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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

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

(2008/C 142/01)

OJ C 128, 24.5.2008

Past publications

OJ C 116, 9.5.2008

OJ C 107, 26.4.2008

OJ C 92, 12.4.2008

OJ C 79, 29.3.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 22 April 2008 — Commission of the European Communities v Salzgitter AG, Federal Republic of Germany

(Case C-408/04 P) ([1])

(Appeal — State aid — Approval by the Commission on the basis of the EC Treaty — Steel undertaking — Articles 4(c) CS, 67 CS and 95 CS — ECSC Treaty — EC Treaty — Steel Aid Codes — Concomitant application — Incompatibility of the aid — Compulsory notification of aid granted — Failure to notify the Commission — Prolonged lack of reaction on the part of the Commission — Recovery decision — Principle of legal certainty — Protection of legitimate expectations — Rights of the defence — Obligation to state the reasons on which the decision is based)

(2008/C 142/02)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: V. Kreuschitz and M. Niejahr, Agents)

Other parties to the proceedings: Salzgitter AG (represented by: J. Sedemund and T Lübbig, Rechtsanwälte), Federal Republic of Germany (represented by: M. Lumma, W.-D. Plessing, C. Schulze-Bahr, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 1 July 2004 in Case T-308/00 *Salzgitter AG* v *Commission*, annulling Articles 2 and 3 of Commission Decision 2000/797/ECSC of 28 June 2000 on State aid granted by Germany to Salzgitter AG, Preussag Stahl AG and the group's steel-industry subsidiaries, now known as Salzgitter AG — Stahl und Technologie (SAG) (OJ 2000 L 323, p. 5), concerning the obligation for Germany to recover the aid in question from the applicant — Breach of Article 4(c) CS and of the Third, Fourth, Fifth and Sixth Steel Aid Codes — Breach of the rights of the defence

Operative part of the judgment

The Court:

1. *Dismisses the cross-appeal;*

2. *Sets aside the judgment of the Court of First Instance of the European Communities of 1 July 2004 in Case T-308/00 Salzgitter v Commission to the extent it annuls Articles 2 and 3 of Commission Decision 2000/797/ECSC of 28 June 2000 on State aid granted by the Federal Republic of Germany to Salzgitter AG, Preussag Stahl AG and the group's steel-industry subsidiaries, now known as Salzgitter AG — Stahl und Technologie (SAG) and makes an order on costs;*

3. *Refers the case back to the Court of First Instance of the European Communities;*

4. *Reserves costs.*

([1]) OJ C 314, 18.12.2004.

Judgment of the Court (Fourth Chamber) of 24 April 2008 (reference for a preliminary ruling from the Verwaltungsgericht Köln (Administrative Court, Cologne — Germany) — Arcor AG & Co. KG v Bundesrepublik Deutschland

(Case C-55/06) [1]

(Telecommunications — Regulation (EC) No 2887/2000 — Access to the local loop — Principle of cost-orientation — Costs — Interest on the capital invested — Depreciation of fixed assets — Valuation of local telecommunications infrastructures — Current costs and historic costs — Calculation basis — Actual costs — Costs already paid and forward looking costs — Proof of costs — 'Bottom-up' and 'top-down' analytical models — Detailed national legislation — Margin of discretion of the national regulatory authorities — Judicial review — Procedural autonomy of the Member States — Principles of equivalence and effectiveness — Challenge by the beneficiaries before the courts of decisions authorising the rates of the notified operator — Burden of proof — Supervisory and judicial procedures)

(2008/C 142/03)

Language of the case: German

Referring court

Verwaltungsgericht Köln (Administrative Court, Cologne)

Parties to the main proceedings

Applicant: Arcor AG & Co. KG,

Defendant: Bundesrepublik Deutschland

Intervener: Deutsche Telekom AG

Re:

Reference for a preliminary ruling — Verwaltungsgericht Köln — Interpretation of Article 1(4), Article 3(3) and Article 4 of Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (OJ 2000 L 336, p. 4)

Operative part of the judgment

1. *The interest on the capital invested and the depreciation of the fixed assets deployed for the initial implementation of the local loop are among the costs to be taken into account in accordance with the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation, laid down in Article 3(3) of Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop.*

2. *When applying the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation, laid down in Article 3(3) of Regulation No 2887/2000, in order to determine the calculation basis of the costs of the notified operator, the national regulatory authorities have to take account of actual costs, namely costs already paid by the notified operator and forward looking costs, the latter being based, where relevant, on an estimation of the costs of replacing the network or certain parts thereof.*

3. *Pursuant to Article 4(2)(b) of Regulation No 2887/2000, the national regulatory authority may request notified operators to supply relevant information on the documents justifying the costs taken into account when applying the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation. Since Community law does not contain any provision concerning the accounting documents to be checked, it is the task of the national regulatory authorities alone, in accordance with the law applicable, to examine whether, for the purposes of cost accounting, the documents produced are the most appropriate ones.*

4. *When national regulatory authorities are applying the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation, Community law does not preclude them, in the absence of complete and comprehensible accounting documents, from determining the costs on the basis of an analytical bottom-up or top-down cost model.*

5. *The possibility granted to the Member States, in Article 1(4) of Regulation No 2887/2000, to adopt detailed national measures cannot render inapplicable the principle that rates for unbundled access to the local loop are to be set on the basis of cost-orientation as laid down in Article 3(3) of that regulation.*

6. *It is apparent from Article 4(1) and (2) of Regulation No 2887/2000 that, when examining the rates of notified operators for the provision of unbundled access to their local loop in light of the pricing principle laid down in Article 3(3) of that regulation, the national regulatory authorities have a broad discretion concerning the assessment of the various aspects of those tariffs, including the discretion to change prices, and thus the proposed tariffs. That broad discretion also relates to the costs incurred by the notified operators, such as interest on invested capital and depreciation of fixed assets, the calculation basis of those costs and the cost accounting models used to prove them.*

7. *It is a matter solely for the Member States, within the context of their procedural autonomy, to determine, in accordance with the principles of equivalence and effectiveness of judicial protection, the competent court, the nature of the dispute and, consequently, the detailed rules of judicial review with respect to decisions of the national regulatory authorities concerning the authorisation of rates of notified operators for unbundled access to their local loop. In those circumstances, the national courts must ensure that the obligations resulting from Regulation No 2887/2000 regarding unbundled access to the local loop by means of procedures consistent with the pricing principle laid down in Article 3(3) of that regulation are in fact complied with in transparent, fair and non-discriminatory conditions.*

8. *Article 4(1) of Regulation No 2887/2000, read in conjunction with Article 5a(3) of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision, as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997, requires that the national courts interpret and apply the domestic rules of procedure governing the bringing of appeals in such a way that a decision of the national regulatory authority concerning the authorisation of rates for unbundled access to the local loop may be challenged before the courts, not only by the undertaking to which such a decision is addressed but also by beneficiaries within the meaning of that regulation whose rights are potentially affected by it.*

9. *Regulation No 2887/2000 must be interpreted as meaning that, during the procedure supervising the pricing for unbundled access to the local loop conducted by a national regulatory authority pursuant to Article 4 of that regulation, it is for the notified operator to provide the evidence that its rates respect the principle that rates are to be set on the basis of cost-orientation. On the other hand, it is for the Member States to allocate the burden of proof between the national regulatory authority which made the decision to authorise the rates of the notified operator and the beneficiary challenging that decision. It is also for the Member States to establish, in accordance with their rules of procedure and the Community principles of effectiveness and equivalence of judicial protection, the rules on the allocation of that burden of proof when a decision of the national regulatory authority authorising the rates of a notified operator for unbundled access to its local loop is challenged before the courts.*

([1]) OJ C 96, 22.4.2006.

Judgment of the Court (Second Chamber) of 17 April 2008 (reference for a preliminary ruling from the Rechtbank van koophandel, Hasselt (Belgium)) — Confederatie van Immobiliën-Beroepen België and Beroepsinstituut van Vastgoedmakelaars v Willem Van Leuken

(Case C-197/06) ([1])

(Recognition of diplomas — Directive 89/48/EEC — Estate agent)

(2008/C 142/04)

Language of the case: Dutch

Referring court

Rechtbank van koophandel, Hasselt

Parties to the main proceedings

Applicants: Confederatie van Immobiliën-Beroepen van België and Beroepsinstituut van Vastgoedmakelaars

Defendant: Willem Van Leuken

Re:

Request for a preliminary ruling — Rechtbank van koophandel, Hasselt — Interpretation of Articles 3 and 4 of 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) — Obligation on an estate agent established in one Member State and engaged in agency activities in another Member State to satisfy the conditions governing the exercise of that profession which are imposed by the legislation of that latter State in pursuance of the directive — Requirement imposed even in the case where there is a contract of collaboration between that estate agent and an estate agent who is authorised by that latter State

Operative part of the judgment

Articles 3 and 4 of 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, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, preclude legislation of a Member State which makes the performance, on its territory, of activities such as those at issue in the main proceedings by a service provider established in another Member State, and in a situation such as that of the defendant in the main proceedings, subject to obtaining an authorisation the grant of which is conditional upon success in an aptitude test in law.

([1]) OJ C 165, 15.7.2006.

Judgment of the Court (Grand Chamber) of 15 April 2008 (reference for a preliminary ruling from the Labour Court (Ireland)) — Impact v Minister for Agriculture and Food, Minister for Arts, Sport and Tourism, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport

(Case C-268/06) ([1])

(Directive 1999/70/EC — Clauses 4 and 5 of the framework agreement on fixed-term work — Fixed-term employment in the public sector — Employment conditions — Pay and pensions — Renewal of fixed-term contracts for a period of up to eight years — Procedural autonomy — Direct effect)

(2008/C 142/05)

Language of the case: English

Referring court

Labour Court

Parties to the main proceedings

Applicant: Impact

Defendants: Minister for Agriculture and Food, Minister for Arts, Sport and Tourism, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport

Re:

Preliminary ruling — Labour Court — Interpretation of Clause 4(1) (principle of non-discrimination) and Clause 5(1) (measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships) of the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Action seeking to rely on the direct effect of those provisions — Lack of jurisdiction, under national law, of the court seised — Jurisdiction under Community law, in particular pursuant to the principles of equivalence and effectiveness

Operative part of the judgment

1. *Community law, in particular the principle of effectiveness, requires that a specialised court which is called upon, under the, albeit optional, jurisdiction conferred on it by the legislation transposing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, to hear and determine a claim based on an infringement of that legislation, must also have jurisdiction to hear and determine an applicant's claims arising directly from the directive itself in respect of the period between the deadline for transposing the directive and the date on which the transposing legislation entered into force if it is established that the obligation on that applicant to bring, at the same time, a separate claim based directly on the directive before an ordinary court would involve procedural disadvantages liable to render excessively difficult the exercise of the rights conferred on him by Community law. It is for the national court to undertake the necessary checks in that regard.*

2. *Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case, however, as regards Clause 5(1) of the framework agreement.*

3. *Article 10 EC, the third paragraph of Article 249 EC, and Directive 1999/70 must be interpreted as meaning that an authority of a Member State acting in its capacity as a public employer may not adopt measures contrary to the objective pursued by that directive and the framework agreement on fixed-term work as regards prevention of the abusive use of fixed-term contracts, which consist in the renewal of such contracts for an unusually long term in the period between the deadline for transposing Directive 1999/70 and the date on which the transposing legislation entered into force.*

4. *In so far as the applicable national law contains a rule that precludes the retrospective application of legislation unless there is a clear and unambiguous indication to the contrary, a national court hearing a claim based on an infringement of a provision of national legislation transposing Directive 1999/70 is required, under Community law, to give that provision retrospective effect to the date by which that directive should have been transposed only if that national legislation includes an indication of that nature capable of giving that provision retrospective effect.*

5. *Clause 4 of the framework agreement on fixed-term work must be interpreted as meaning that employment conditions within the meaning of that clause encompass conditions relating to pay and to pensions which depend on the employment relationship, to the exclusion of conditions relating to pensions arising under a statutory social-security scheme.*

([1]) OJ C 212, 2.9.2006.

Judgment of the Court (First Chamber) of 17 April 2008 — Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) v Ireland, Commission of the European Communities

(Joined Cases C-373/06 P, C-379/06 P and C-382/06 P) ([1])

(Appeal — Resource conservation measures — Restructuring of the fisheries sector — Requests to increase the tonnage objectives of the multiannual guidance programme 'MAGP IV' — Dismissal of application)

(2008/C 142/06)

Language of the case: English

Parties

Appellants: Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) (represented by: D. Barry, Solicitor, and A. Collins SC (C-373/06 P, C-379/06 P and C-382/06 P), and additionally by P. Gallagher SC (C-379/06 P)

Other parties to the proceedings: Ireland, Commission of the European Communities (represented by: B. Doherty and M. van Heezik, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 13 June 2006 in Joined Cases T-218/03 to T-240/03 *Boyle and Others* v *Commission* annulling Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for

vessels of more than 12 m in length overall (notified under document number C(2003) 1113) (OJ 2003 L 90, p. 48), but dismissing the applications lodged by the appellants as inadmissible — Persons (who are not) individually concerned by the annulled decision

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 13 June 2006 in Joined Cases T-218/03 to T-240/03 Boyle and Others v Commission (i) in so far as it dismissed as inadmissible the applications of Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd for annulment of Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall, and (ii) in so far as it ordered the appellants to bear their own costs;*

2. *Annuls Decision 2003/245 in so far as it applies to the vessels of Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd;*

3. *Orders the Commission of the European Communities to pay the costs incurred by Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd in respect of both the proceedings at first instance and the present appeals.*

([1]) OJ C 281, 18.11.2006.
OJ C 294, 2.12.2006.

Judgment of the Court (Grand Chamber) of 15 April 2008 (reference for a preliminary ruling from the Tribunale ordinario di Roma) — Nuova Agricast Srl v Ministero delle Attività Produttive

(Case C-390/06) ([1])

(State aid — Aid scheme authorised for a specific period — Notification of the amended aid scheme for a new period — Transitional measures between the two schemes — Decision of the Commission not to raise objections — Information available to the Commission — Validity of the Commission's decision — Equal treatment — Statement of reasons)

(2008/C 142/07)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Applicant: Nuova Agricast Srl

Defendant: Ministero delle Attività Produttive

Re:

Preliminary ruling — Tribunale ordinario di Roma — Validity of the Commission Decision of 12 July 2000 declaring compatible with the Treaty an aid scheme provided for under Italian legislation in the form of aid for investment in the less-favoured regions of Italy (SG(2000)D/105754)

Operative part of the judgment

Examination of the question submitted has revealed nothing which might affect the validity of the decision of the Commission of 12 July 2000 not to raise objections against an aid scheme for investment in the less-favoured regions of Italy until 31 December 2006 (State aid No N 715/99 — Italy).

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (First Chamber) of 17 April 2008 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Quelle AG v Bundesverband der Verbraucherzentralen und Verbraucherverbände

(Case C-404/06) ([1])

(Consumer protection — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Right of the seller, where goods not in conformity are replaced, to require the consumer to pay compensation for the use of those goods — No charge for the use of the goods not in conformity)

(2008/C 142/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Quelle AG

Defendant: Bundesverband der Verbraucherzentralen und Verbraucherverbände

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 3 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12) — Entitlement under national law of a seller to seek compensation from consumers for the use of goods not in conformity with the sale contract during the period before their replacement

Operative part of the judgment

Article 3 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees is to be interpreted as precluding national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods.

([1]) OJ C 310, 16.12.2006.

Judgment of the Court (Second Chamber) of 24 April 2008 — Kingdom of Belgium v Commission of the European Communities

(Case C-418/06 P) ([1])

(Appeal — EAGGF — Arable crop sector — Clearance of EAGGF accounts — Reliable and operational inspection system — Expenditure excluded from Community financing — Flat-rate correction — Retrospective application of the rules relating to checks — Implicit obligations — Principle of proportionality — Legal certainty — Unlimited jurisdiction)

(2008/C 142/09)

Language of the case: French

Parties

Appellant: Kingdom of Belgium (represented by: A. Hubert and L. Van den Broeck, Agents, H. Gilliams, P. de Bandt and L. Goossens, avocats)

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

Re:

Appeal brought against the judgment delivered by the Court of First Instance (Second Chamber) on 25 July 2006 in Case T-221/04 *Belgium* v *Commission*, by which the Court of First Instance dismissed the application for partial annulment of Commission Decision 2004/136/EC of 4 February 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 40, p. 31), in so far as it imposes a flat-rate correction of 2 % of the expenditure declared by Belgium in respect of arable crops.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders the Kingdom of Belgium and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (Fourth Chamber) of 17 April 2008 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Peek & Cloppenburg KG v Cassina SpA

(Case C-456/06) ([1])

(Copyright — Directive 2001/29/EC — Article 4(1) — Distribution to the public by sale or otherwise of the original of a work or a copy thereof — Use of reproductions of copyright-protected furniture as items of furniture exhibited in a sales area and in display windows — No transfer of ownership or possession)

(2008/C 142/10)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Peek & Cloppenburg KG

Defendant: Cassina SpA

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 28 EC and 30 EC and of Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Use, without the consent of the copyright holder, of reproductions of copyright-protected items of furniture as furnishings arranged in a sales area and for decorative display purposes — Whether such use, which does not involve any form of transfer of ownership or possession, does or does not constitute a 'form of distribution to the public'

Operative part of the judgment

The concept of distribution to the public, otherwise than through sale, of the original of a work or a copy thereof, for the purpose of Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, applies only where there is a transfer of the ownership of that object. As a result, neither granting to the public the right to use reproductions of a work protected by copyright nor exhibiting to the public those reproductions without actually granting a right to use them can constitute such a form of distribution.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 24 April 2008 (references for a preliminary ruling from the Landesgericht Bozen (Italy)) — Othmar Michaeler (C-55/07 and C-56/07), Subito GmbH (C-55/07 and C-56/07), Ruth Volgger (C-56/07) v Amt für sozialen Arbeitsschutz, Autonome Provinz Bozen (formerly Arbeitsinspektorat der Autonomen Provinz Bozen)

(Joined Cases C-55/07 and C-56/07) ([1])

(Directive 97/81/EC — Equal treatment of part-time and full-time workers — Discrimination — Administrative obstacle limiting opportunities for part-time work)

(2008/C 142/11)

Language of the case: German

Referring court

Landesgericht Bozen

Parties to the main proceedings

Applicants: Othmar Michaeler (C-55/07 and C-56/07), Subito GmbH (C-55/07 and C-56/07), Ruth Volgger (C-56/07)

Defendant: Amt für sozialen Arbeitsschutz, Autonome Provinz Bozen (formerly Arbeitsinspektorat der Autonomen Provinz Bozen)

Re:

Reference for a preliminary ruling — Landesgericht Bolzano — Interpretation of Community law and, in particular, Article 137 EC and Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — Annex: Framework agreement on part-time work (OJ 1998 L 14, p. 9) — National legislation requiring employers to send a copy of part-time employment contracts to the competent national authorities, which imposes a fine for failure to do so — Obligation of the Member States to eliminate legal and administrative obstacles which may limit the opportunities for part-time work — Principle of equal treatment of part-time and full-time workers

Operative part of the judgment

Clause 5(1)(a) of the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC must be interpreted as precluding national legislation such as that at issue in the main proceedings which requires that copies of part-time employment contracts be sent to the authorities within 30 days of their signature.

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (First Chamber) of 17 April 2008 — Ferrero Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Cornu SA Fontain

(Case C-108/07 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Application for Community word mark FERRO — Opposition by the proprietor of the earlier national word mark FERRERO — Evidence of the enhanced distinctiveness of the earlier mark)

(2008/C 142/12)

Language of the case: French

Parties

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

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Rassat, Agent), Cornu SA Fontain

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 15 December 2006 in Case T-310/04 *Ferrero Deutschland* v *OHIM and Cornu* in proceedings against the decision of the Fourth Board of Appeal of OHIM of 17 March 2004 (Case R 540/2002-4) relating to opposition proceedings between Ferrero OHG mbH and Cornu SA Fontain — Interpretation of Article 8(1)(b) of Council Regulation (EC) No 40/94 of

20 December 1993 (OJ 1994 L 11, p. 1) — Likelihood of confusion between the two marks — Moderate degree of similarity between the marks — Little similarity between the goods — Distinctive character of the earlier mark

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 15 December 2006 in Case T-310/04 Ferrero Deutschland v OHIM — Cornu (FERRO);*

2. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 17 March 2004 (Case R 540/2002-4);*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Cornu SA Fontain to pay the costs of the appeal;*

4. *Orders Ferrero Deutschland GmbH to bear its own costs in relation to the proceedings at first instance, except for those relating to the intervention of Cornu SA Fontain;*

5. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs in relation to the proceedings at first instance, except for those relating to the intervention of Cornu SA Fontain;*

6. *Orders Cornu SA Fontain to bear its own costs and to pay the costs incurred by Ferrero Deutschland GmbH and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in relation to its intervention.*

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (Fourth Chamber) of 24 April 2008 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — A.O.B. Reuter & Co. v Hauptzollamt Hamburg-Jonas

(Case C-143/07) ([1])

(Agriculture — Regulation (EEC) No 3665/87 — Article 11 — System of export refunds on agricultural products — Condition for the grant of the refund — Refund paid to the exporter after submission of documents forged by its contracting partner — Goods not exported — Conditions for the application of sanctions)

(2008/C 142/13)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: A.O.B.Reuter & Co.

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a Preliminary ruling — Finanzgericht Hamburg — Interpretation of Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 (OJ 1994 L 310, p. 57), and of Article 51 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11) — Refund paid to an exporter after submission of documents forged by a third party — Conditions governing the application of penalties

Operative part of the judgment

Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994, must be interpreted as meaning that the sanction for which it provides is applicable against an exporter who has requested an export refund on goods, where those goods, as a result of fraudulent conduct on the part of the exporter's contracting partner, were not exported.

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Third Chamber) of 24 April 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-286/07) ([1])

(Failure of a Member State to fulfil obligations — Article 28 EC — Registration of second-hand vehicles previously registered in other Member States — Requirement of an excerpt from the commercial register or a comparable document proving that the seller of the vehicle is registered as a dealer — Exemption from the requirement to submit invoices or other documents showing transfer of ownership by previous owner(s))

(2008/C 142/14)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent, and P. Kinsch, avocat)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 28 EC –National rule making the registration of second-hand vehicles which have previously been registered in another Member State subject to the submission of an excerpt from the entry on the commercial register of the vehicle's seller, whereas vehicles previously registered in Luxembourg are not subject to such a requirement — Obstacle to the free movement of goods — Lack of justification and proportionality

Operative part of the judgment

The Court:

1. *Declares that, by requiring, in accordance with the practice in issue, for the purposes of the registration of vehicles in Luxembourg, the submission of an excerpt from the commercial register or a comparable document proving that the seller of the vehicle is registered as a dealer, except for the dealers on the register of the Société Nationale de Contrôle Technique, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 28 EC;*

2. *orders the Grand Duchy of Luxembourg to pay the costs.*

(1) OJ C 211, 8.9.2007.

Order of the Court of 8 April 2008 — Saint-Gobain Glass Deutschland GmbH v Fels-Werke GmbH, Spenner-Zement GmbH & Co KG, Commission of the European Communities

(Case C-503/07 P) (1)

(Appeal — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Integrated pollution prevention and reduction — Federal Republic of Germany — Allocation of allowances — Period 2008-2012 — Conditions — Individual concern — Inadmissibility — Right to be heard by a court — Right to a fair hearing)

(2008/C 142/15)

Language of the case: German

Parties

Appellant: Saint-Gobain Glass Deutschland GmbH (represented by: H. Posser and S. Altenschmidt, Rechtsanwälte)

Other parties to the proceedings: Fels-Werke GmbH, Spenner-Zement GmbH & Co KG, Commission of the European Communities (represented by: U. Wölker, Agent)

Re:

Appeal brought against the Order of the Court of First Instance (Third Chamber) of 11 September 2007 in Case T-28/07 *Fels-Werke and Others* v *Commission*, by which the Court dismissed as inadmissible the action seeking partial annulment of the Commission Decision of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the Federal Republic of Germany for the period from 2008 to 2012 in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — Requirement to be individually concerned by the contested decision — Right to be heard by a court and right to a fair hearing

Operative part of the order

1. *The appeal is dismissed.*

2. *Saint-Gobain Glass Deutschland GmbH is ordered to pay the costs.*

(1) OJ C 64, 8.3.2008.

Appeal brought on 28 February 2008 by K & L Ruppert Stiftung & Co. Handels-KG against the judgment of the Court of First Instance (Second Chamber) delivered on 12 December 2007 in Case T-86/05 *K & L Ruppert Stiftung & Co. Handels-KG* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-90/08 P)

(2008/C 142/16)

Language of the case: German

Parties

Appellant(s): K & L Ruppert Stiftung & Co. Handels-KG (represented by: D. Spohn, Rechtsanwältin)

Other party/parties to the proceedings: 1. Office for Harmonisation in the Internal Market (Trade Marks and Designs), 2. Natália Cristina Lopes de Almeida Cunha, 3. Cláudia Couto Simões, 4. Marly Lima Jatobá

Form of order sought

— Annulment of the whole of paragraph 1 of the operative part of the judgment of the Court of First Instance of 12 December 2007 in Case T-86/05 and annulment of paragraph 2 of the operative part of that judgment so as to order OHIM to pay all its own costs and all the applicant's costs;

— An order that OHIM pay the costs of proceedings.

Upholding the claims made at first instance:

— Annulment of the decision of the First Board of Appeal of OHIM of 7 December 2004, R 0328/2004-1 in full;

— An order that OHIM pay the costs.

Pleas in law and main arguments

The Court of First Instance dismissed the application of the appellant against the decision of the First Board of Appeal of OHIM on the ground that the Opposition Division of the Office correctly applied the second sentence of Rule 71(1) of Regulation No 2868/95 when it refused the appellant's application for an extension of the period specified for submission of proof of use of the earlier marks in the opposition proceedings, and that the Office had no discretion as regards the consideration of the evidence submitted late by the appellant in the present case.

The appeal alleges the following breaches of Community law by the Court.

(1) The Court of First Instance has infringed the second sentence of Rule 71(1) of Regulation No 2868/95 by misinterpreting that provision. In particular, the Court of First Instance failed to have regard for the fact that Regulation No 40/94 contains no rules on possible grounds for an extension of the period specified. It also failed to have regard for the fact that, at the material time, Rule 71(1) of Regulation No 2868/95 had not been further defined by guidelines for oppositions or other instructions from OHIM, so that no possible interpretations of the permissible grounds for extensions of the period were available. The Court therefore did not consider fully the facts of the case and/or misinterpreted the second sentence of Rule 71(1).

(2) The Court of First Instance also disregarded the duty to state reasons incumbent on it, as it did not investigate the statement of the appellant that at the time of the application for an extension there were no legal rules and no basis for interpretation of the wording of requests for extensions. As reasons were attached to the request for an extension, the Court should also have explained the legal basis on which the reasons stated for the request for an extension are to be regarded as insufficient.

(3) The Court of First Instance infringed Article 74(2) of Regulation No 40/94 by misinterpreting that provision as meaning that OHIM had no discretion to take account of evidence adduced late in the opposition proceedings. It failed to have regard to the fact that the Boards of Appeal have a general discretion which is not excluded by the provisions of Article 43 of Regulation No 40/94 and the second sentence of Rule 22(2) of Regulation No 2868/95.

Reference for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 28 February 2008 — Wall AG v Stadt Frankfurt am Main, Frankfurter Entsorgungs- und Service GmbH (FES)

(Case C-91/08)

(2008/C 142/17)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Wall AG

Defendants: Stadt Frankfurt am Main, Frankfurter Entsorgungs- und Service GmbH (FES)

Other party to the proceedings: DSM Deutsche Städte Medien GmbH

Questions referred

1. Are the principle of equal treatment expressed inter alia in Articles 12 EC, 43 EC and 49 EC and the prohibition in Community law of discrimination on grounds of nationality to be interpreted as meaning that the consequent duties of transparency for public authorities, namely to use an appropriate degree of advertising to enable the award of service concessions to be opened up to competition and the impartiality of the procurement procedure to be reviewed (see the judgments of the Court of Justice in Case C-324/98 *Telaustria*, paragraphs 60 to 62; Case C-231/03 *Coname*, paragraphs 17 to 22; Case C-458/03 *Parking Brixen*, paragraphs 46 to 50; Case C-410/04 *ANAV*, paragraph 21; and C-260/04 *Commission* v *Italy*, paragraph 24), require national law to provide an unsuccessful tenderer with a claim to an order restraining an imminent breach of those duties and/or prohibiting the continuation of such a breach of duty?

2. If Question 1 is answered in the negative: Do those duties of transparency form part of the customary law of the European Communities, in the sense that they are already applied continually and constantly, equally and generally, and are recognised as a binding rule by those concerned?

3. Do the duties of transparency mentioned in Question 1 require, in the case also of an intended amendment to a service concession contract — including the substitution of a subcontractor who was mentioned as part of the tender — that the negotiations on this are again opened up to competition with an appropriate degree of advertising, or what would be the criteria for requiring such an opening up?

4. Are the principles and duties of transparency mentioned in Question 1 to be interpreted as meaning that in the case of service concessions, in the event of a breach of duty, a contract concluded as a result of the breach and intended to create or amend a continuing obligation must be terminated?

5. Are the principles and duties of transparency mentioned in Question 1 and Article 86(1) EC, referring also if necessary to Article 2(1)(b) and (2) of the Transparency Directive 80/723/EEC [1] and Article 1(9) of the Procurement Coordination Directive 2004/18/EC [2], to be interpreted as meaning that an undertaking is subject to those duties of transparency, as a public undertaking or contracting authority, if

   — it was set up by a regional or local authority for the purpose of waste disposal and street cleaning but also operates in the free market,

   — it belongs to that regional or local authority to the extent of a 51 % holding, but decisions of shareholders can be taken only by a three-quarters majority,

   — the regional or local authority appoints only a quarter of the members of the supervisory board of the undertaking, including the chairman, and

   — it achieves more than half its turnover from bilateral contracts for waste disposal and street cleaning in the territory of that regional or local authority, which reimburses itself by means of municipal taxes on its residents?

[1] Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ 1980 L 195, p. 35); Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ 2000 L 193, p. 75).

[2] 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).

Reference for a preliminary ruling from the Pest Megyei Bíróság (Magyar Köztársaság) lodged on 3 March 2008 — CIBA Speciality Chemicals Central and Eastern Europe Szolgáltató, Tanácsadó és Keresdedelmi Kft. v Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály

(Case C-96/08)

(2008/C 142/18)

Language of the case: Hungarian

Referring court

Pest Megyei Bíróság

Parties to the main proceedings

Applicants: CIBA Speciality Chemicals Central and Eastern Europe Szolgáltató, Tanácsadó és Keresdedelmi Kft.

Defendant: Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály

Question referred

Can the principle of freedom of establishment under Articles 43 and 48 EC be interpreted as precluding a legal rule under which a trading company established in Hungary must pay a vocational training levy if it employs workers in a branch abroad and meets its tax and social security obligations with regard to such workers in the State where the branch is situated?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 5 March 2008 — SALIX Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Offenbach KG v Finanzamt Düsseldorf-Süd

(Case C-102/08)

(2008/C 142/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: SALIX Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Offenbach KG

Defendant: Finanzamt Düsseldorf-Süd

Questions referred

1. May the Member States 'treat' activities of States, regional and local government authorities and other bodies governed by public law which are exempt from tax under Article 13 of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC) as activities in which they engage as public authorities within the meaning of the fourth subparagraph of Article 4(5) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (Directive 77/388/EEC) ([1]) only where the Member States make express legal provision to that effect?

2. Can 'significant distortions of competition' within the meaning of the fourth subparagraph in conjunction with the second subparagraph of Article 4(5) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes exist only where treatment of a body governed by public law as a non-taxable person would lead to significant distortions of competition to the detriment of competing private taxable persons or also where treatment of a body governed by public law as a non-taxable person would lead to significant distortions of competition to its detriment?

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

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Vorarlberg (Austria) lodged on 6 March 2008 — Arthur Gottwald v Bezirkshauptmannschaft Bregenz

(Case C-103/08)

(2008/C 142/20)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Vorarlberg

Parties to the main proceedings

Appellant: Arthur Gottwald

Respondent: Bezirkshauptmannschaft Bregenz

Question referred

Is Article 12 EC to be interpreted as precluding the application of a provision of national law which provides that an annual disc in respect of a motor vehicle for the use of federal toll roads is made available free of charge only to those persons with a defined disability who are resident or ordinarily resident in national territory?

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria), lodged on 6 March 2008 — Marc André Kurt v Bürgermeister der Stadt Wels

(Case C-104/08)

(2008/C 142/21)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

Parties to the main proceedings

Applicant: Marc André Kurt

Defendant: Bürgermeister der Stadt Wels

Questions referred

1. Is it compatible with the fundamental principles of the Treaty on the establishment of the European Community and of the Treaty on Union (OJ 2006 C 321 E/1) and the freedoms arising from those treaties for an EU citizen, who in the light of his theoretical and practical education and training and his relevant professional experience acquired over many years and his qualifications is entitled, formally and in practice, to teach driving theory and practice to learner drivers and most recently also to teach driving school instructors and to establish, operate and manage a driving school in a Member State, to be denied the right to manage a driving school in his own Member State, by virtue of a requirement to hold a diploma ('Diplomzwang') which is laid down by statute and which cannot in practice be met?

2. Is the requirement to hold a diploma arising from Paragraph 109(1)(e) KFG (Kraftfahrgesetz — Law on driving Motor Vehicles) 1967 compatible in particular with the values expressed by Articles 16 and 20 of the Charter on Fundamental Rights (OJ 2007 C 303, p. 1) concerning the freedom to pursue an economic or business activity, free competition and the principle of equality of all citizens?

3. Must Paragraph 109(2) KFG 1967 be interpreted as meaning that another relevant form of education or training along with the corresponding professional experience can also be recognised as 'another equivalent academic education'?

Reference for a preliminary ruling from the Landesgericht Linz (Austria) lodged on 17 March 2008 — Land Oberösterreich v ČEZ, a.s.

(Case C-115/08)

(2008/C 142/22)

Language of the case: German

Referring court

Landesgericht Linz

Parties to the main proceedings

Applicant: Land Oberösterreich

Defendant: ČEZ, a.s.

Questions referred

1. (a) Does it constitute a measure having equivalent effect within the meaning of Article 28 EC for an undertaking operating a power plant in a Member State, in compliance with the laws of that State and the relevant provisions of Community law, by means of which it produces electricity that it delivers to various Member States, to be forced, pursuant to an injunction in respect of a potential nuisance emanating from that power plant granted by a judgment of a court in a neighbouring Member State — which is enforceable in all Member States pursuant to Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — to make changes to that installation in order to bring it in line with the technical rules of another Member State or even — if, because of the complexity of the plant as a whole, those changes are impossible to make — to stop operations at the installation, in a situation in which that court, as a result of an interpretation of national legal provisions given by the highest court of that country, is not allowed to take into account the existing operating authorisation for the power plant granted by the authorities of the Member State in which the plant is located, even though it would take into account, in the context of such an action for an injunction, an authorisation for an installation granted by the domestic authorities, with the effect that no judgment granting an injunction would be delivered in relation to an installation operating under an authorisation granted by the domestic authorities?

   (b) Are the grounds for justification laid down in the EC Treaty to be interpreted as meaning that it is unlawful, in any event, to make a distinction under the laws of a Member State between authorisations for installations granted by the domestic authorities and those granted by the authorities of another Member State, in so far as that distinction is motivated by the desire to protect only the national economy but not the economy of another Member State, since this is a purely economical motive which is not recognised as worthy of protection in the context of the fundamental freedoms?

   (c) Are the grounds of justification laid down in the EC Treaty and the corresponding principle of proportionality to be interpreted as meaning that a global distinction made under the laws of a Member State between authorisations for installations granted by the domestic authorities and authorisations for installations granted by the authorities of another Member State is per se unlawful, because the operation of an installation authorised by the authorities of the Member State in which it is located has to be assessed by the national court of another Member State in each individual case on the basis of the actual danger posed by operation of the installation to public policy, public security or public health or on the basis of other recognised overriding requirements of public interest?

   (d) Having regard to the principle of proportionality that must be considered in the context of the grounds of justification, are the courts of a Member State under an obligation, in any event, to treat the operating authorisation for an installation granted in the Member State in which it is located like an authorisation for an installation granted by the domestic authorities if the authorisation granted in the Member State in which the installation is located is essentially equivalent, in legal terms, to that of an authorisation granted by the domestic authorities?

   (e) For the purposes of considering the above questions, is it relevant that the installation authorised in the Member State in which it is located is a nuclear power plant, if, in another Member State in which an action for an injunction to prevent a nuisance which it is feared will emanate from a nuclear power plant is pending, operation of that type of installation is not permitted per se, even though other nuclear facilities are operated there?

   (f) If the interpretation of the national provisions which is described in Question 1(a) infringes Article 28 EC, are the courts of the Member State in which such an action for an injunction is pending under an obligation to interpret domestic law in a way conforming with Community law, so that the term 'officially authorised installation' can cover both operating authorisations granted by the domestic authorities and those granted by the authorities of another Member State?

2. (a) Is it compatible with the prohibition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State laid down in Article 43 EC for an undertaking which operates a power plant in a Member State in compliance with the laws of that State and the relevant provisions of Community law to be forced, pursuant to an injunction in respect of a potential nuisance emanating from that power plant granted by a judgment of a court in a neighbouring Member State — which is enforceable in all Member States pursuant to Regulation (EC) No 44/2001 — to make changes to that installation in order to bring it in line with the technical rules of another Member State or even — if, because of the complexity of the plant as a whole, those changes are impossible to make

— to stop operations at the installation, in a situation in which that court, as a result of an interpretation of national legal provisions given by the highest court in that country, is not allowed to take into account the existing operating authorisation for the power plant granted by the authorities of the Member State in which the plant is located, even though it would take into account, in the context of such an action for an injunction, an authorisation for an installation granted by the domestic authorities, with the effect that no judgment granting an injunction would be delivered in relation to an installation operating under an authorisation granted by the domestic authorities?

(b) Are the grounds on which freedom of establishment can be restricted to be interpreted as meaning that it is unlawful, in any event, to make a distinction under the laws of a Member State between authorisations for installations granted by the domestic authorities and those granted by the authorities of another Member State, in so far as that distinction is motivated by the desire to protect only the national economy but not the economy of another Member State, since this is a purely economical motive which is not recognised as worthy of protection in the context of the fundamental freedoms?

(c) Are the grounds justifying a restriction of the freedom of establishment which are laid down in the EC Treaty and, in particular, the principle of proportionality to be interpreted as meaning that a global distinction made under the laws of a Member State between authorisations for installations granted by the domestic authorities and authorisations for installations granted by the authorities of another Member State is per unlawful, because the operation of an installation authorised by the authorities of the Member State in which it is located has to be assessed by the national court of another Member State in each individual case on the basis of the actual danger posed by operation of the installation to public policy, public security or public health or on the basis of other recognised overriding requirements of public interest?

(d) Having regard to the principle of proportionality that must be considered in the context of justifying interference with the freedom of establishment, are the courts of a Member State under an obligation, in any event, to treat the operating authorisation for an installation granted in the Member State in which it is located like an authorisation for an installation granted by the domestic authorities if the authorisation granted in the Member State in which the installation is located is essentially equivalent, in legal terms, to that of an authorisation granted by the domestic authorities?

(e) For the purposes of considering the above questions, is it also relevant in the context of the freedom of establishment that the installation authorised in the Member State in which it is located is a nuclear power plant, if, in another Member State in which an action for an injunction against that nuclear power plant is pending, operation of that type of installation is not permitted per se, even though other nuclear facilities are operated there?

(f) If the interpretation of the national provisions which is described in Question 2(a) infringes Article 43 EC, are the courts of the Member State before which such an action for an injunction is pending under an obligation to interpret domestic law in a way conforming with Community law, so that the term 'officially authorised installation' can cover both operating authorisations granted by the domestic authorities and those granted by the authorities of another Member State?

3. (a) Does it constitute prohibited indirect discrimination on grounds of nationality within the meaning of Article 12 EC for the courts of a Member State to take into account authorisations for installations granted by the domestic authorities in the context of a private action for an injunction brought against those installations, with the result that claims for cessation of operation of the installation or its modification are excluded, but not to take into account in the context of such actions for an injunction authorisations of installations located in other Member States granted by the authorities of those Member States?

(b) Does such discrimination fall within the scope of the Treaty, since it affects the legal conditions under which undertakings operating such installations may establish themselves in an EU Member State as well as the legal conditions under which such undertakings produce the good 'electricity' and deliver it to other EU Member States, so that it is at least indirectly connected to the realisation of the fundamental freedoms?

(c) Can such discrimination be justified on objective grounds, given that the relevant courts of the Member State do not conduct an individual assessment taking into consideration the facts underlying the authorisation of the installation in the Member State in which it is located? Would it not be consistent with the principle of proportionality — at least if the condition is fulfilled that the authorisation is essentially equivalent, from a legal point of view, to an authorisation for an installation granted by the domestic authorities — for the courts of the other Member State to take into account the authorisation granted by the authorities in the Member State in which the installation is located?

(d) If the interpretation of the national provisions which is described in Question 3(a) infringes Article 12 EC, are the courts of the Member State before which such an action for an injunction is pending under an obligation to interpret domestic law in a way conforming with Community law, so that the term 'officially authorised installation' can cover both operation authorisations granted by the domestic authorities and those granted by the authorities of another Member State?

4. (a) Does the principle of loyal cooperation laid down in Article 10 EC with respect to the application of Community law also apply in respect of relationships among Member States?

(b) Is it to be inferred from the principle of loyal cooperation that the Member States must not render other Member States' exercise of public authority more onerous or even impossible and does this apply, in particular, to decisions by Member States to concerning the planning, construction and operation of nuclear installations within their territory?

(c) If the interpretation of the national provisions which is described in Question 4(a) infringes Article 10 EC, are the courts of the Member State before which such an action for an injunction is pending under an obligation to interpret domestic law in a way conforming with Community law, so that the term 'officially authorised installation' can cover both operation authorisations granted by the domestic authorities and those granted by the authorities of another Member State?

Reference for a preliminary ruling from the Hof van Cassatie van België, lodged on 25 March 2008 — I. G.A.L.M. Snauwaert and Algemeen Expeditiebedrijf Zeebrugge BVBA v Belgian State; II. Coldstar NV v Belgian State; III. D.P.W. Vlaeminck v Belgian State; IV. J.P. Den Haerynck v Belgian State; and V. A.E.M. De Wintere v Belgian State

(Case C-124/08)

(2008/C 142/23)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants:

I. 1. G.A.L.M. Snauwaert

2. Algemeen Expeditiebedrijf Zeebrugge BVBA, party incurring civil liability

II. Coldstar NV, party incurring civil liability

III. D.P.W. Vlaeminck

IV. J.P. Den Haerynck

V. A.E.M. De Wintere

Respondent: Belgische Staat (Belgian State)

Questions referred

1. Should Article 221(1) of the Community Customs Code (CCC) ([1]) be construed as meaning that the prescribed communication of a customs debt to the person liable for payment can be lawfully effected only after it has been entered in the accounts or, in other words, that the communication of a customs debt to the person liable for payment prescribed in Article 221(1) of the CCC should always be preceded by its entry in the accounts if it is to be lawful and to comply with Article 221(1)of the CCC?

2. Should Article 221(3) of the CCC, as applicable before its amendment by Article 1 of Regulation (EC) No 2700/2000 ([2]), be construed as meaning that the option of lawfully communicating the amount entered in the accounts after the period of three years from the date on which the customs debt was incurred, if that debt is the result of an act which is liable to give rise to criminal court proceedings, is available to the customs authorities only in respect of the person who is responsible for the act which is liable to give rise to criminal court proceedings?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302 p. 1).

([2]) Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 amending Regulation (EEC) No 2913/92 (OJ 2000 L 311, p. 17).

Reference for a preliminary ruling from the Hof van Cassatie van België, lodged on 25 March 2008 — G.C. Deschaumes v Belgian State

(Case C-125/08)

(2008/C 142/24)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: G. Deschaumes

Respondent: Belgian State

Question referred

Should Article 221(1) of the Community Customs Code (CCC) ([1]) be construed as meaning that the prescribed communication of a customs debt to the person liable for payment can lawfully be effected only after the customs debt has been entered in the accounts or, in other words, that the communication of a customs debt to the person liable for payment, as prescribed in Article 221(1) of the CCC, must always be preceded by its entry in the accounts if it is to be lawful and to comply with Article 221(1)of the CCC?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Reference for a preliminary ruling from the Hof van Cassatie van België, lodged on 25 March 2008 — I. Distillerie Smeets Hasselt NV v 1. Belgische Staat, 2. L.S.C. De Vos, 3. Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV, 4. D. Van den Langenbergh and 5. Firma De Vos NV; II. Belgische Staat v Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV; and III. L.S.C. De Vos v Belgische Staat

(Case C-126/08)

(2008/C 142/25)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants:

I. Distillerie Smeets Hasselt NV

II. Belgische Staat

III. L.S.C. De Vos

Respondents:

I. 1. Belgische Staat

2. L.S.C. De Vos

3. Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV

4. D. Van den Langenbergh

5. Firma De Vos NV

II Bollen, Mathay, & Co. BVBA, liquidator of Transterminal Logistics NV

III. Belgische Staat

Question referred

Should Articles 217(1) and 221(1) of the Community Customs Code (CCC) ([1]) be construed as meaning that the prescribed entry of a customs debt in the accounts may also be lawfully effected through the entry of the amount in a record in accordance with the AWDA ([2]), drawn up by investigating officials and not by persons authorised to enter such amounts in the accounts, and that such records may be treated as accounting records or any other equivalent medium within the terms of Article 217(1) of the CCC?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

([2]) Royal Decree of 18 July 1997 coordinating the general provisions on customs and excise duties.

Reference for a preliminary ruling from the Tribunal de première instance de Liège (Court of First Instance, Liège) (Belgium) lodged on 28 March 2008 — Jacques Damseaux v État belge

(Case C-128/08)

(2008/C 142/26)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Jacques Damseaux

Defendant: État belge

Questions referred

1. 'Must Article 56 of the EC Treaty be interpreted as meaning that it prohibits a restriction, arising from the France-Belgium Convention seeking to avoid double taxation and to establish mutual administrative and legal rules of assistance in the field of income tax, which allows partial double taxation of dividends from shares of companies established in France to subsist and which renders the taxation of those dividends more onerous than Belgian withholding tax alone applied to dividends distributed by a Belgian company to a Belgian resident shareholder?'

2. 'Must Article 293 of the EC Treaty be interpreted as meaning that it renders wrongful Belgium's inaction in not renegotiating with France a new way of abolishing double taxation of dividends from shares of companies established in France?'

Reference for a preliminary ruling from the Rechtbank van eerste aanleg Brugge (Belgium) lodged on 31 March 2008 — C. Cloet and J. Cloet v CVBA Westvlaamse Intercommunale voor Economische Expansie, Huisvestingsbeleid en Technische Bijstand

(Case C-129/08)

(2008/C 142/27)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg Brugge

Parties to the main proceedings

Applicants: C. Cloet and J. Cloet

Defendants: CVBA Westvlaamse Intercommunale voor Economische Expansie, Huisvestingsbeleid en Technische Bijstand

Questions referred

1. Is a financial advantage granted to NV Metafox by the Flemish Region/Flemish Community through a decentralised administrative authority, the WVI, in the form of a preferential price for the purchase of industrial/commercial land of 1 ha 82 a 72 m², performed by the WVI for a sum stated in the sales instrument to be EUR 294 394,14 'for tax' in respect of a preferential price in reality of EUR 91 720,60, compatible with the common market, given that the cost price of purchasing such industrial/commercial land under normal circumstances, applying average values for such land at that place, is EUR 1 007 926,40?

2. Through such expropriation and subsequent sale to NV Metafox (specifically the preferential price paid by NV Metafox of EUR 91 720,60) does the Flemish Region/Flemish Community, through the WVI, not indirectly benefit the favoured undertaking, NV Metafox, by directly conferring an economic advantage on it (namely the difference between the price paid and the 'for tax' sale price stated in the sales instrument), since the favoured undertaking, NV Metafox, could not have acquired this land under normal market conditions (EUR 1 007 926,40) or at the 'for tax' sale price (EUR 294 394,14)?

   Consequently, can such a measure of the WVI (specifically the sale of industrial land for the preferential price actually paid) be classified as a financial advantage that is contrary to Article 87(1) EC?

Action brought on 7 April 2008 — Commission of the European Communities v Republic of Poland

(Case C-142/08)

(2008/C 142/28)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary for the purpose of giving effect to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([1]), or in any event by failing to inform the Commission of the adoption of such measures, the Republic of Poland has failed to fulfil its obligations arising under that directive;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period for transposing Directive 2004/39/EC expired on 31 January 2007.

([1]) OJ L 145, 30.4.2004, p. 1-44.

Action brought on 7 April 2008 — Commission of the European Communities v Republic of Poland

(Case C-143/08)

(2008/C 142/29)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary for the purpose of giving effect to Commission Directive 2006/73/EC ([1]) of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council, or in any event by failing to inform the Commission of the adoption of such measures, the Republic of Poland has failed to fulfil its obligations arising under that directive;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period for transposing Directive 2006/73/EC expired on 31 January 2007.

([1]) OJ L 241 of 2.9.2006, p. 26-58.

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 9 April 2008 — Club Hotel Loutraki AE, Athinaïki Tekhniki AE and Evangelos Marinakis v Ethniko Simvoulio Radiotileorasis and Ipourgos Epikratias

(Case C-145/08)

(2008/C 142/30)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Claimants: Club Hotel Loutraki AE, Athinaïki Tekhniki AE and Evangelos Marinakis

Defendants: Ethniko Simvoulio Radiotileorasis and Ipourgos Epikratias

Questions referred

1. Does a contract by which the contracting authority entrusts to the contracting undertaking the management of a casino business and the execution of a development plan consisting in the upgrading of the casino premises and the commercial exploitation of the possibilities offered by the casino's licence, and which contains a term under which the contracting authority is obliged to pay the contracting undertaking compensation should another casino lawfully operate in the wider area in which the casino in question operates, constitute a concession, not governed by Directive 92/50/EEC?

2. If the first question referred for a preliminary ruling is answered in the negative: does a legal action which is brought by persons who have participated in the procedure for the award of a public contract of mixed form providing inter alia for the supply of services subject to Annex I B to Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209), and in which they plead breach of the principle of equal treatment of participants in tender procedures (a principle affirmed by Article 3(2) of that directive), fall within the field of application 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), or is its application precluded inasmuch as, in accordance with Article 9 of Directive 92/50/EEC, only Articles 14 and 16 of the latter apply to the procedure for the award of the abovementioned contract for the supply of services?

3. If the second question referred for a preliminary ruling is answered in the affirmative: accepting that a national provision in accordance with which only all the members of a consortium without legal personality which has participated unsuccessfully in a public procurement procedure can bring a legal action against the act awarding the contract, and not consortium members individually, is not in principle contrary to Community law and specifically to Directive 89/665, and that that still applies where the legal action has initially been brought by all the members of the consortium jointly but ultimately proves, as regards some of them, to be inadmissible, is it in addition necessary, from the viewpoint of application of that directive, to examine, in order to make a declaration of inadmissibility, whether those individual members thereafter retain the right to claim before another national court any damages which may be envisaged by a provision of national law?

4. When it has been held by settled case-law of a national court that an individual member of a consortium may also bring an admissible legal action against an act falling within a public procurement procedure, is it compatible with Directive 89/665/EEC, interpreted in the light of Article 6 of the European Convention on Human Rights as a general principle of Community law, to dismiss a legal action as inadmissible, because of a change to that settled case-law, without the person who has brought that legal action first being given either the opportunity to cure the inadmissibility or, in any event, the opportunity to set out, pursuant to the adversarial principle, his views relating to that issue?

Reference for a preliminary ruling from the Juzgado de lo Mercantil No 1 (Commercial Court No 1), Spain lodged on 9 April 2008 — Finn Mejnertsen v Betina Mandal Barsoe

(Case C-148/08)

(2008/C 142/31)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 (Commercial Court No 1), Spain

Parties to the main proceedings

Applicant: Finn Mejnertsen

Defendant: Betina Mandal Barsoe

Questions referred

1. For the purposes of Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty of European Union and the Treaty establishing the European Community, should Denmark be considered to be a Member State within the meaning of Article 16 of Regulation (EC) No 1346/2000 [1] on insolvency proceedings?

2. Does the fact that that Regulation is subject to that Protocol mean that that Regulation does not form part of the body of Community law in that country?

3. Does the fact that Regulation No 1346/2000 is not binding on and is not applicable in Denmark mean that other Member States are not to apply that Regulation in respect of the recognition and enforcement of judicial declarations of insolvency handed down in that country, or, on the other hand, that other Member States are obliged, unless they have made derogations, to apply that Regulation when the judicial declaration of insolvency is handed down in Denmark and is presented for recognition and enforcement in other Member States, in particular, in Spain?

(1) Regulation (EC) No 1346/2000 of the Council, of 29 May 2000 (OJ L 160, p. 1).

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 11 April 2008 — Aktor Anonimi Tekhniki Etairia (Aktor A.T.E.) v Ethniko Simvoulio Radiotileorasis

(Case C-149/08)

(2008/C 142/32)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Claimant: Aktor Anonimi Tekhniki Etairia (Aktor A.T.E.)

Defendant: Ethniko Simvoulio Radiotileorasis

Intervener: Mikhaniki A.E.

Questions referred

1. Accepting that a national provision in accordance with which only all the members of a consortium without legal personality which has participated unsuccessfully in a public procurement procedure can bring a legal action against the act awarding the contract, and not consortium members individually, is not in principle contrary to Community law and specifically to Directive 89/665, and that that still applies where the legal action has initially been brought by all the members of the consortium but ultimately proves, as regards some of them, to be inadmissible, is it in addition necessary, from the viewpoint of application of that directive, to examine, in order to make a declaration of inadmissibility, whether those individual members thereafter retain the right to claim before another national court any damages which may be envisaged by a provision of national law?

2. When it has been held by settled case-law of a national court that an individual member of a consortium may also bring an admissible legal action against an act falling within a public procurement procedure, is it compatible with Directive 89/665/EEC, interpreted in the light of Article 6 of the European Convention on Human Rights as a general principle of Community law, to dismiss a legal action as inadmissible, because of a change to that settled case-law, without the person who has brought that legal action first being given either the opportunity to cure the inadmissibility or, in any event, the opportunity to set out, pursuant to the adversarial principle, his views relating to that issue?

Action brought on 15 April 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-153/08)

(2008/C 142/33)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and L. Lozano Palacios, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that, by maintaining in force fiscal legislation taxing winnings from all types of lotteries, games and betting organised outside the Kingdom of Spain, whereas winnings obtained from certain lotteries, games and betting organised within the Kingdom of Spain are exempted from income tax, the Kingdom of Spain has failed to fulfil its obligations under Community law and, in particular, under Article 49 EC and Article 36 of the Agreement on the European Economic Area;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under Spanish legislation, winnings from lotteries and betting organised by Loterías y Apuestas del Estado (the Spanish public-law body in charge of lotteries and betting) or by bodies or entities of the Comunidades Autónomas (Autonomous Communities), and winnings from lotteries organised by the Spanish Red Cross or the Organización Nacional de Ciegos Españoles (Spanish national association for the blind) are exempt from income tax. However, income from lotteries, games or betting organised by other national bodies or by foreign bodies, including those established in Member States of the European Union or the European Economic Area, is added to the taxable amount and subject to progressive rates of taxation.

Relying in particular on *Lindman* and *Safir*, the Commission points out that, according to that line of authority, the organising of lotteries is to be regarded as a 'service' for the purposes of the Treaty. Also according to that case-law, Article 49 EC prohibits any restriction on the freedom to provide services, or any obstacle to that freedom — even where such a restriction or obstacle applies equally to national providers of services and to those of the other Member States — and precludes the application of any rule of national law the effect of which is to make it more difficult to provide services between Member States than to provide services wholly within a particular Member State. Given the particular features of the gaming sector, the case-law accepts certain restrictions imposed by Member States, provided that such measures can be shown to be appropriate and proportionate, as well as non-discriminatory.

The Commission maintains that the Spanish legislation is discriminatory because the exemption is reserved for certain entities which that legislation defines precisely, and entities of other Member States, albeit of the same nature and in pursuit of the same objectives as the Spanish entities specified in the exemption rule, are excluded from the benefit of that exemption. Accordingly, even if the Spanish authorities had shown, in the course of the infringement proceedings, that the legislation at issue is a measure which is appropriate and proportionate to the stated objective of protecting consumers and public order — which they have failed to do — the legislation at issue could not in any circumstances be regarded as compatible with Community law, in so far as it is wholly discriminatory.

Order of the President of the Court of 10 March 2008 (reference for a preliminary ruling from the Sozialgericht Berlin — Germany) — Irene Werich v Deutsche Rentenversicherung Bund

(Case C-111/06) ([1])

(2008/C 142/34)

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 Court of 1 April 2008 (reference for a preliminary ruling from the Corte Suprema Di Cassazione — Italy) — Ministero dell'Economia e delle Finanze and Agenzie delle Entrate v Porto Antico di Genova SpA

(Case C-149/06) ([1])

(2008/C 142/35)

Language of the case: Italian

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

([1]) OJ C 310, 16.12.2006.

Order of the President of the Court of 10 March 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-44/07) ([1])

(2008/C 142/36)

Language of the case: German

The President of the Court 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 27 February 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-120/07) ([1])

(2008/C 142/37)

Language of the case: Dutch

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 26 February 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-123/07) ([1])

(2008/C 142/38)

Language of the case: Dutch

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 3 April 2008 — Commission of the European Communities v Italian Republic

(Case C-449/07) ([1])

(2008/C 142/39)

Language of the case: Italian

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

([1]) OJ C 283, 24.11.2007.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 3 April 2008 — PKK v Council

(Case T-229/02) [1]

(Common foreign and security policy — Restrictive measures directed against certain persons and entities with a view to combating terrorism — Freezing of funds — Action for annulment — Statement of reasons)

(2008/C 142/40)

Language of the case: English

Parties

Applicant: Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK) (represented by: M. Muller QC, E. Grieves and P. Moser, barristers, and J.G. Pierce, Solicitor)

Defendant: Council of the European Union (represented initially by: M. Vitsentzatos and M. Bishop, and subsequently by M. Bishop and E. Finnegan, Agents)

Interveners in support of the applicant: United Kingdom of Great Britain and Northern Ireland (represented initially by: R. Caudwell, and subsequently by E. Jenkinson, Agents, assisted by S. Lee, Barrister) and Commission of the European Communities, (represented by: P. Kuijper and C. Brown, and subsequently by P. Hetsch and P. Aalto, Agents)

Re:

Annulment of Council Decision 2002/460/EC: of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26)

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC in so far as it concerns the Kurdistan Workers' Party (PKK).*

2. *Orders the Council to bear, in addition to its own costs, all the costs incurred by Osman Ocalan on behalf of the PKK before the Court of First Instance and the Court of Justice.*

3. *Orders the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to pay their own costs.*

[1] OJ C 233, 28.9.2002.

Judgment of the Court of First Instance of 3 April 2004 — KONGRA-GEL and Others v Council

(Case T-253/04) [1]

(Common foreign and security policy — Restrictive measures directed against certain persons and entities with a view to combating terrorism — Freezing of funds — Action for annulment — Statement of reasons)

(2008/C 142/41)

Language of the case: English

Parties

Applicants: KONGRA-GEL and the nine other applicants whose names are shown in the annex to the judgment (represented by M. Muller QC, E. Grieves and C. Vine, Barristers, and J.G. Pierce, Solicitor)

Defendant: Council of the European Union (represented by E. Finnegan and D. Canga Fano, Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by R. Caudwell, and subsequently by E. Jenkinson, Agents, and S. Lee, Barrister)

Re:

First, the partial annulment of Council Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2003/902/EC (OJ 2004 L 99, p. 28), and of Regulation No 2580/2001 (OJ 2001 L 344, p. 70), and, secondly, damages.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2003/902/EC in so far as it concerns KONGRA-GEL;*

2. *Orders the Council to bear, in addition to its own costs, all the costs incurred by the applicants;*

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

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 22 April 2008 — Casa Editorial El Tiempo v OHIM — Instituto Nacional de Meteorología (EL TIEMPO)

(Case T-233/06) ([1])

(Community trade mark — Opposition — Application for Community word mark EL TIEMPO — Earlier national word marks TELETIEMPO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 142/42)

Language of the case: Spanish

Parties

Applicant: Casa Editorial El Tiempo, SA (Santafé de Bogotá, Colombia) (represented by: A. Fernández Lerroux and A. Fernández Fernández-Pacheco, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Instituto Nacional de Meteorología (Madrid, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 22 June 2006 (Case R 760/2005-4) concerning opposition proceedings between the Instituto Nacional de Meteorología and Casa Editoria El Tiempo, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Casa Editorial El Tiempo to pay the costs.*

([1]) OJ C 261, 28.10.2006.

Judgment of the Court of First Instance of 23 April 2008 — Leche Celta v OHIM — Celia (Celia)

(Case T-35/07) ([1])

(Community trade mark — Opposition — Application for Community figurative mark Celia — Earlier national word mark CELTA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 142/43)

Language of the case: French

Parties

Applicant: Leche Celta, SL (Puentedeume, Spain) (represented by: J. Calderón Chavero, T. Villate Consonni and M. Tañez Manglano, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Celia SA (Craon, France) (represented by: D. Masson and F. de Castelnau, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 December 2006 (Case R 294/2006-4) concerning opposition proceedings between Leche Celta, SL and Celia SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Leche Celta, SL to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Order of the Court of First Instance of 9 April 2008 — Meggle v OHIM — Clover (HiQ with trefoil)

(Case T-37/06) ([1])

(Community trade mark — Opposition — Withdrawal of opposition — No need to adjudicate)

(2008/C 142/44)

Language of the case: German

Parties

Applicant: Meggle AG (Wasserburg, Germany) (represented by: T. Raab and H. Lauf, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Clover Corporation Limited (Sydney, Australia)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 November 2005 (Case R 1130/2004-2) concerning opposition proceedings between Meggle AG and Clover Corporation Limited

Operative part of the order

1. *There is no longer any need to adjudicate in the case.*

2. *The applicant is ordered to pay the costs.*

([1]) OJ C 96, 22.4.2006.

Order of the Court of First Instance of 3 April 2008 — Landtag Schleswig-Holstein v Commission

(Case T-236/06) ([1])

(Action for annulment — Access to documents — Regional parliament — Lack of capacity to be a party to legal proceedings — Inadmissibility)

(2008/C 142/45)

Language of the case: German

Parties

Applicant: Landtag Schleswig-Holstein (Germany) (represented by: S. Laskowski and J. Caspar)

Defendant: Commission of the European Communities (represented by: P. Costa de Oliveira and C. Ladenburger)

Re:

Application for the annulment of the Commission decisions of 10 March and 23 June 2006 refusing to grant the applicant access to document SEK(2005) 420 of 22 March 2005, containing a legal analysis of a draft framework decision, under discussion in the Council, on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *It is not necessary to rule on the applications to intervene;*

3. *Landtag Schleswig-Holstein shall bear its own costs and pay the Commission's costs, except those relating to the applications to intervene;*

4. *Landtag Schleswig-Holstein, the Commission, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland shall bear their own costs in relation to the applications to intervene.*

([1]) OJ C 261, 28.10.2006.

Order of the Court of First Instance of 10 April 2008 — 2K-Teint and Others v Commission and EIB

(Case T-336/06) ([1])

(Non-contractual liability — Financing contract concluded with Morocco — EIB's alleged negligence and failures in monitoring a loan financed by the Community budget — Limitation — Inadmissibility)

(2008/C 142/46)

Language of the case: French

Parties

Applicants: 2K-Teint SARL (Casablanca, Morocco); Mohammed Kermoudi, Khalid Kermoudi, Laila Kermoudi, Mounia Kermoudi, Salma Kermoudi and Rabia Kermoudi (Casablanca) (represented by: P. Thomas, lawyer)

Defendants: Commission of the European Communities (represented by A. Aresu and V. Joris, Agents) and European Investment Bank (EIB) (represented by C. Gómez de la Cruz and J.-P. Minnaert, Agents)

Re:

Action for compensation for the loss allegedly suffered by the applicants by reason of the EIB's negligence and failures in monitoring the use of funds intended for the completion of the project of 2K-Teint, in performance of the financing contract concluded between the EIB, as agent of the Community, and the Kingdom of Morocco.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *2K-Teint SARL, Mohammed Kermoudi, Khalid Kermoudi, Laila Kermoudi, Mounia Kermoudi, Salma Kermoudi and Rabia Kermoudi are ordered to pay, in addition to their own costs, the costs incurred by the Commission and the European Investment Bank (EIB).*

([1]) OJ C 20, 27.1.2007.

Action brought on 19 February 2008 — Hellenic Republic v Commission of the European Communities

(Case T-86/08)

(2008/C 142/47)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: B. Kondolaimos, S. Kharitaki, and by M. Tassopoulou)

Defendant: Commission of the European Communities

Form of order sought

The Court is asked to

— annul or otherwise amend the Commission's decision of 20 December 2007, notified under No E(2007) 6514 final and published as Decision 2008/68/EC (OJ 2008 L 18, p. 12), in so far as it imposes financial corrections on the Hellenic Republic as specified in the application;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the Commission's decision excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it concerns the financial corrections imposed on it in the sectors: (a) fruit and vegetables, (b) guarantee accompanying measures, (c) failure to meet payment deadlines.

The applicant claims that the contested decision should be annulled because it is unlawful, inasmuch as Community provisions were misinterpreted and misapplied, or it was based on an error as to the facts and incorrect assessment of the factual circumstances, or otherwise as having defective, insufficient and imprecise reasoning, undermining the legal basis of the decision; in addition it should be annulled because in imposing the corrections in question the Commission infringed the principle of proportionality and exceeded the bounds of its discretion.

In particular the applicant puts forward six grounds for annulment.

As regards citrus processing, in view of the factual circumstances and the fact that the correction of 2 % imposed concerns the repetition of the procedure from the bilateral consultation stage, after the annulment of a similar Commission decision by the Court of Justice of the European Communities in Case C-5/03 ([1]), the applicant alludes first to the fact that the Commission was in breach of its obligation to comply with the judgments of the Court of Justice under Article 233 EC and the principle of res iudicata, and also with the Community rules and guidelines for the clearance of accounts. The applicant also submits that the Commission did not have the necessary powers at the time, that the imposition of a correction for a shortcoming in supplementary checking was unlawful and, lastly, that the 24-month rule was infringed because of the erroneous categorisation of the letter of 1999 as a letter of conclusions.

Secondly, the applicant alleges error as to the facts, insufficient reasoning, infringement of the principle of proportionality and that the Commission exceeded the bounds of its discretion in view of the fact that the alleged infringement (payment by cheque instead of bank transfer) concerns a shortcoming rather than the non-existence of supplementary controls, with no finding of unlawful payment, in conjunction with the date when it was effected.

Thirdly, with regard to the correction in the sector of guarantee accompanying measures, the applicant alleges infringement of essential procedural requirements and otherwise alludes to the fact that at the time the Commission was not empowered to impose financial corrections retroactively for a period earlier than 24 months before the sending of the conciliation letter. Fourthly, the applicant maintains that the contested decision is vitiated by insufficient reasoning, in so far as the conciliation letter merely refers to a shortcoming and in the summary there is doubt as to the exact reason for the correction.

Fifthly, the applicant maintains that the Commission was in error as to the facts and imposed a correction of 5 % in respect of agro-environmental measures and the salvage measure in infringement of the Community rules and guidelines for the clearance of accounts, without justification, in breach of the principle of proportionality and exceeding the bounds of its discretion.

Sixthly, in view of the automatic application of the scale of reductions in Regulation (EC) No 296/96 ([2]) concerning advances, and without any doubt being cast on the veracity of the reasons which prompted late payments, with the consequence that 100 % of expenditure on late payments was excluded, the applicant alleges infringement of the Community rules and guidelines for the clearance of accounts.

([1]) Judgment of 7 July 2005 in Case C-5/03 *Hellenic Republic* v *Commission* [2005] ECR I-5925.
([2]) Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5).

Action brought on 18 February 2008 — Republic of Cyprus v Commission

(Case T-87/08)

(2008/C 142/48)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/126225/C/SER/CY for the conclusion of a contract entitled 'Technical assistance for engineering works for waste management infrastructure and rehabilitation of dumping sites in the northern part of Cyprus', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 8 December 2007, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

— first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ([1]);

— second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ([2]) ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ([3]);

— third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984); and

— fourth, because the notice was not published in the Official Journal.

([1]) OJ 2006 L 65, p. 5.
([2]) OJ 2003 L 236, p. 33.
([3]) OJ 2003 L 236, p. 955.

Action brought on 18 February 2008 — Republic of Cyprus v Commission

(Case T-88/08)

(2008/C 142/49)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/125242/C/SER/CY for the conclusion of a contract entitled 'Technical assistance to support implementation of the Rural Development Sector Programme', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 6 December 2007, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

— first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ([1]);

— second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ([2]) ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ([3]);

— third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984); and

— fourth, because the notice was not published in the Official Journal.

([1]) OJ 2006 L 65, p. 5.
([2]) OJ 2003 L 236, p. 33.
([3]) OJ 2003 L 236, p. 955.

Action brought on 22 February 2008 — Republic of Cyprus v Commission

(Case T-91/08)

(2008/C 142/50)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference aEuropeAid/126172/C/SER/CY for the conclusion of a contract entitled 'Development and restructuring of telecommunications infrastructure — Training, Capacity building and Project management', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 12 December 2007, and annul points 5 and 28 of the notice;

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

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

— first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ([1]);

— second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ([2]) ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ([3]);

— third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984);

— fourth, because the notice is contrary to and/or incompatible with the principle of sincere cooperation between the institutions of the European Union and the Member States, as laid down under Article 10 EC; and

— fifth, because the notice was not published in the Official Journal.

([1]) OJ 2006 L 65, p. 5.
([2]) OJ 2003 L 236, p. 33.
([3]) OJ 2003 L 236, p. 955.

Action brought on 22 February 2008 — Republic of Cyprus v Commission

(Case T-92/08)

(2008/C 142/51)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/126111/C/SER/CY for the conclusion of a contract entitled 'Technical Assistance to support the ongoing reform of the primary and secondary education sector', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 14 December 2007, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

— first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ([1]);

— second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ([2]) ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ([3]);

— third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984);

— fourth, because the notice is contrary to and/or incompatible with the principle of sincere cooperation between the institutions of the European Union and the Member States, as laid down under Article 10 EC; and

— fifth, because the notice was not published in the Official Journal.

([1]) OJ 2006 L 65, p. 5.
([2]) OJ 2003 L 236, p. 33.
([3]) OJ 2003 L 236, p. 955.

Action brought on 22 February 2008 — Republic of Cyprus v Commission

(Case T-93/08)

(2008/C 142/52)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/125671/C/SER/CY for the conclusion of a contract entitled 'Technical Assistance on Crop Husbandry and Irrigation', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 14 December 2007, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

— first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ([1]);

— second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ([2]) ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ([3]);

— third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984);

— fourth, because the notice is contrary to and/or incompatible with the principle of sincere cooperation between the institutions of the European Union and the Member States, as laid down under Article 10 EC; and

— fifth, because the notice was not published in the Official Journal.

([1]) OJ 2006 L 65, p. 5.
([2]) OJ 2003 L 236, p. 33.
([3]) OJ 2003 L 236, p. 955.

Action brought on 7 March 2008 — Republic of Cyprus v Commission

(Case T-119/08)

(2008/C 142/53)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/125672/C/SER/CY for the conclusion of a contract entitled 'Technical Assistance on animal husbandry', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 27 December 2007, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant's pleas in law and main arguments are identical or similar to those advanced in Cases T-91/08, T-92/08 and T-93/08 *Cyprus* v *Commission*.

Action brought on 14 March 2008 — Republic of Cyprus v Commission

(Case T-122/08)

(2008/C 142/54)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

— annul the procurement notice under reference EuropeAid/126316/C/SER/CY for the conclusion of a contract entitled 'Establishment of a Programme Management Unit to support the implementation of investments projects in the field of water/wastewater and solid waste', which was published, only in English, on the webpage http://ec.europa.eu/europaid/tender/data/ on or around 4 January 2008, and annul points 5 and 28.2 of the notice;

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

Pleas in law and main arguments

The applicant's pleas in law and main arguments are identical or similar to those advanced in Cases T-91/08, T-92/08 and T-93/08 *Cyprus* v *Commission*.

Action brought on 25 March 2008 — CBI and Abisp v Commission

(Case T-128/08)

(2008/C 142/55)

Language of the case: French

Parties

Applicants: Coordination Bruxelloise d'Institutions sociales et de santé (CBI) (Brussels, Belgium) and Association Bruxelloise des Institutions de Soins Privées (Abisp) (Brussels, Belgium) (represented by: D. Waelbroeck, lawyer, and D. Slater, solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of the Commission's decision of 10 January 2008 rejecting their complaint made on 7 September and 17 October 2005 against the State aid granted by the Kingdom of Belgium to public hospitals of the IRIS network in the Brussels-Capital Region and refusing to initiate the formal investigation procedure in respect of the aid in question pursuant to Article 88(2) EC.

The applicants submit, first of all, that the contested decision is vitiated by procedural defects inasmuch as it should have been adopted by the Commission as a body, addressed to the Member State concerned, and published in the *Official Journal of the European Union*.

As to the merits, the applicants submit that the Commission made manifest errors of assessment and failed to fulfil its obligations to state reasons in taking the view that the measures in question were compatible with Article 86(2) EC and that it was not necessary to initiate the formal investigation procedure pursuant to Article 88(2) EC.

The applicants claim that the conditions for the application of Article 86(2) EC are not satisfied in this case, since:

— the public-service mission of the hospitals receiving the aid is not clearly defined;

— the compensation criteria have not been established in advance;

— the compensation exceeds the costs incurred; and

— no comparison has been made between the hospitals receiving the aid and comparable private hospitals.

The applicants further submit that the directive on the transparency of financial relations between Member States and public undertakings ([1]) has not been complied with in the present case.

([1]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ 2006 L 318, p. 17).

Action brought on 2 April 2008 — ENRI Electronics v OHIM (MaxiBridge)

(Case T-132/08)

(2008/C 142/56)

Language in which the application was lodged: German

Parties

Applicant: ENRI Electronics GmbH (Adelberg, Germany) (represented by N. Breitenbach, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 30 January 2008 in Case R 1530/2006-4;

— Order OHIM to pay the costs, including the costs incurred in the course of the appeal.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'MaxiBridge' for goods in Classes 9 and 17 (Application No 4 899 647).

Decision of the Examiner: Application rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 ([1]) inasmuch as the mark in respect of which application is sought does not constitute an indication which needs to be kept freely available.

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

Action brought on 3 April 2008 — Schräder v CPVO — Jørn Hansson (Lemon Symphony)

(Case T-133/08)

(2008/C 142/57)

Language in which the application was lodged: German

Parties

Applicant: Ralf Schräder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt, lawyers)

Defendant: Community Plant Variety Office

Other party to the proceedings before the Board of Appeal of CPVO: Jørn Hansson (Søndersø, Denmark)

Form of order sought

— Annul the decision of the Board of Appeal of CPVO of 4 December 2007 (Case A 007/2007) and declare the adaptation of the variety description for the plant variety Lemon Symphony null and void;

— In the alternative, annul the decision of the Board of Appeal of CPVO of 4 December 2007 (Case A 007/2007);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community plant variety right concerned: Lemon Symphony

Proprietor of the Community plant variety right: Jørn Hansson

Decision of the Board of Appeal of the Community Plant Variety Office which is being contested: Adaptation of a variety description in accordance with Article 87(4) of Council Regulation (EC) No 2100/94 ([1])

Appellant before the Board of Appeal: the Applicant

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— Infringement of Article 59(2) of Regulation (EC) No 1239/95 ([2]) inasmuch as the applicant was not summoned to the hearing in due form;

— Infringement of Article 75 of Regulation No 2100/94 inasmuch as the applicant was unable to present his comments orally or in writing on the absence of *locus standi*;

— Infringement of Article 71(1), in conjunction with Article 68, of Regulation No 2100/94, inasmuch as the decision challenged before the Board of Appeal is of direct and individual concern to the applicant;

— Infringement of Article 73 of Regulation No 2100/94 and Article 230 EC inasmuch as the applicant's right to judicial review of administrative action has been infringed;

— Infringement of Article 48 of Regulation No 2100/94 inasmuch as a member of the Board of Appeal allegedly had an interest in the proceedings.

(1) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).
(2) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).

Action brought on 4 April 2008 — Schräder v CPVO — Jørn Hansson (Lemon Symphony)

(Case T-134/08)

(2008/C 142/58)

Language in which the application was lodged: German

Parties

Applicant: Ralf Schräder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt, lawyers)

Defendant: Community Plant Variety Office

Other party to the proceedings before the Board of Appeal of CPVO: Jørn Hansson (Søndersø, Denmark)

Form of order sought

— Annul the decision of the Board of Appeal of CPVO of 4 December 2007 (Case A 006/2007);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community plant variety right concerned: Lemon Symphony

Proprietor of the Community plant variety right: Jørn Hansson

Decision of the Board of Appeal of the Community Plant Variety Office which is being contested: Failure to cancel the Community plant variety right for Lemon Symphony in accordance with Article 21 of Council Regulation (EC) No 2100/94 (1)

Appellant before the Board of Appeal: the Applicant

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law:

— Infringement of Article 59(2) of Commission Regulation (EC) No 1239/95 (2) inasmuch as the applicant was not summoned to the hearing in due form;

— Infringement of Article 71(1), in conjunction with Articles 21, 67 and 68, of Regulation No 2100/94 inasmuch as the grounds of appeal were not considered or not adequately considered;

— Infringement of Article 73 of Regulation No 2100/94 and Article 230 EC inasmuch as the applicant's right to judicial review of administrative action has been infringed;

— Infringement of Article 48 of Regulation No 2100/94 inasmuch as a member of the Board of Appeal allegedly had an interest in the proceedings.

(1) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).
(2) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).

Action brought on 4 April 2008 — Schniga v Community Plant Variety Office (CPVO) — Elaris and Brookfield New Zealand (Gala-Schnitzer)

(Case T-135/08)

(2008/C 142/59)

Language in which the application was lodged: English

Parties

Applicant: Schniga Srl (Bolzano, Italy) (represented by G. Würtenberger, lawyer and R. Kunze, Solicitor)

Defendant: Community Plant Variety Office

Other parties to the proceedings before the Board of Appeal: SNC Elaris (Angers, France) and Brookfield New Zealand Ltd (Havelock North, New Zealand)

Form of order sought

— Annul the Decision of the Board of Appeal of 21 November 2007 in cases A-003/2007 and A-004/2007; and

— order CPVO to pay the costs.

Pleas in law and main arguments

Applicant for Community plant variety rights: Konsortium Südtiroler Baumschuler, following the transfer of the variety at issue, Schniga Srl (Application No 1999/0033)

Community plant variety right sought for: Gala-Schnitzer

Decision of the CPVO: Community plant variety right granted (Decisions No EU 18759, OBJ 06-021 and OBJ 06-022)

Appeal before the Board of Appeal lodged by: SNC Elaris and Brookfield New Zealand Ltd

Decision of the Board of Appeal: Annulment of the decision of the CPVO

Pleas in law: Infringement of Article 59(3) of Council Regulation No 2100/94 [1] as the objections to the Community plant variety right do not comply with the said provision; the disputed decision is based on requirements to be fulfilled by the applicant beyond the legislative framework; the power and discretion of the President of CPVO have been wrongly assessed.

[1] Council Regulation (EC) No 2100/1994 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

Action brought on 9 April 2008 — BCS v OHIM — Deere (Combination of colours green and yellow)

(Case T-137/08)

(2008/C 142/60)

Language in which the application was lodged: English

Parties

Applicant: BCS SpA (Milan, Italy) (represented by: M. Franzosi, V. Jandoli, F. Santonocito, lawyers)

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

Other party to the proceedings before the Board of Appeal: Deere & Company (Moline, United States)

Form of order sought

— Annul the Decision of the Second Board of Appeal of 16 January 2008 in case R 0222/2007-2; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A figurative mark consisting of the colour combination of green and yellow for goods in classes 7 and 12 — Community trade mark No 63 289

Proprietor of the Community trade mark: Deere & Company

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

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(3), 52(1)(c) in connection with Article 8(4) and Article 73(1) of Council Regulation No 40/94, as:

— the Board of Appeal ought to have interpreted Article 7(3) very strictly and, accordingly, should have imposed a rigorous burden of proof on the other party to the proceedings;

— the Board of Appeal failed to recognize the prior de facto trade mark of the applicant; and

— the Board of Appeal used contradictory reasoning in its decision.

Action brought on 3 April 2008 — Cavankee Fishing and Others v Commission

(Case T-138/08)

(2008/C 142/61)

Language of the case: English

Parties

Applicants: Cavankee Fishing Co. Ltd (Lifford, Ireland), Ocean Trawlers Limited (Killybegs, Ireland), Mullglen Limited (Balbriggan, Ireland), Eamon McHugh (Killybegs, Ireland), Joseph Doherty (Burtonport, Ireland), Brendan Gill (Lifford, Ireland), Eileen Oglesby (Burtonport, Ireland), Noel McGing (Killybegs, Ireland), Larry Murphy (Castletownbere, Ireland), Thomas Flaherty (Aran Islands, Ireland), Pauric Conneely (Claregalway, Ireland), Island Trawlers Limited (Killybegs, Ireland), Cathal Boyle (Killybegs, Ireland), Eugene Hannigan (Milford, Ireland), Peter McBride (Downings, Ireland), Hugh McBride (Downings, Ireland), Patrick Fitzpatrick (Aran Islands, Ireland), Patrick O'Malley (Galway, Ireland), Cecil Sharkey (Clogherhead, Ireland) (represented by: A. Collins, SC, N. Travers, Barrister, D. Barry, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— order the Commission to pay the following sums (excluding interest), increased by the costs of borrowing, further up-to-date particulars of which will be provided at the oral hearing, by way of damages to each of the applicants:

Pelagic

— Cavankee Fishing Company	2 748 276,00 EUR
— Ocean Trawlers Ltd	6 740 000,00 EUR
— Mullglen Ltd.	2 690 000,00 EUR
— Eamon McHugh	3 036 187,00 EUR
— Joseph Doherty	2 640 408,00 EUR
— Brendan Gill	2 717 665,00 EUR
— Eileen Oglesby	2 994 349,00 EUR
— Noel McGing	2 444 000,00 EUR
— Larry Murphy	4 150 000,00 EUR
— Thomas Flaherty	2 140 000,00 EUR
— Pauric Conneely	1 930 000,00 EUR

Polyvalent

— Island Trawlers Limited	672 000,00 EUR
— Cathal Boyle	651 200,00 EUR
— Eugene Hannigan	125 000,00 EUR
— Peter McBride	106 848,00 EUR
— Hugh McBride	106 848,00 EUR
— Partick Fitzpatrick	177 573,00 EUR
— Patrick O'Malley	
(a) 'Capal Ban'	205 698,00 EUR
(b) 'Capal Or'	496 800,00 EUR
— Cecil Sharkey	205 697,88 EUR

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

Pleas in law and main arguments

In the present case, the applicants are bringing an action for non-contractual liability arising from the losses they claim to have suffered as a result of the Commission's Decision 2003/245/EC of 4 April 2003 on the requests submitted by the Member States ([1]) in so far as it provided for the rejection of the request by Ireland in respect of the applicants' vessels. This decision was partially annulled by the Court's judgment of 13 June 2006 ([2]).

The applicants state in support of their contentions that in adopting the annulled decision the Commission breached a number of superior rules of law intended to confer rights on individuals by grave and manifest disregard of the discretion conferred upon the Commission by Article 4(2) of Decision 97/413/EC ([3]) as found by the Court in its judgment in the Joined Cases T-218/03 to T-240/03. The applicants claim that the Commission also infringed: the principle of equal treatment, the principle of care and sound administration, the freedom to pursue a trade or profession and the principle of proportionality. They claim that in such circumstances, the mere infringement of Community law establishes a sufficiently serious breach of law.

Furthermore, the applicants claim that they have suffered and continue to suffer substantial loss and damage as a direct consequence of the Commission adopting the annulled decision as they were required to purchase on the market tonnage to replace safety tonnage requested but not granted and, for some applicants, as regards to the losses flowing from days lost at sea. Therefore, the applicants claim that their damage is actual and certain.

As proof of the existence of a causal connection between the conduct and damage at issue, the applicants state that if the Commission had not acted unlawfully in refusing properly to consider the applications for safety tonnage submitted by the applicants, none of them would have been required to purchase additional tonnage.

([1]) Decision C(2003) 1113 final on the requests received by the Commission to increase the fourth multi-annual guidance programme (MAGP IV) objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall (OJ 2003 L 90, p. 48).

([2]) Joined Cases T-218/03 to T-240/03, *Boyle and Others* v *Commission* [2006] ECR II-1699.

([3]) Council Decision of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with a view to achieving a balance on a sustainable basis between resources and their exploitation (OJ L 175, p. 27).

Action brought on 11 April 2008 — Loufrani v OHIM (half-smiley)

(Case T-139/08)

(2008/C 142/62)

Language of the case: English

Parties

Applicant: Franklin Loufrani (London, United Kingdom) (represented by: A. Deutsch, lawyer)

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

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of 7 February 2008 in case R 0958/2007-4); and

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'half-smiley' for goods in classes 14, 18 and 25 — application No 893 580

Decision of the examiner: Refusal of the application for all goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the mark acquired the minimum degree of distinctiveness required to be registered.

Action brought on 14 April 2008 — Ferrero v OHIM — Tirol Milch (TiMi KINDERJOGHURT)

(Case T-140/08)

(2008/C 142/63)

Language in which the application was lodged: English

Parties

Applicant: Ferrero SpA (Alba, Italy) (represented by: C. Gielen, lawyer, and F. Jacobacci, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tirol Milch rGmbH (Innsbruck, Austria)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal market (Trade Marks and Designs) of 30 January 2008 in case R 628/2007-2; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A word mark consisting of the words 'TiMi KINDERJOGHURT' for goods in class 29 — application No 792 978

Proprietor of the Community trade mark: Tirol Milch reg. Gen. mbH

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

Decision of the Cancellation Division: Invalidity of the challenged trade mark

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

Pleas in law: The Second Board of Appeal erred in establishing that the previous final decisions between the same parties and concerning the same trade mark are binding in the subsequent action for invalidity before the Cancellation Division and the Board of Appeal; Infringement of Article 8(1)(b) and 8(5) of Council Regulation No 40/94 as the challenged trade mark is similar to an earlier trade mark.

Action brought on 2 April 2008 — Italian Republic v Commission of the European Communities

(Case T-142/08)

(2008/C 142/64)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: Commission of the European Communities, European Personnel Selection Office

Form of order sought

The applicant claims that the Court should:

— annul Notice of open competitions EPSO/AD/116/08 and EPSO/AD/117/08 to constitute a reserve list comprising 30 Administrator posts (AD8) and 20 Principal Administrator posts (AD11) in the field of fraud prevention;

— annul Notice of open competition EPSO/AST/45/08 to constitute a reserve list comprising 30 Assistant posts (AST4) in the field of fraud prevention.

Pleas in law and main arguments

The pleas in law and principal arguments are similar to those put forward in Case T-117/08 *Italy* v *Commission* ([1]).

([1]) Not yet published in the *Official Journal of the European Union*.

Action brought on 21 April 2008 — Beifa Group v OHIM — Schwan-STABILO Schwanhäußer (design of instruments for writing)

(Case T-148/08)

(2008/C 142/65)

Language in which the application was lodged: English

Parties

Applicant: Beifa Group Co. Ltd (formerly Ningbo Beifa Group Co. Ltd) (Zhejiang, China) (represented by: R. Davis, Barrister and N. Cordell, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Schwan-STABILO Schwanhäußer GmbH & Co KG (Heroldsberg, Germany)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2008 in case R 1352/2006-3;

— remit the matter to the Invalidity Division for further consideration of the issues raised in the application for invalidity; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: A design for the product 'instruments for writing' — registered Community design No 352315-0007

Proprietor of the Community design: The applicant

Party requesting the declaration of invalidity of the Community design: The other party to the proceedings before the Board of Appeal

Trade mark right of the party requesting the declaration of invalidity: A national figurative mark representing an instrument for writing registered on 14 December 2006 for goods in class 16 — registration No DE 30045470

Decision of the Invalidity Division: Invalidity of the challenged design

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 25(1)(e) of Council Regulation No 6/2002 as the Third Board of Appeal applied the wrong test to determine whether there was the requisite use of the trade mark by the applicant; the Third Board of Appeal should have considered whether the use of the trade mark by the other party to the proceedings has been both within the meaning of Article 25(1)(e) of Council Regulation No 6/2002 and German national law; in reaching its decision under Article 25(1)(e) of Council Regulation No 6/2002 the Third Board of Appeal should have applied the test for trade mark infringement upheld under German national law.

Action brought on 18 April 2008 — Abbott Laboratories v OHIM — aRigen (Sorvir)

(Case T-149/08)

(2008/C 142/66)

Language in which the application was lodged: English

Parties

Applicant: Abbott Laboratories (Abbott Park, United States) (represented by: S. Schäffler, lawyer)

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

Other party to the proceedings before the Board of Appeal: aRigen, Inc. (Tokyo, Japan)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 February 2008 in case R 809/2007-2; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: aRigen, Inc

Community trade mark concerned: The word mark 'Sorvir' for goods in class 5 — application No 004 455 507

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

Mark or sign cited: The word mark 'NORVIR' for goods in class 5

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the marks in question are similar and thus likely to cause confusion.

Order of the Court of First Instance of 3 April 2008 — PTV v OHIM (map&guide travelbook)

(Case T-219/06) ([1])

(2008/C 142/67)

Language of the case: German

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

([1]) OJ C 237, 30.9.2006.

Order of the Court of First Instance of 3 April 2008 — PTV v OHIM (MAP&GUIDE The Mapware Company)

(Case T-226/06) ([1])

(2008/C 142/68)

Language of the case: German

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

([1]) OJ C 249, 11.10.2006.

Order of the Court of First Instance of 9 April 2008 — Belgium v Commission

(Case T-403/06) ([1])

(2008/C 142/69)

Language of the case: French

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

([1]) OJ C 42, 24.2.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 23 April 2008 — Pickering v Commission

(Case F-103/05) ([1])

(Staff case — Officials — Remuneration — Correction coefficients — Transfer of part of remuneration out of the country of employment — Pensions — Default proceedings — Temporal application of the Tribunal's Rules of Procedure — Pay slips — Plea of illegality — Equal treatment of officials — Principle of protection of legitimate expectations, acquired rights, principle of legal certainty and the duty to have regard for the interests of officials — Obligation to state reasons)

(2008/C 142/70)

Language of the case: French

Parties

Applicant(s): Stephen Pickering (La Hulpe, Belgium) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities (represented by: V. Joris and D. Martin, Agents)

Re:

Annulment of the applicant's pay slips for the months of December 2004 and January and February 2005, and of all subsequent pay slips, in so far as they apply the allegedly unlawful provisions of Regulation No 723/2004 amending the Staff Regulations of Officials, concerning the transfer of part of remuneration to the official's country of origin (formerly Case T-393/05).

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 10 of 14.1.2006, p. 27 (Case originally registered at the Court of First Instance of the European Communities under number T-393/05 and transferred to the European Union Civil Service Tribunal by order of 15 December 2005).

Judgment of the Civil Service Tribunal (First Chamber) of 23 April 2008 — Bain and Others v Commission

(Case F-112/05) ([1])

(Staff case — Officials — Remuneration — Correction coefficients — Transfer of part of remuneration out of the country of employment — Pensions — Default proceedings — Temporal application of the Tribunal's Rules of Procedure — Pay slips — Plea of illegality)

(2008/C 142/71)

Language of the case: French

Parties

Applicants: **Neil Bain** (Brussels, Belgium), **Obhijit Chatterjee** (Brussels, Belgium), **Richard Fordham** (Bergen, Netherlands), **Roger Hurst** (Bergen, Netherlands), (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities (represented by: V. Joris and D. Martin, Agents)

Re:

Annulment of the applicants' pay slips for the months of February, March and April 2005, and of all subsequent pay slips, in so far as they apply the allegedly unlawful provisions of Regulation No 723/2004 amending the Staff Regulations of Officials, concerning the transfer of part of remuneration to the official's country of origin (formerly Case T-419/05).

Operative part of the judgment

The Tribunal:

1. *Dismisses the action as inadmissible;*

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

([1]) OJ C 48 of 25.2.2006, p. 36 (Case originally registered at the Court of First Instance of the European Communities under number T-419/05 and transferred to the European Union Civil Service Tribunal by order of 15 December 2005).

Action brought on 7 January 2008 — Blais v European Central Bank

(Case F-6/08)

(2008/C 142/72)

Language of the case: German

Parties

Applicant: Jessica Blais (Frankfurt am Main, Germany) (represented by: B. Karthaus, lawyer)

Defendant: European Central Bank

The subject-matter and description of the proceedings

Annulment of the decision of the European Central Bank refusing to pay the applicant expatriation allowance on the ground that during the 10 years before her entry into the defendant's service, her place of residence was not outside the territory of the Member State in which she was employed, as required by Article 17(ii) of the Conditions of Employment (CoE).

Form of order sought

— Annul the decision of the European Central Bank of 15 August 2007, in the form of a communication from the President of the European Central Bank dated 8 November 2007, not to pay the applicant expatriation allowance;

— Order the defendant to pay the costs.

Action brought on 24 January 2008 — Tomas v Parliament

(Case F-13/08)

(2008/C 142/73)

Language of the case: Lithuanian

Parties

Applicant: Stanislovas Tomas (Pavlodar, Kazakhstan) (represented by: M. Michalauskas, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision to dismiss the applicant and damages for the material and non-material loss suffered.

Form of order sought

— Annul the appointing authority's decision to dismiss the applicant;

— Order the defendant to pay the applicant the sum of EUR 125 000 by way of damages for the material and non-material loss suffered;

— Order the European Parliament to pay the costs.

Action brought on 5 February 2008 — X v European Parliament

(Case F-14/08)

(2008/C 142/74)

Language of the case: Greek

Parties

Applicant: X (Luxembourg, Grand Duchy of Luxembourg) (represented by V. Christianos, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

Annulment of the decision by which the European Parliament's Director of Personnel considered that the applicant did not suffer from permanent and total disability making it impossible for her to perform her duties, and annulment of the opinion given by the Invalidity Committee on 27 June 2007.

Form of order sought

— Annulment of the decision by which the European Parliament's Director of Personnel considered that the applicant did not suffer from permanent and total disability making it impossible for her to perform her duties, and annulment of the opinion given by the Invalidity Committee on 27 June 2007;

— that the file should be sent back to the Invalidity Committee for it to take another decision;

— that the European Parliament should be ordered to pay the costs.

Action brought on 21 March 2008 — Schell v Commission

(Case F-36/08)

(2008/C 142/75)

Language of the case: French

Parties

Applicant: Arno Schell (Brussels, Belgium) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the applicant's career development report for the period from 1 January 2006 to 31 December 2006 and annulment of his 2007 promotion report.

Form of order sought

— Annul the applicant's career development report for the period from 1 January 2006 to 31 December 2006 and annul his 2007 promotion report;

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

Action brought on 20 March 2008 — Meister v OHIM

(Case F-37/08)

(2008/C 142/76)

Language of the case: German

Parties

Applicant: Herbert Meister (Alicante, Spain) (represented by: H.-J. Zimmermann, lawyer)

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

The subject-matter and description of the proceedings

Annulment of the implied decision of OHIM rejecting the applicant's complaint concerning alleged errors in his periodical report.

Form of order sought

— Annul the implied decision of the President of OHIM of 3 January 2008 rejecting the applicant's complaint of 27 August 2007;

— Order OHIM to pay the applicant damages (in an amount to be determined by the Tribunal) for non-material loss;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs;

— In the alternative, annul the decision of the President of OHIM, transmitted to the applicant on 7 January 2008, rejecting the applicant's complaint of 27 August 2007.