regarded as a body governed by public law within the meaning of the second subparagraph of Article 2(1)(a) of Directive 2004/17 and the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.*

3. *All contracts awarded by an entity which is a body governed by public law, within the meaning of Directive 2004/17 or Directive 2004/18, which relate to activities carried out by that entity in one or more of the sectors listed in Articles 3 to 7 of Directive 2004/17 must be subject to the procedures laid down in that directive. However, all other contracts awarded by such an entity in connection with the exercise of other activities are covered by the procedures laid down in Directive 2004/18. Each of these two directives applies without distinction between the activities carried out by that entity to accomplish its task of meeting needs in the general interest and activities which it carries out under competitive conditions, and even where there is an accounting system intended to make a clear internal separation between those activities in order to avoid cross financing between those sectors.*

([1]) OJ C 310, 16.12.2006.

Judgment of the Court (Seventh Chamber) of 10 April 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-398/06) ([1])

(Failure of a Member State to fulfil obligations — Right of residence of nationals of Members States of the European Union and of the European Economic Area who are non-active and pensioned persons — National legislation and administrative practice requiring personal resources sufficient for a stay of at least a year in the host Member State)

(2008/C 128/15)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and R. Troosters, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster and D.J.M. de Grave, Agents)

Intervener in support of the form of order sought by the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: E. O'Neill, Agent, and J. Stratford, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of the Community rules on the residence of citizens of the Union — National legislation and administrative practice which require that, in order to obtain a residence permit, non-active and pensioned persons must have adequate personal resources

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force national provisions under which, in order to obtain a residence permit, nationals of the European Union and of the European Economic Area who are non-active and retired must prove that they have sustainable resources, the Kingdom of the Netherlands has failed to fulfil its obligations under Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Council Directive 90/364/EEC of 28 June 1990 on the right of residence and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity;*

2. *Orders the Kingdom of the Netherlands to pay the costs;*

3. *Orders the Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (First Chamber) of 10 April 2008 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart) — Annelore Hamilton v Volksbank Filder eG

(Case C-412/06) ([1])

(Consumer protection — Contracts negotiated away from business premises — Directive 85/577/EEC — First paragraph of Article 4 and Article 5(1) — Contract for long-term credit — Right of cancellation)

(2008/C 128/16)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Parties to the main proceedings

Applicant: Annelore Hamilton

Defendant: Volksbank Filder eG

Re:

Reference for a preliminary ruling — Oberlandesgericht Stuttgart — Interpretation of Articles 4 and 5 of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31) — Cancellation of a loan contract, negotiated away from business premises, to finance the acquisition of shares in a real property fund — National legislation under which the right of cancellation expires one month after both parties have performed in full their contractual obligations, even where a consumer has not been informed of that right

Operative part of the judgment

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises must be interpreted as meaning that the national legislature is entitled to provide that the right of cancellation laid down in Article 5(1) of the directive may be exercised no later than one month from the time at which the contracting parties have performed in full their obligations under a contract for long-term credit, where the consumer has been given defective notice concerning the exercise of that right.

([1]) OJ C 310 of 16.12.2006.

Judgment of the Court (Second Chamber) of 10 April 2008 — Commission of the European Communities v Italian Republic

(Case C-442/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 1999/31/EC — Landfill of waste — National legislation concerning existing landfill sites — Incorrect transposition)

(2008/C 128/17)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, G. Fiengo, avocat)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) — National legislation which does not comply with the directive

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force Legislative Decree No 36 of 13 January 2003, as amended, which transposes Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste into national law,*

   — *in so far as that legislative decree does not provide for the application of Articles 2 to 13 of Directive 1999/31 to landfills authorised subsequent to the date of expiry of the period for transposition of that directive and prior to the date of the entry into force of the legislative decree, and*

   — *in so far as it does not secure the transposition of Article 14(d)(i) of that directive,the Italian Republic has failed to fulfil its obligations under Articles 2 to 14 of Directive 1999/31;*

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

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Second Chamber) of 3 April 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-444/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 89/665/EEC — Public supply and works contracts — Review procedures for the award of public contracts)

(2008/C 128/18)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, acting as Agent, and C. Fernandez Vicién and I. Moreno-Tapia Rivas, abogados)

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

Re:

Failure of a Member State to fulfil obligations — Breach of Article 2(1)(a) and (b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — National legislation not in conformity with the directive

Operative part of the judgment

The Court:

1. *Declares that, by failing to lay down a mandatory period for the contracting authority to notify the decision on the award of the contract to all the tenderers and by failing to provide for a mandatory waiting period between the award of the contract and its conclusion, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1)(a) and (b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992;*

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

3. *Orders the Kingdom of Spain to pay two thirds of all the costs. The Commission of the European Communities is ordered to pay the other third.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Fifth Chamber) of 3 April 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-522/06) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EC) No 2037/2000 — Substances that deplete the ozone layer — Recovery, recycling, reclamation and destruction of those substances)

(2008/C 128/19)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: A. Hubert, Agent)

Re:

Failure of a Member State to fulfil obligations — Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1) — Articles 16(5) and 17(1) — Failing to adopt measures defining the minimum qualification requirements for personnel responsible for recovery, recycling, reclamation and destruction of controlled substances referred to in Article 2 of the Regulation and contained in refrigeration, air-conditioning and heat pump equipment, fire protection systems and fire extinguishers — Failure to adopt all precautionary measures practicable to prevent and minimise leakages of controlled substances and absence of checks on the possible presence of leakages.

Operative part of the judgment

The Court:

1. *Declares that,*

   — *by failing to define the minimum qualification requirements for certain members of personnel working in recovery, recycling, reclamation and destruction of controlled substances in accordance with Article 16(5) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer, and*

   — *in respect of the Walloon Region, by failing to take all precautionary measures practicable to prevent and minimise leakages of controlled substances and by failing to carry out annual checks to establish the presence or not of leakages in accordance with Article 17(1) of Regulation No 2037/2000,*

   the Kingdom of Belgium has failed to fulfil its obligations under the provisions of that regulation;

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

([1]) OJ C 42, 24.2.2007.

Judgment of the Court (Fourth Chamber) of 3 April 2008 (reference for a preliminary ruling from the Conseil d'État (France)) — Banque Fédérative du Crédit Mutuel v Ministre de l'Économie, des Finances et de l'Industrie

(Case C-27/07) ([1])

(Corporation tax — Directive 90/435/EEC — Taxable income of a parent company — Non deductibility of costs and expenses relating to a holding in a subsidiary — Fixing of costs at a flat rate — Ceiling of 5 % of the profits distributed by the subsidiary — Inclusion of tax credits)

(2008/C 128/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Banque Fédérative du Crédit Mutuel

Defendant: Ministre de l'Économie, des Finances et de l'Industrie

Re:

Reference for a preliminary ruling — Conseil d'État (France) — Interpretation of Articles 4, 5 and 7 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Add-back to the taxable income of the parent company of a fixed proportion of the costs and expenses, equal to 5 % of the income from its holdings in a subsidiary, including tax credits — Compatibility of that add back with the limit provided for in Article 4 of the directive — Need for the tax credit to be entirely set off against the tax payable by the parent company.

Operative part of the judgment

The concept of 'profits distributed by the subsidiary', within the meaning of the last sentence of Article 4(2) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, is to be interpreted as not precluding legislation of a Member State which includes in those profits tax credits which have been granted in order to offset a withholding tax levied by the Member State of the subsidiary in the hands of the parent company.

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (First Chamber) of 10 April 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden, Netherlands) — adidas AG, adidas Benelux BV v Marca Mode CV, C&A Nederland, H&M Hennes & Mauritz Netherlands BV, Vendex KBB Nederland BV

(Case C-102/07) ([1])

(Trade marks — Articles 5(1)(b), 5(2) and 6(1)(b) of Directive 89/104/EEC — Requirement of availability — Three-stripe figurative marks — Two-stripe motifs used by competitors as decoration — Complaint alleging infringement and dilution of the mark)

(2008/C 128/21)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: adidas AG, adidas Benelux BV

Defendants: Marca Mode CV, C&A Nederland, H&M Hennes & Mauritz Netherlands BV, Vendex KBB Nederland BV

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 3(1)(b) and (c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Non-registration or invalidity — Lack of distinctive character — Acquisition through usage — General interest in not restricting unduly the availability of signs perceived by the relevant public as signs serving to embellish a product and not to distinguish it

Operative part of the judgment

First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the requirement of availability cannot be taken into account in the assessment of the scope of the exclusive rights of the proprietor of a trade mark, except in so far as the limitation of the effects of the trade mark defined in Article 6(1)(b) of the Directive applies.

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (First Chamber) of 3 April 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — J.C.M. Beheer BV v Staatssecretaris van Financiën

(Case C-124/07) ([1])

(Sixth VAT Directive — Supply of services relating to insurance transactions — Insurance brokers and insurance agents)

(2008/C 128/22)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: J.C.M. Beheer BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 13 B(a) of Sixth Council Directive 77/388/EEG 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) — Supply by insurance brokers or insurance agents of services relating to insurance or reinsurance transactions — Taxable person acting as sub-agent in the name of a principal agent

Operative part of the judgment

Article 13B(a) of the 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 must be interpreted as meaning that the fact that an insurance broker or agent does not have a direct relationship with the parties to the insurance or reinsurance contract in the conclusion of which he has been instrumental, but merely an indirect relationship with them through the intermediary of another taxable person who is, himself, in a direct relationship with one of those parties, and to whom the insurance broker or agent is contractually bound does not prevent the service provided by the latter from being exempt from value added tax under that provision.

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (Seventh Chamber) of 3 April 2008 (reference for a preliminary ruling from the Rechtbank Zutphen (Netherlands)) — Criminal proceedings against Dirk Endendijk

(Case C-187/07) ([1])

(Directive 91/629/EEC — Decision 97/182/EC — Rearing of calves — Individual pens — Prohibition on tethering calves — Meaning of the verb 'tether' — Material and length — Different language versions — Uniform interpretation)

(2008/C 128/23)

Language of the case: Dutch

Referring court

Rechtbank Zutphen

Party in the main proceedings

Dirk Endendijk

Re:

Reference for a preliminary ruling — Rechtbank Zutphen — Interpretation of point 8 of the Annex to Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28) read in conjunction with Article 1(3) of Commission Decision 97/182/EC of 24 February 1997 amending the Annex to Directive 91/629 (OJ 1997 L 76, p. 30) — Meaning of 'tether'

Operative part of the judgment

A calf is tethered within the meaning of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves, as amended by Commission Decision 97/182/EC of 24 February 1997, where it is tied by a rope, irrespective of the material, length and purpose of that rope.

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (Seventh Chamber) of 3 April 2008 — Commission of the European Communities v Portuguese Republic

(Case C-289/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/17/EC — Coordination of the procurement procedures of entities operating in the water, energy, transport and postal services sectors — Failure to transpose within the period prescribed)

(2008/C 128/24)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros and D. Kukovec, acting as Agents,)

Defendant: Portuguese Republic (represented by: L. Fernandes and F. Andrade de Sousa, Agents)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the measures necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Portuguese Republic has failed to fulfil its obligations under Article 71 of that directive;*

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

([1]) OJ C 183, 4.8.2007.

Order of the Court of 20 February 2008 — Comunidad Autónoma de Valencia — Generalidad Valenciana v Commission of the European Communities

(Case C-363/06) ([1])

(Appeal — Article 119 of the Rules of Procedure — Article 19 of the Statute of the Court of Justice — Representation by a lawyer — Compliance with the essential procedural requirements of the Rules of Procedure — Principle of non-discrimination — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2008/C 128/25)

Language of the case: Spanish

Parties

Appellant: Comunidad Autónoma de Valencia — Generalidad Valenciana (represented by: C. Fernández Vicién, I. Moreno-Tapia Rivas, M.J. Rodríguez Blasco, abogados, and J.V. Sánchez-Tarazaga Marcelino)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and L. Escobar Guerrero, acting as Agents)

Intervener in support of the appellant: Kingdom of Spain (represented by: N. Días Abad)

Intervener in support of the other party to the proceedings: Italian Republic (represented by:I.M. Braguglia, Agent, and P. Gentili, avvocato dello Stato)

Re:

Appeal against the order of the Court of First Instance (Second Chamber) of 5 July January 2006 in Case T-357/05 *Comunidad Autónoma de Valencia — Generalidad Valenciana* v *Commission*, by which the Court dismissed as manifestly inadmissible the appellant's application to annul Commission Decision C(2005) 1867 final of 27 June 2005 concerning the reduction of the financial assistance initially granted from the Cohesion Fund to Project Group No 97/11/61/028, concerning the collection and treatment of waste waters on the Mediterranean coast of the Comunidad Autónoma de Valencia (Spain) — Representation by a lawyer — Article 19 of the Statute of the Court of Justice

Operative part of the order

1. *The appeal is dismissed.*

2. *The Comunidad Autónoma de Valencia — Generalidad Valenciana is ordered to pay the costs.*

(1) OJ C 261, 28.10.2006.

Order of the Court (Sixth Chamber) of 13 February 2008 — Indorata-Serviços e Gestão, Ld[a] v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-212/07) (1)

(Appeal — Community trade mark — Word mark HAIRTRANSFER — Refusal of registration — Lack of distinctive character)

(2008/C 128/26)

Language of the case: German

Parties

Appellant: Indorata-Serviços e Gestão, Ld[a] (represented by: T. Wallentin, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Weberndörfer, acting as Agent)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 15 February 2007 in Case T-204/04 *Indorata-Serviços e Gestão, Ld[a]* v *OHIM*, by which the Court of First Instance dismissed the action for annulment of the decision refusing registration of the word mark HAIRTRANSFER for goods and services in Classes 8, 22, 41 and 44 — Distinctiveness of the mark

Operative part of the order

1. *The appeal is dismissed.*

2. *Indorata-Serviços e Gestão, Ld[a] is ordered to pay the costs.*

(1) OJ C 155, 7.7.2007.

Order of the Court (Fifth Chamber) of 15 February 2008 — Carsten Brinkmann v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-243/07) (1)

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word sign 'terranus' — Refusal of registration)

(2008/C 128/27)

Language of the case: German

Parties

Appellant: Carsten Brinkmann (represented by: K. van Bebber, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, acting as Agent), Terra Networks SA

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 22 March 2007 in Case T 322/05 *Brinkmann* v *OHIM — Terra Networks (Terranus)* dismissing the action brought by the applicant for the Community word mark 'TERRANUS' (for goods in Class 36) for annulment of Decision R 1145/2004-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 10 June 2005, by which the appeal against the decision of the Opposition Division to refuse registration of the mark was dismissed in opposition proceedings brought by the holder of the Community trade mark and national figurative mark 'TERRA' for goods in Class 36 — Likelihood of confusion between the two marks

Operative part of the order

1. *The appeal is dismissed.*

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

(1) OJ C 199, 25.8.2007.

Order of the Court of 19 February 2008 — Tokai Europe GmbH v Commission of the European Communities

(Case C-262/07) [1]

(Appeal — Regulation (EC) No 384/2004 — Classification of certain goods in the Combined Nomenclature — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2008/C 128/28)

Language of the case: German

Parties

Appellant: Tokai Europe GmbH (represented by: G. Kroemer, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities (represented by: S. Schønberg and B. Schima, acting as Agents)

Re:

Appeal against the order of the Court of First Instance (Fourth Chamber) of 19 March 2007 in Case T-183/04 *Tokai Europe* v *Commission*, by which the Court dismissed as inadmissible an action for annulment of Commission Regulation (EC) No 384/2004 of 1 March 2004 concerning the classification of certain goods in the Combined Nomenclature (OJ 2004 L 64, p. 21) — Requirement to be individually concerned by the contested regulation — Right to a fair hearing

Operative part of the order

1. *The appeal is dismissed.*

2. *Tokai Europe GmbH is ordered to pay the costs.*

[1] OJ C 170, 21.7.2007.

Reference for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht (Germany) lodged on 30 January 2008 — Carmen Media Group Ltd v Land Schleswig-Holstein and Minister for the Interior for the Land Schleswig-Holstein

(Case C-46/08)

(2008/C 128/29)

Language of the case: German

Referring court

Schleswig-Holsteinisches Verwaltungsgericht

Parties to the main proceedings

Applicant: Carmen Media Group Ltd

Defendants: Land Schleswig-Holstein and Minister for the Interior for the Land Schleswig-Holstein

Questions referred

1. Is Article 49 EC to be interpreted as meaning that reliance on the freedom to provide services requires that a service provider be permitted, in accordance with the provisions of the Member State in which it is established, to provide that service there as well — in the present case, restriction of the Gibraltar gambling licence to 'offshore bookmaking'?

2. Is Article 49 EC to be interpreted as precluding a national monopoly on the operation of sports betting and lotteries (with more than a low potential risk of addiction), justified primarily on the grounds of combating the risk of gambling addiction, whereas other games of chance, with considerable potential risk of addiction, may be provided in that Member State by private service providers, and the different legal rules for sports betting and lotteries, on the one hand, and other games of chance, on the other, are based on the differing legislative powers of the Bund and the Länder?

   If question (2) is answered in the affirmative:

3. Is Article 49 EC to be interpreted as precluding national rules which make entitlement to the grant of a licence to operate and arrange games of chance subject to the discretion of the competent licensing authority, even where the conditions for the grant of a licence as laid down in the legislation have been fulfilled?

4. Is Article 49 EC to be interpreted as precluding national rules prohibiting the operation and brokering of public games of chance on the internet, in particular where, at the same time, although only for a transitional period of one year, their online operation and brokering is permitted, subject to legislation protecting minors and players, for the purposes of the principle of proportionality and to enable two commercial gambling brokers who have previously operated exclusively online to switch over to those distribution channels permitted by the Staatsvertrag?

Action brought on 11 February 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-47/08)

(2008/C 128/30)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and H. Støvlbæk, agents)

Defendant: Kingdom of Belgium

Form of order sought

The applicant claims that the Court should:

— declare that, by laying down a nationality requirement for access to the profession of notary and by failing to transpose Council Directive 89/48/EEC [1] in respect of the occupation of notary, the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 and 45 EC, and Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By its action, the Commission first of all alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts freedom of establishment as laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According to the Commission, the tasks entrusted to notaries under Belgian law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment. Those tasks, in fact, do not confer on notaries a power of coercion and less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

By its second complaint, the Commission further alleges that the defendant failed to fulfil its obligations by failing to transpose Directive 89/48/EEC in respect of the profession of notary. As it is a regulated profession, the directive is fully applicable to that profession and the high level of qualification required of notaries could easily be guaranteed by an aptitude test or an adaptation period.

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

Action brought on 12 February 2008 — Commission of the European Communities v French Republic

(Case C-50/08)

(2008/C 128/31)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and M H. Støvlbæk, Agents)

Defendant: French Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by laying down a nationality requirement for access to the profession of notary, the French Republic has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 EC and 45 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts the freedom of establishment laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According to the Commission, the tasks entrusted to notaries under French law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment.

First, those tasks do not in fact confer on notaries a genuine power of coercion and the respective rights and duties of a judge and notary are completely separate.

Secondly, less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

Action brought on 12 February 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-51/08)

(2008/C 128/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and H. Støvlbæk, agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

— declare that, by laying down a nationality requirement for access to the profession of notary and by failing to transpose Council Directive 89/48/EEC [1] in respect of the occupation of notary, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 and 45 EC, and Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

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

Pleas in law and main arguments

By its action, the Commission first of all alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts freedom of establishment as laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According to the Commission, the tasks entrusted to notaries under Luxemburgish law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment. Those tasks, in fact, do not confer on notaries a power of coercion and less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

By its second complaint, the Commission further alleges that the defendant failed to fulfil its obligations by failing to transpose Directive 89/48/EEC in respect of the profession of notary. As it is a regulated profession, the directive is fully applicable to that profession and the high level of qualification required of notaries could easily be guaranteed by an aptitude test or an adaptation period.

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

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz (Austria), lodged on 15 February 2008 — Dachsberger & Söhne GmbH v Zollamt Salzburg, Erstattungen

(Case C-77/08)

(2008/C 128/33)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Graz

Parties to the main proceedings

Appellant: Dachsberger & Söhne GmbH

Respondent: Zollamt Salzburg, Erstattungen

Questions referred

1. Is the second sentence of the second subparagraph of Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 ([1]), which provides that, for the calculation of the requested refund in the case of a differentiated refund, *'the differentiated part of the refund shall be calculated using the particulars of quantity, weight and destination provided pursuant to Article 47'*, to be interpreted as meaning that the expression *'particulars of quantity, weight and destination provided pursuant to Article 47'* refers to the particulars in the specific application made pursuant to Article 47(1), with the result that the differentiated part of the refund is requested only at the time of presentation of the application within the meaning of Article 47(1)?

2. If the reply to the first question is in the affirmative, the question arises as to whether, if the request for payment pursuant to Article 47(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 is already to be submitted 'in the document used for export to enable products to qualify for a refund' (here, the export declaration), the abovementioned provision is to be interpreted as meaning that the calculation of the refund requested in relation to the differentiated part is to be made using the particulars in the export declaration, with the result that the differentiated part of the refund is requested also with the export declaration?

3. If the reply to the first question is in the negative, the question arises as to whether the abovementioned provision is to be interpreted as meaning that the calculation of the refund requested in relation to the differentiated part is to be made using the documents to be presented in accordance with Article 47 of Commission Regulation (EEC) No 3665/87 of 27 November 1987, with the result that the differentiated part of the refund is requested only at the time of presentation of the '*documents relating to payment*' within the meaning of Article 47(2) of Commission Regulation (EEC) No 3665/87 of 27 November 1987?

4. If the reply to the third question is in the affirmative, the question arises as to whether the abovementioned provision is to be interpreted as meaning that, for the purpose of requesting the differentiated part of the refund, the presentation even of such documents within the meaning of Article 47(2) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 which are defective is sufficient, with the consequence in law that the sanction provision of Article 11 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 is applicable also in relation to the differentiated part of the refund?

([1]) OJ 1994 L 310, p. 57.

Appeal brought on 25 February 2008 by Miguel Cabrera Sánchez against the judgment delivered on 13 December 2007 in Case T-242/06 *Miguel Cabrera Sánchez* v *OHIM and Industrias Cárnicas Valle, S.A.*

(Case C-81/08 P)

(2008/C 128/34)

Language of the case: Spanish

Parties

Appellant: Miguel Cabrera Sánchez (represented by: J. A. Calderón Chavero and T. Villate Consonni, abogados)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Industrias Cárnicas Valle, S.A.

Form of order sought

— Set aside the judgment of the Court of First Instance (Third Chamber) delivered on 13 December 2007 in case T-242/06 seeking annulment of the decision in question since the appellant claims that the marks EL CHARCUTERO (appellant) and EL CHARCUTERO ARTESANO (respondent) are clearly incompatible;

— Make an order for costs.

Pleas in law and main arguments

The appellant claims, contrary to the judgment under appeal, that the Community trade mark 'El chacutero Artesano' falls under the prohibition in Article 8(1)(b) of Regulation 40/94 ([1]) since, upon opposition by the proprietor of an earlier trade mark, in this case, the Spanish mark 'El Charcutero', the trade mark applied for is not to be registered if, because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected, in this case, Spain. The likelihood of confusion includes the likelihood of association with the earlier trade mark.

([1]) Council Regulation of 20 December 1993 on the Community trade mark (OJ 1993 L 11, p. 1).

Reference for a preliminary ruling from the Thüringer Finanzgericht (Germany), lodged on 25 February 2008 — Glückauf Brauerei GmbH v Hauptzollamt Erfurt

(Case C-83/08)

(2008/C 128/35)

Language of the case: German

Referring court

Thüringer Finanzgericht

Parties to the main proceedings

Claimant: Glückauf Brauerei GmbH

Defendant: Hauptzollamt Erfurt

Question referred

Are the criteria of legal and economic independence referred to in Article 4(1) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages ([1]) for applying the reduced duty rates to be understood, in view of the recitals to the Directive, as meaning that economic dependence between otherwise legally independent breweries is to be presumed only where the breweries concerned cannot act as competitors in the market uninfluenced by each other, or is the mere de facto possibility of influence on the business activity of the breweries sufficient for the criterion of independence to be met no longer?

([1]) OJ 1992 L 316, p. 21.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 27 February 2008 — David Hütter v Technische Universität Graz

(Case C-88/08)

(2008/C 128/36)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: David Hütter

Defendant: Technische Universität Graz

Question referred

Are Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation to be understood as precluding national legislation ([1]) (here: Paragraphs 3(3) and 26(1) of the Austrian Vertragsbedienstetengesetz 1948 (1948 Law on contractual employees)) which excludes accreditable previous service from being taken into account in the determination of the reference date for salary increments in so far as such service was completed before the person concerned reached the age of 18 years?

([1]) OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Augstākās tiesas Senāta (Republic of Lativa) lodged on 28 February 2008 — Schenker SIA v Valsts ieņēmumu dienests

(Case C-93/08)

(2008/C 128/37)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Schenker SIA

Defendant: Valsts ieņēmumu dienests

Question referred

Must Article 11 of Regulation No 1383/2003 ([1]) be interpreted as precluding the possibility of imposing a penalty on the declarant or owner of goods under the national law, where the intellectual property right-holder (the right-holder) reaches an agreement, with the declarant or the owner of those goods, to abandon them for their destruction, or engages in discussions in respect of the possibility of the goods being abandoned for their destruction, and in the course of that procedure, the customs authorities receive information that the goods are counterfeit?

([1]) Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7).

Appeal brought on 3 March 2008 by Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV against the judgment of the Court of First Instance (Second Chamber) delivered on 12 December 2007 in Case T-112/05: Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV v Commission of the European Communities

(Case C-97/08 P)

(2008/C 128/38)

Language of the case: English

Parties

Appellants: Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals International BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV (represented by: Mr C. Swaak, advocaat, Mr M. van der Woude, avocat, Ms M. Mollica, avvocato)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellants claim that the Court should rule:

— that the judgment of the Court of First Instance of 12 December 2007 in Case T-112/05 be set aside, insofar as it rejected the plea that responsibility was wrongfully attributed — jointly and severally — to Akzo Nobel NV;

— that the Contested Decision be annulled, in as far as it attributed responsibility to Akzo Nobel NV;

— that the Commission pay the costs of this appeal and of the proceedings before the Court of First Instance in as far as they concern the plea raised in the present appeal.

Pleas in law and main arguments

The applicants consider that the Court of First Instance has misapplied the concept of 'undertaking' within the meaning of Article 81 EC and Article 23(2) of Regulation 1/2003 ([1]), as interpreted by the Court in its case-law on the imputation of the unlawful conduct of a subsidiary to its parent company.

([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, p. 1).

Reference for a preliminary ruling from the Juzgado de lo Mercantil nº 7 de Madrid (Spain) lodged on 4 March 2008 — Asociación de Gestión de Derechos Intelectuales (AGEDI) and Asociación de Artistas Intérpretes o Ejecutantes — Sociedad de Gestión de España (AIE) v Sogecable S.A. and Canal Satélite Digital S.L.

(Case C-98/08)

(2008/C 128/39)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil nº 7 de Madrid

Parties to the main proceedings

Applicants: Asociación de Gestión de Derechos Intelectuales (AGEDI) and Asociación de Artistas Intérpretes o Ejecutantes — Sociedad de Gestión de España (AIE)

Defendants: Sogecable S.A. and Canal Satélite Digital S.L.

Question referred

Does Community law and, in particular, Council Directive 92/100/EEC ([1]) of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property permit the Member States to adopt a provision like Article 109.1 of Law 22/1987 of 11 November on Intellectual Property, which recognises the exclusive right of producers of phonograms published for commercial purposes to authorise the public communication of those phonograms and copies thereof?

([1]) OJ 1992 L 346, p. 61.

Action brought on 3 March 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-100/08)

(2008/C 128/40)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillan and R. Troosters, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Commission claims that the Court should,

1. Declare that the Kingdom of Belgium has failed to fulfil its obligations under Article 28 of the Treaty establishing the European Community by

   — making the import, keeping and sale of specimens of birds born and bred in captivity that were brought to the market legally in other Member States subject to restrictive conditions that require the market participants concerned to alter the marking of the birds so as to comply with the special Belgian requirements, and failing to recognise the marking recognised in other Member States or the certificates issued for this purpose by the CITES authorities;

   — denying traders the possibility to receive exemptions from the prohibition to keep indigenous European birds which were brought to the market legally in other Member State.

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

Pleas in law and main arguments

The Royal Decree of 9 September 1981 on the protection of birds in the Flemish Region and the Royal Decree of 26 October 2001 on measures concerning the import, export and transit of certain species of non-indigenous wild birds contain provisions pursuant to which (1) the import, keeping and sale of specimens of birds born and bred in captivity that were brought to the market legally in other Member States are subject to restrictive conditions, and (2) traders are denied the possibility to receive exemptions from the prohibition to keep indigenous European birds that were brought to the market legally in other Member States.

The Commission submits that those measures constitute measures having equivalent effect to quantitative restrictions and are therefore, as a matter of principle, prohibited under Article 28 EC. First, the conditions created by the Belgian legal provisions have the effect of requiring changes to the manner in which specimens of birds that were brought to the market legally in other Member States are presented and, second, trade is also restricted as a result of the prohibition on traders to keep certain birds that were brought to the market legally in other Member States.

The Commission does not exclude in general that certain restrictions on trade can be justified in this context under Article 30 EC if they aim to protect rare species with specific characteristics. However, this is not what the Belgian legal provisions aim to do. In addition, the Belgian provisions are neither necessary nor proportionate to, where required, achieve such a legitimate aim.

Action brought on 6 March 2008 — Commission of the European Communities v Hellenic Republic

(Case C-106/08)

(2008/C 128/41)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and N. Yerrell)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to take all the measures necessary to ensure that vehicles put into service for the first time from 1 May 2006 must be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85 and to issue the corresponding driver cards, the Hellenic Republic has failed to fulfil its obligations under Article 2(1)(a) and (2) of Council Regulation (EC) No 2135/98, as amended by Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006;

— order Hellenic Republic to pay the costs.

Pleas in law and main arguments

Article 2(2) of the Regulation states that 'Member States shall take the necessary measures to ensure that they are able to issue driver cards at the latest on the 20th day following the day of publication of Regulation (EC) No 561/2006'.

Regulation No 561/2006 was published in the *Official Journal of the European Union* on 11 April 2006 and it follows that the mandatory requirement of installation of a digital tachograph in all vehicles put into circulation in the European Union for the first time became applicable on 1 May 2006.

The Hellenic Republic responded to the Commission's reasoned opinion on 30 May 2007 and explained to the Commission that, taking into account every possible delay completing the procedure, issue of the digital tachograph cards to drivers would be possible by the end of 2007.

The Hellenic Republic responded to the Commission's reasoned opinion on 30 May 2007 and explained to the Commission that, taking into account every possible delay in completing the procedure, issue of the digital tachograph cards to drivers would be possible by the end of 2007.

The Commission asks the Court to order the Hellenic Republic to pay the costs.

Action brought on 13 March 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-112/08)

(2008/C 128/42)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M.A. Rabanal Suárez and P. Dejmek, Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to adopt all the all the laws, regulations and administrative provisions necessary to comply with Directive 2006/48/EC ([1]) of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and in particular: Article 68(2), Article 72, Article 73(3), Article 74, Articles 99, 100 and 101, Articles 110 to 114, Articles 118 and 119, Articles 124 to 127, Articles 129 to 132, Article 133, Article 136, Articles 144 and 145, Article 149, Article 152, Article 154(1), Article 155, Annex V, Annex VI (except part I), Annex VII to XII (except Annex X parts I, II and III), and in any event, by failing to communicate those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under the directive;

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2006/48/EC into national law expired on 31 December 2006.

([1]) OJ 2006 L 177, p. 1.

Reference for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 17 March 2008 — C. Meerts v Proost NV

(Case C-116/08)

(2008/C 128/43)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: C. Meerts

Respondent: Proost NV

Question referred

Are clauses 2.4, 2.5, 2.6 and 2.7 of the framework agreement on parental leave concluded on 14 December 1995 by the general cross-industry organisations UNICE, CEEP and the ETUC which is annexed to Council Directive 96/34/EC ([1]) of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC to be interpreted as meaning that, where an employer unilaterally terminates an employment contract without urgent cause or without compliance with the statutory period of notice at a time when the worker is availing himself of arrangements for reduced working hours, the payment in lieu of notice that is due to the worker must be determined by reference to the base salary calculated as if the worker had not reduced his working hours as a form of parental leave in accordance with clause [2].3(a) of the framework agreement?

([1]) OJ 1996 L 145, p. 4.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 18 March 2008 — Transportes Urbanos y Servicios Generales, SAL v Administración del Estado

(Case C-118/08)

(2008/C 128/44)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Transportes Urbanos y Servicios Generales, SAL

Defendant: Administración del Estado

Question referred

Is it contrary to the principles of equivalence and effectiveness to apply differing case-law of the Tribunal Supremo of the Kingdom of Spain in the judgments of 29 January 2004 and 24 May 2005 to actions for financial liability against the State qua legislature in respect of administrative acts adopted pursuant to a law which has been declared unconstitutional and to such actions in respect of administrative acts adopted pursuant to a measure which has been held to be contrary to Community law?

Reference for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 18 March 2008 — Mechel Nemunas UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-119/08)

(2008/C 128/45)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania)

Parties to the main proceedings

Claimant: Mechel Nemunas UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate attached to the Ministry of Finance of the Republic of Lithuania)

Question referred

Are First Council Directive 67/227/EEC ([1]) and/or Article 33 of Sixth Council Directive 77/388/EEC ([2]) to be interpreted as having prohibited a Member State from maintaining, and levying, deductions from income in accordance with the Law of the Republic of Lithuania on the financing of the road maintenance and development programme in the form of the tax which has been described earlier in this order?

([1]) First Council Directive of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14).

([2]) Sixth Council Directive 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 45, p. 1).

Action brought on 31 March 2008 — Commission of the European Communities v Hellenic Republic

(Case C-130/08)

(2008/C 128/46)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Kontou-Durande)

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative measures necessary to ensure, in every case, examination of the merits of applications for asylum of third-country nationals who, in accordance with Article 16(1)(d) of Regulation (EC) No 343/2003, are transferred to Greece so as to be taken back for examination of their applications, the Hellenic Republic has failed to fulfil its obligations under Article 3(1) of Regulation No 343/2003;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The United Nations High Commissioner for Refugees drew the Commission's attention to the question whether Greek legislation relating to the procedure for recognising foreign nationals as refugees is compatible with Regulation No 343/2003 in cases where the foreign national arbitrarily has left the country and a decision discontinuing the procedure for consideration of asylum has been made in his regard.

2. This problem results from Article 2(8) of Presidential Decree No 61/99 (FEK (Official Gazette) A 63) of 6 April 1999, which concerns discontinuance of the procedure for consideration of asylum. That provision treats arbitrary

departure of the applicant for asylum without his giving notice as a withdrawal and the procedure for examination of the application is discontinued by a decision of the Secretary General of the Ministry of Public Order that is notified to the person concerned as a person whose whereabouts are unknown. That decision can be set aside only if the applicant presents himself to the competent authorities again no later than three months from notification of the decision, and provided that he adduces evidence showing that his absence was due to force majeure.

3. The passage of an applicant for asylum, without his giving notice, from the Member State in which he has submitted the application for asylum to another Member State is one of the typical situations that Regulation No 343/2003 seeks specifically to regulate so as to ensure that the merits of his application are examined by the State considered responsible for examining the application, under Article 16(1) of the regulation.

4. However, the requirements imposed by Article 2(8) of the presidential decree have the combined effect of making it impossible in practice to challenge a discontinuance decision before the courts and to have real access to the procedure for determining a refugee's status.

5. The Hellenic Republic acknowledged that Greek legislation may create a problem in relation to Regulation No 343/2003 and displayed willingness to take measures in that regard. Thus, it proposed solving the problem by means of the adoption of a presidential decree which would transpose Council Directive 2005/85/EC into national law and would specify that the provisions at issue would not apply in cases where Regulation No 343/2003 applied.

6. At the same time it gave assurances that it would examine the merits of every application for asylum of persons who are transferred for re-examination within the framework of Regulation No 343/2003 and that it would revoke any discontinuance decisions that had been adopted.

7. The Commission takes account of those assurances given by the Hellenic Republic. None the less, it considers that they are not sufficient to guarantee the required legal certainty regarding the correct implementation, in all cases of an application for asylum, of the regulation's provisions and in particular of the examination of the merits of every application for asylum, in such a way as to ensure actual and effective access for refugees to the procedures for making determinations.

8. On the basis of the foregoing, the Commission considers that, by failing to adopt the necessary measures to ensure that it examines the merits of applications for asylum of third-country nationals in respect of whom a discontinuance decision has been issued on the ground of arbitrary departure and whom it has taken back, in accordance with Article 3(1) of Regulation No 343/2003, the Hellenic Republic has failed to fulfil its obligations under that provision.

Order of the President of the Court of 20 February 2008 (reference for a preliminary ruling from the Bayerisches Landessozialgericht, Germany) — Grete Schlepps v Deutsche Rentenversicherung Oberbayern

(Case C-60/06) ([1])

(2008/C 128/47)

Language of the case: German

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

([1]) OJ C 131, 3.6.2006.

Order of the President of the First Chamber of the Court of 27 February 2008 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart, Germany) — Raiffeisenbank Mutlangen eG v Roland Schabel

(Case C-99/06) ([1])

(2008/C 128/48)

Language of the case: German

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

([1]) OJ C 96, 22.4.2006.

Order of the President of the Seventh Chamber of the Court of 11 March 2008 (reference for a preliminary ruling from the Tribunale di Genova, Italy) — Consel Gi. Emme Srl v Sistema Logistico dell'Arco Ligure e Alessandrino Srl (SLALA)

(Case C-467/06) ([1])

(2008/C 128/49)

Language of the case: Italian

The President of the Court (Seventh Chamber) has ordered that the case be removed from the register.

([1]) OJ C 326, 30.12.2006.

Order of the President of the Court of 13 February 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-485/06) ([1])

(2008/C 128/50)

Language of the case: German

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

([1]) OJ C 326, 30.12.2006.

Order of the President of the Eighth Chamber of the Court of 20 February 2008 — Commission of the European Communities v Italian Republic

(Case C-62/07) ([1])

(2008/C 128/51)

Language of the case: Italian

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

([1]) OJ C 69, 24.3.2007.

Order of the President of the Court of 15 January 2008 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (High Court of Justice of Galicia), Spain) — Doña Rosa Méndez López v Instituto Nacional de Empleo (INEM); Instituto Nacional de la Seguridad Social (INSS)

(Case C-97/07) ([1])

(2008/C 128/52)

Language of the case: Spanish

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

([1]) OJ C 95, 28.4.2007.

Order of the President of the Court of 28 February 2008 — Kingdom of Spain v Council of the European Union

(Case C-167/07) ([1])

(2008/C 128/53)

Language of the case: Spanish

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

([1]) OJ C 117, 26.5.2007.

Order of the President of the Court of 13 February 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-216/07) ([1])

(2008/C 128/54)

Language of the case: German

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

([1]) OJ C 129, 9.6.2007.

Order of the President of the Court of 12 February 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-218/07) ([1])

(2008/C 128/55)

Language of the case: German

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

([1]) OJ C 129, 9.6.2007.

Order of the President of the Court of 20 February 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-254/07) ([1])

(2008/C 128/56)

Language of the case: Spanish

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

([1]) OJ C 170, 21.7.2007.

Order of the President of the Court of 21 February 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-255/07) ([1])

(2008/C 128/57)

Language of the case: Spanish

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

([1]) OJ C 183, 4.8.2007.

Order of the President of the Court of 11 February 2008 — Commission of the European Communities v Portuguese Republic

(Case C-314/07) ([1])

(2008/C 128/58)

Language of the case: Portuguese

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

([1]) OJ C 199, 25.8.2007.

Order of the President of the Court of 6 February 2008 — Commission of the European Communities v Ireland

(Case C-412/07) ([1])

(2008/C 128/59)

Language of the case: English

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

([1]) OJ C 247, 20.10.2007.

Order of the President of the Court of 19 February 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-422/07) ([1])

(2008/C 128/60)

Language of the case: Spanish

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

([1]) OJ C 283, 24.11.2007.

Order of the President of the Court of 10 March 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-469/07) ([1])

(2008/C 128/61)

Language of the case: French

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

([1]) OJ C 8, 12.1.2008.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 10 April 2008 — Deutsche Telekom v Commission

(Case T-271/03) ([1])

(Competition — Article 82 EC — Charges for access to the fixed-line telecommunications network in Germany — Margin squeeze — Charges approved by the national regulatory authority for telecommunications — Leeway of the dominant undertaking)

(2008/C 128/62)

Language of the case: German

Parties

Applicant: Deutsche Telekom AG (Bonn, Germany) (represented by: initially, K. Quack, U. Quack and S. Ohlhoff, and subsequently, U. Quack and S. Ohlhoff, lawyers)

Defendant: Commission of the European Communities (represented by: initially, K. Mojzesowicz and S. Rating, then K. Mojzesowicz and A. Whelan, and subsequently, K. Mojzesowicz, W. Mölls and O. Weber, Agents)

Interveners in support of the defendant: Arcor AG & Co. KG (Eschborn, Germany), (represented by: initially, M. Klusmann, F. Wiemer and M. Rosenthal, then M. Klusmann and F. Wiemer, and subsequently, M. Klusmann, lawyers); Versatel NRW GmbH, formerly Tropolys NRW GmbH, formerly CityKom Münster GmbH Telekommunikationsservice and TeleBeL Gesellschaft für Telekommunikation Bergisches Land mbH (Essen, Germany); EWE TEL GmbH (Oldenburg, Germany); HanseNet Telekommunikation GmbH (Hamburg, Germany); Versatel Nord-Deutschland GmbH, formerly KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH (Flensburg, Germany); NetCologne Gesellschaft für Telekommunikation mbH (Cologne, Germany); Versatel Süd-Deutschland GmbH, formerly tesion Telekommunikation GmbH (Stuttgart, Germany); and Versatel West-Deutschland GmbH, formerly Versatel Deutschland GmbH & Co. KG (Dortmund, Germany) (represented by N. Nolte, T. Wessely and J. Tiedemann, lawyers)

Re:

Application for annulment of Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C 1/37.451, 37.578, 37.579 — Deutsche Telekom AG) (OJ 2003 L 263, p. 9), and, in the alternative, reduction of the fine imposed on the applicant in Article 3 of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutsche Telekom AG to bear its own costs and to pay those incurred by the Commission;*

3. *Orders (1) Arcor AG & Co. KG and (2) Versatel NRW GmbH, EWE TEL GmbH, HanseNet Telekommunikation GmbH, Versatel Nord-Deutschland GmbH, NetCologne Gesellschaft für Telekommunikation mbH, Versatel Süd-Deutschland GmbH and Versatel West Deutschland GmbH to bear their own costs.*

([1]) OJ C 264, 1.11.2003.

Judgment of the Court of First Instance of 17 April 2008 — Dainichiseika Colour & Chemicals Mfg. v OHIM (Representation of a pelican)

(Case T-389/03) ([1])

(Community trade mark — Opposition proceedings — Application for a figurative Community trade mark depicting a pelican — Earlier Community or national figurative trade mark Pelikan — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 128/63)

Language of the case: English

Parties

Applicant: Dainichiseika Colour & Chemicals Mfg. Co. Ltd (Tokyo, Japan) (represented by: J. Hofmann and B. Linstow, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Pelikan Vertriebsgesellschaft mbH & Co.KG (Hanover, Germany) (represented by: A. Renck, V. von Bomhard and A. Pohlmann, and subsequently by A. Renck, V. von Bomhard and T. Dolde, lawyers)

Re:

Action brought against the decision of the Second Chamber of the Board of Appeal of OHIM of 18 September 2003 (Case R 191/2002-2) relating to opposition proceedings between Pelikan Vertriebsgesellschaft mbH & Co. KG and Dainichiseika Colour & Chemicals Mfg. Co. Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Dainichiseika Colour & Chemicals Mfg. Co. Ltd to pay the costs.*

([1]) OJ C 21, 21.1.2004.

Judgment of the Court of First Instance of 10 April 2008 — Netherlands v Commission

(Case T-233/04) ([1])

(State aid — Directive 2001/81/EC — National measure establishing an emission trading scheme for nitrogen oxides — Decision finding the aid compatible with the common market — Admissibility — Advantage — Measure lacking selective character)

(2008/C 128/64)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: H. Sevenster, J. van Bakel and M. de Grave, Agents)

Defendant: Commission of the European Communities (represented by: H. van Vliet, and V. Di Bucci, Agents)

Intervener in support of the Applicant: Federal Republic of Germany (represented by W.-D. Plessing and M. Lumma, Agents)

Re:

Application for annulment of Commission Decision C(2003) 1761 final of 24 June 2003, relating to State aid N 35/2003 concerning the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2003) 1761 final of 24 June 2003 relating to State aid N 35/2003 concerning the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands.*

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

3. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 275, 15.11.2003 (formerly case C-388/03).

Judgment of the Court of First Instance (Fourth Chamber) of 17 April 2008 — Cestas v Commission

(Case T-260/04) ([1])

(Action for annulment — European Development Fund — Repayment of amounts paid — Debit note — Act not amenable to review — Preparatory act — Inadmissibility)

(2008/C 128/65)

Language of the case: Italian

Parties

Applicant: Centro di educazione sanitaria e tecnologie appropriate sanitarie (Cestas) (Bologna (Italy) (represented initially by: N. Amadei and C. Turk, and subsequently by N. Amadei and P. Manzini, lawyers)

Defendant: Commission of the European Communities (represented by: E. Montaguti and F. Dintilhac, Agents)

Re:

Annulment of the decision of 21 April 2004 of the Commission (Delegation in the Republic of Guinea), sent to the applicant by registered letter, ordering it to pay the amount of GNF 959 543 (EUR 397 126,02).

Operative part of the judgment

The Court:

1. *Dismisses the action as being inadmissible.*

2. *Orders the Centro di educazione sanitaria e tecnologie appropriate sanitarie (Cestas) to bear three fifths of its own costs and also to pay three fifths of the costs incurred by the Commission.*

3. *Orders the Commission to bear two fifths of its own costs and also to pay two fifths of the costs incurred by Cestas.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 15 April 2008 — SIDE v Commission

(Case T-348/04) ([1])

(State aid — Export aid in the book sector — Failure to give prior notification — Article 87(3)(d) EC — Temporal scope of Community law — Method of calculating the amount of the aid)

(2008/C 128/66)

Language of the case: French

Parties

Applicant: Société internationale de diffusion and d'édition SA (SIDE) (Vitry-sur-Seine, France) (represented by: N. Coutrelis and V. Giacobbo, lawyers)

Defendant: Commission of the European Communities (represented by: J.-P. Keppenne, Agent)

Intervener in support of the defendant: French Republic (represented by: G. de Bergues and S. Ramet initially and, subsequently, by G. de Bergues and A.-L. Vendrolini, Agents)

Re:

APPLICATION for annulment of the last sentence of Article 1 of Commission Decision 2005/262/EC of 20 April 2004 on the aid implemented by France in favour of the Coopérative d'exportation du livre français (CELF) (OJ 2005 L 85, p. 27).

Operative part of the judgment

The Court:

1. *Annuls the last sentence of Article 1 of the Commission's Decision of 20 April 2004 on the aid implemented by France in favour of the Coopérative d'exportation du livre français (CELF).*

2. *Orders the Commission to bear its own costs and those of the Société internationale de diffusion et d'édition SA (SIDE).*

3. *Orders the French Republic to bear its own costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 9 April 2008 — Greece v Commission

(Case T-364/04) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Products processed from fruit and vegetables — Animal premiums — Period of 24 months)

(2008/C 128/67)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias and E. Svolopoulou, Agents)

Defendant: Commission of the European Communities (represented by: M. Condou-Durande and L. Visaggio, initially, and M. Condou-Durande and H. Tserepa-Lacombe, Agents, and N. Korogiannakis, lawyer, subsequently)

Re:

Annulment of Commission Decision 2004/561/EC of 16 July 2004 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 250, p. 21) inasmuch as it excludes certain expenditure by the Hellenic Republic in the sectors of products processed from fruit and vegetables and animal premiums.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 314, 18.12.2004.

Judgment of the Court of First Instance (First Chamber) of 16 April 2008 — Michail v Commission

(Case T-486/04) ([1])

(Staff Case — Officials — Acton for annulment — Duty to provide assistance — Mental harassment)

(2008/C 128/68)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: G. Berscheid and H Tserepa-Lacombe, agents, assisted initially by V. Kasparian, lawyer, then by I. Antypas, lawyer))

Re:

Action for annulment of the implied decision of 20 March 2004 by the Commission rejecting an application for assistance made by the applicant under Article 24 of the Staff Regulations.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Mr Christos Michail to bear one half of his costs;*

3. *orders the Commission to bear its own costs and to pay one half of the costs of Mr Michail.*

([1]) OJ C 57, 5.3.2008.

Judgment of the Court of First Instance of 16 April 2008 — Citigroup and Citibank v OHIM — Citi (CITI)

(Case T-181/05) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative trade mark CITI — Earlier Community word mark CITIBANK — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 40/94)

(2008/C 128/69)

Language of the case: English

Parties

Applicants: Citigroup, Inc., formerly Citicorp, (New York, New York, United States), and Citibank, NA, (New York) (represented by: initially V. von Bomhard, A.W. Renck and A. Pohlmann, lawyers, and subsequently by V. von Bomhard, A.W. Renck, and H. O'Neill, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Citi, SL (Madrid, Spain) (represented by: M. Peris Riera, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 March 2005 (Case R 173/2004-1) in respect of opposition proceedings between Citicorp and Citi SL and opposition proceedings between Citibank NA and Citi SL

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 1 March 2005 (Case R 173/2004-1);*

2. *Orders OHIM to bear its own costs and to pay the costs of Citigroup, Inc., and Citibank, NA, including those costs incurred in the proceedings before the Board of Appeal;*

3. *Orders Citi, SL, to bear its own costs.*

([1]) OJ C 171, 9.7.2005.

Judgment of the Court of First Instance of 17 April 2008 — Nordmilch v OHIM (Vitality)

(Case T-294/06) ([1])

(Community trade mark — Application for the Community word mark Vitality — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2008/C 128/70)

Language of the case: German

Parties

Applicant: Nordmilch eG (Zeven, Germany) (represented by: R. Schneider, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 9 August 2006 (Case R 746/2004-4) concerning the registration of the word sign Vitality as a Community trade mark.

Operative part of the judgment

1. *The action is dismissed.*

2. *Nordmilch eG is ordered to pay the costs.*

([1]) OJ C 310, 16.12.2006.

Order of the Court of First Instance of 2 April 2008 — Maison de l'Europe Avignon Méditerranée v Commission

(Case T-100/03) ([1])

(Action for annulment — Setting up of an Info-Point Europe — Termination of an agreement entered into by the Commission and the applicant — Manifest inadmissibility)

(2008/C 128/71)

Language of the case: French

Parties

Applicant: Maison de l'Europe Avignon Méditerranée (Avignon, France) (represented by: F. Martineau, lawyer)

Defendant: Commission of the European Communities (represented by: J.-F. Pasquier, acting as Agent)

Re:

Application for the annulment of the decision of the Commission of 24 January 2003 terminating the agreement between the Commission and the applicant on the setting up of an Info-Point Europe (IPE) in Avignon

Operative part of the order

1. *The action is dismissed.*

2. *Maison de l'Europe Avignon Méditerranée is ordered to pay the costs.*

([1]) OJ C 112, 10.5.2003.

Order of the Court of First Instance of 10 March 2008 — Lebedef-Caponi v Commission

(Case T-233/07) ([1])

(Appeal — Staff cases — Officials — Career development report — 2004 appraisal procedure — Appeal manifestly inadmissible)

(2008/C 128/72)

Language of the case: French

Parties

Appellant: Maddalena Lebedef-Caponi (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: H. Krämer and B. Eggers, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 25 April 2007 in Case F-71/06 *Lebedef-Caponi* v *Commission* [2007] ECR I-0000 seeking annulment of that judgment.

Operative part of the order

1. *The appeal is dismissed.*

2. *Maddalena Lebedef-Caponi is ordered to pay her own costs and those incurred by the Commission.*

([1]) OJ C 211, 8.9.2007.

Appeal brought on 18 January 2008 by C. Michail against the judgment of the Civil Service Tribunal delivered on 22 November 2007 in Case F-34/06 Michail v Commission

(Case T-50/08)

(2008/C 128/73)

Language of the case: Greek

Parties

Appellant: C. Michail (represented by C. Meïdanis, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— hold that the present application to set aside the judgment of the Civil Service Tribunal in Case F-34/06 is admissible and well founded;

— annul the disputed measures/decisions of the Civil Service Tribunal in Case F-34/06;

— determine the financial compensation for the non-material harm to the appellant, which amounts to EUR 120 000;

— make an order as to costs as laid down by law.

Grounds of appeal and main arguments

The appellant submits that, in the contested judgment, the Civil Service Tribunal ('the CST') erred in ruling upon his application for annulment of his career development report for 2004 and of the decision of the appointing authority rejecting the complaints submitted by him under Article 90(2) of the Staff Regulations.

More specifically, the appellant contends, first, that that the CST misinterpreted Article 43 of the Staff Regulations and the general provisions implementing that Article. Second, the CST misinterpreted the form of order sought by the application upon which it ruled, and it appraised the evidence wrongly. Third, the CST relied on contradictory reasoning in dismissing his application, with the result that fundamental procedural rights enjoyed by him were infringed. Fourth, the CST erred in refusing to rule on a particular claim or otherwise employed insufficient reasoning and, finally, it wrongly dismissed part of the application for lack of precision.

Action brought on 6 March 2008 — Arch Chemicals Inc. and Others v Commission

(Case T-120/08)

(2008/C 128/74)

Language of the case: English

Parties

Applicants: Arch Chemicals, Inc. (Norwalk, United States), Arch Timber Protection Ltd (Castleford, United Kingdom), Bactria Industriehygiene-Service Verwaltungs GmbH (Kirchheimbolanden, Germany), Rhodia UK Ltd (Watford, United Kingdom), Sumitomo Chemical (UK) plc (London, United Kingdom) and Troy Chemical Company BV (Maassluis, Netherlands) (represented by: C. Mereu, K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— to declare the present application admissible and well founded, or, in the alternative, to join the questions of admissibility to the examination of the substance, or, in the alternative, to reserve its decision on standing until judgment in the main proceedings;

— to order the annulment of Article 3(2) (and Annex II), Article 4, Article 7(3), Article 14(2), second paragraph, Article 15(3) and Article 17 of Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market;

— to declare the illegality and the inapplicability vis-à-vis the applicants of Articles 9(a), 10(3), 11 and 16(1) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market;

— to declare the illegality and the inapplicability vis-à-vis the applicants of Article 6(2) of Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products;

— to order the defendant to pay the costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants seek partial annulment of Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products

on the market ([1]) (hereinafter 'the second review regulation' of 'SRR') and repealing Commission Regulation (EC) No 2032/2003 ([2]), on the grounds that the contested provisions:

(i) maintain the letter and/or the content of provisions originally introduced by Regulation (EC) No 2032/2003 and previously challenged by the applicants (Cases T-75/04 to T-79/04) into the ongoing review of substances in a way which adversely affects their rights and legitimate expectations under Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (hereinafter 'the BDP') ([3]);

(ii) are contradictory in themselves and at odds with the BPD, and

(iii) violate provisions of the EC Treaty and a series of high-ranking principles of EC law such as the principle of undistorted competition, legal certainty and legitimate expectations, proportionality, equal treatment and non-discrimination, as well as the right to property and freedom to pursue a trade.

Moreover, the applicants claim that as participants in the second review regulation, they are entitled to benefit from procedural guarantees and data protection rights (*i.e.* exclusive use) for the data in their notifications and complete dossiers in all Member States in accordance with Article 12 of the BPD. However, according to the applicants, Article 4 of the SRR, by not requiring Member States to cancel biocidal product registrations corresponding to the applicants' notified active substance/product type combinations held by competing companies which do not participate in the review and have no access to the data submitted by the applicants for the purposes of the review, *de jure* and *de facto* violates the exclusive use right granted to the applicants by Article 12 of the BPD. In addition, the applicants submit that the defendant misused the powers entrusted upon it by the basic BPD, by deliberately implementing the BPD in a way which goes beyond the text of it and upsets the applicants' rights and expectations. Further, it is submitted that the contested measure violates EC Treaty provisions on fair competition by allowing companies which do not participate in the review and do not bear investment costs to remain on the market and regain a competitive advantage over the applicants.

The applicants finally raise a plea of illegality against Article 6(2) of the FRR and Articles 9(a), 10(3), 11 and 16(1) of the BPD.

([1]) OJ 2007 L 325, p. 3.
([2]) Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 (OJ 2003 L 307, p. 1).
([3]) OJ 1998 L 123, p. 1.

Action brought on 31 March 2008 — Sahlstedt and Others v Commission

(Case T-129/08)

(2008/C 128/75)

Language of the case: Finnish

Parties

Applicants: Markku Sahlstedt (Karkkila, Finland), Juha Kankkunen (Laukaa, Finland), Mikko Tanner (Vihti, Finland), Toini Tanner (Helsinki, Finland), Liisa Tanner (Helsinki, Finland), Eeva Jokinen (Helsinki, Finland), Aili Oksanen (Helsinki, Finland), Olli Tanner (Lohja, Finland), Leena Tanner (Helsinki, Finland), Aila Puttonen (Ristiina, Finland), Risto Tanner (Espoo, Finland), Tom Järvinen (Espoo, Finland), Runo K. Kurko (Espoo, Finland), Maa- ja metsätaloustuottajain keskusliitto MTK ry (Helsinki, Finland), Maataloustuottajain Keskusliiton Säätiö (Helsinki, Finland) (represented by: K. Marttinen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision which is the subject of this action in so far as it concerns all the SCI sites in the Republic of Finland mentioned in that decision;

— alternatively, should the Court not consider the foregoing possible, annul the decision in so far as it concerns the specific SCI sites set out section 6.2.2.7 of the application;

— requests for information and measures of inquiry:

If the dispute is not decided solely on the basis of the evidence submitted in this application in favour of the applicants, in accordance with the above principal heads of claim, the Court of First Instance of the European Communities should:

1. order the Commission of the European Communities to provide the applicants, in CD-Rom format, with the proposals submitted to it by Finland, including all the areas included in the contested decision together with all information referred to in recital (7) in the preamble to the contested decision,

2. order the Commission of the European Communities to provide to the applicants, in CD-Rom format, scientific data concerning habitats and other information in its possession relating to all the areas of the Republic of Finland referred to in recital (8) in the preamble to the contested decision, together with, in paper format, the maps and the information referred to in recital (9) in the preamble thereto,

3. order the Commission of the European Communities to provide the applicants, in CD-Rom format, with all the documents relating to the sites in the Republic of Finland drawn up during the cooperation mentioned in recital (10) in the preamble to the contested decision, or made available to the Commission at that time, together with paper copies of the maps, and

4. order the Commission of the European Communities to provide the applicants with the opinion of the Habitats Committee mentioned in recital (15) in the preamble to the contested decision.

— order the Commission to pay the applicants' costs in full, together with statutory interest.

Pleas in law and main arguments

The applicants submit that the decision ([1]) is contrary to Community law, in particular Articles 3 and 4 of the Habitats Directive and Annex III thereto, referred to in Article 4. The grounds alleging non-conformity of the decision with Community law are set out in four principal pleas:

(a) The Habitats Directive does not permit earlier decisions relating to the list of sites of Community importance ('SCI sites') to be annulled by way of new decisions in the manner and on the grounds set out. The procedural rules in the Habitats Directive are also binding on the Commission. Any other interpretation would lead to legal uncertainty in relation to national implementing measures and the legal protection of landowners.

(b) According to Article 3 of the Habitats Directive, the Natura 2000 network is a coherent European network of protected areas which is intended to guarantee a favourable conservation status as defined in the directive. The coherence of the network is guaranteed and the favourable conservation status achieved by the fact that Article 4 of and Annex III to the directive, relating to the choice of sites, are detailed technical substantive law rules which are binding on both the Member States and the Commission. Areas cannot be selected as SCI sites without following those two stages. Given the favourable conservation status which was designated as a coherent objective, sites in each Member State must be selected in accordance with uniform criteria corresponding to Article 4 of and Annex III to the Habitats Directive.

(c) Stage 1 in Annex III (the Member State stage) and Stage 2 thereof (the Commission stage) form a whole consisting of acts accompanied by legal effects. The decision relating to sites of Community importance in Stage 2 of the procedure is not in accordance with the Habitats Directive if the proposal in Stage 1 does not satisfy the conditions laid down by the directive.

(d) When the Republic of Finland was preparing its proposal relating to the boreal region as an SCI site, neither Article 4 of the Habitats Directive nor the provisions relating to Stage 1 in Annex III to the directive were observed. As the Republic of Finland's proposal was accepted in its entirety, and as regards all the sites, by decision of the Commission, the Commission decision relating to the SCI sites is also contrary to the directive on that ground alone.

([1]) Commission Decision 2008/24/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Boreal biogeographical region (OJ 2008 L 12, p. 118).

Action brought on 4 April 2008 — Aurelia Finance v OHIM (AURELIA)

(Case T-136/08)

(2008/C 128/76)

Language in which the application was lodged: English

Parties

Applicant: Aurelia Finance SA (Geneva, Switzerland) (represented by M. Elmslie, Solicitor)

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

Form of order sought

— Annul the Decision of the First Board of Appeal of 9 January 2008 in case R 1214/2007-1;

— Remit the applicant's application for *restitutio in integrum* to OHIM for reconsideration; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: A word mark consisting of the word AURELIA for various services in class 36 — application No 274 936

Decision of the OHIM: Refusal of the application for *restitutio in integrum*

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 78 of Council Regulation No 40/94 as the standard of due care required in connection with administrative renewals is lower than that for a party to proceedings before OHIM.

Order of the Court of First Instance of 14 April 2008 — Elektrociepłownia (Zielona Góra) v Commission

(Case T-142/06) ([1])

(2008/C 128/77)

Language of the case: English

The President of the Court of First Instance (Sixth Chamber) has ordered that the case be removed from the register.

([1]) OJ C 178, 29.7.2006.

Order of the Court of First Instance of 25 February 2008 — Cemex UK Cement Ltd v Commission of the European Communities

(Case T-313/07) [1]

(2008/C 128/78)

Language of the case: English

The President of the Court of First Instance (Fourth Chamber) has ordered that the case be removed from the register.

[1] OJ C 235, 6.10.2007.

Order of the Court of First Instance of 1 April 2008 — Simsalagrimm Filmproduktion v Commission of the European Communities and Education, Audiovisual and Culture Executive Agency (EACEA)

(Case T-314/07) [1]

(2008/C 128/79)

Language of the case: German

The President of the Court of First Instance (Eighth Chamber) has ordered that the case be removed from the register.

[1] OJ C 235, 6.10.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 8 April 2008 — Bordini v Commission

(Case F-134/06) ([1])

(Staff cases — Officials — Pensions — Correction coefficient — Member State of residence — Concept of residence — Concept of principal residence — Documents in support)

(2008/C 128/80)

Language of the case: French

Parties

Applicant: Giovanni Bordini (Dover, United Kingdom) (represented by: L. Levi, C. Ronzi and I. Perego, lawyers)

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

Re:

Staff case — First, annulment of the Commission decision of 25 January 2006 failing to recognise that the applicant is resident in the United Kingdom and, in consequence, failing to apply to his pension the correction coefficient for that Member State and, second, a claim for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to bear its own costs and to pay half of the costs which Mr Bordini incurred in respect of the informal meeting of 5 June 2007;*

3. *Save in respect of half of the costs which he incurred in respect of the informal meeting of 5 June 2007, orders Mr Bordini bear his own costs.*

([1]) OJ C 326, 30.12.2006, p. 87.

Action brought on 30 March 2008 — Honnefelder v Commission

(Case F-41/08)

(2008/C 128/81)

Language of the case: German

Parties

Applicant: Stephanie Honnefelder (Brussels, Belgium) (represented by: C. Bode, Rechtsanwalt)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the decision of the Commission not to include the applicant on the reserve list for competition EPSO AD/26/05 on the ground that she was not awarded enough points

Form of order sought

— Annul the decision of the Commission of 10 May 2007 and the decision of 14 December 2007 on the applicant's complaint and order the Commission to assess whether the applicant can be included on the reserve list in a manner that does not infringe the principle of equal treatment and follows proper procedure;

— order the Commission to pay the costs;

— as a precautionary measure, enter a judgment by default.