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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 158/01)

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

OJ C 142, 7.6.2008

Past publications

OJ C 128, 24.5.2008

OJ C 116, 9.5.2008

OJ C 107, 26.4.2008

OJ C 92, 12.4.2008

OJ C 79, 29.3.2008

OJ C 64, 8.3.2008

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 8 May 2008 — Ferriere Nord SpA v Commission of the European Communities, Italian Republic

(Case C-49/05 P) ([1])

(Appeal — State aid — Formal examination procedure — Community framework for State aid for environmental protection — Rights of the parties — Application to submit observations — Article 88(2) EC — Regulation (EC) No 659/1999 — Legitimate expectations — Legal certainty — Environmental purpose of the investment)

(2008/C 158/02)

Language of the case: Italian

Parties

Appellant: Ferriere Nord SpA (represented by: W. Viscardini, G. Donà, avvocati)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Di Bucci, acting as Agent); Italian Republic (represented by: I. Braguglia, Agent, and M. Fiorilli, avvocato dello Stato)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 18 November 2004 in Case T-176/01 *Ferriere Nord* v *Commission*, dismissing an application for, on the one hand, annulment of Commission Decision 2001/829/EC, ECSC of 28 March 2001 Commission Decision of 28 March 2001 on the State aid which Italy is planning to grant to Ferriere Nord SpA (OJ 2001 L 310, p. 22), declaring incompatible with the common market aid notified as environmental aid which the autonomous Region of Friuli-Venezia Giulia (Italy) is planning to grant to the applicant in the form of a financial contribution to investments in new plant for the production of electrowelded wire mesh to reduce noise and eliminate waste in the form of iron oxide, and, on the other, compensation for the harm allegedly suffered by the applicant following adoption of that decision

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ferriere Nord SpA to pay the costs;*

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

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Second Chamber) of 8 May 2008 (references for a preliminary ruling from the Finanzgericht Düsseldorf and the Tribunal de grande instance de Nanterre (Germany, France)) — Zuckerfabrik Jülich AG, formerly Jülich AG v Hauptzollamt Aachen

(Joined Cases C-5/06 and C-23/06 to C-36/06) ([1])

(Sugar — Production levies — Detailed rules for the application of the quota system — Calculation of the exportable surplus — Calculation of the average loss)

(2008/C 158/03)

Language of the case: German and French

Referring court

Finanzgericht Düsseldorf, Tribunal de grande instance de Nanterre

Parties to the main proceedings

Applicants: Zuckerfabrik Jülich AG, formerly Jülich AG (C-5/06), Saint Louis Sucre SNC (C-23/06), Sucreries du Marquenterre SA (C-24/06), SA des Sucreries de Fontaine Le Dun, Bolbec, Auffray (SAFBA) (C-25/06), SA Lesaffre Frères (C-26/06), Tereos, as successor in title to Sucreries, Distilleries des Hauts de France (C-27/06), SA Sucreries & Distilleries de Souppes — Ouvré fils (C-28/06), SA Sucreries de Toury et Usines Annexes (C-29/06), Tereos (C-30/06), Tereos, as successor in title to SAS Sucrerie du Littoral Groupe SDHF (C-31/06), Cristal Union (C-32/06), Sucrerie Bourdon (C-33/06), SA Sucrerie de Bourgogne (C-34/06), SAS Vermendoise Industries (C-35/06), SA Sucreries et Raffineries d'Erstein (C-36/06)

Defendants: Hauptzollamt Aachen (C-5/06), Directeur général des douanes et droits indirects, Receveur principal des douanes et droits indirects de Gennevilliers (C-23/06 to C-36/06)

Re:

Preliminary rulings — Finanzgericht Düsseldorf — Interpretation of Article 15 of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1) — Validity of Article 6(4) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40), as amended by Commission Regulation (EC) No 1140/2003 of 27 June 2003 amending, in the sugar sector, Regulations (EC) No 779/96 laying down detailed rules of application as regards communications and (EC) No 314/2002 laying down detailed rules for the application of the quota system (OJ 2003 L 160, p. 33) — Validity of Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year (OJ 2004 L 316, p. 64) — Whether account is to be taken, in determining the exportable surplus, of all exported quantities of sugar, isoglucose and inulin syrup and, in determining the average loss per tonne of sugar, only of the quantities in respect of which export refunds were paid

Operative part of the judgment

Pursuant to Article 15(1)(c) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector, for the purpose of calculating the exportable surplus, all the quantities of exported products which fall under that article must, regardless of whether or not refunds have actually been paid, be subtracted from consumption.

Article 15(1)(d) of that regulation is to be interpreted as meaning that all the quantities of exported products which fall under that article must, regardless of whether or not refunds have actually been paid, be taken into account for the purpose of calculating both the exportable surplus and the average loss per tonne of product.

Commission Regulations (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year and (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year are invalid.

Examination of Commission Regulation (EC) No 1837/2002 of 15 October 2002 fixing the production levies and the coefficient for the additional levy in the sugar sector for the marketing year 2001/02 has not disclosed the existence of any factors such as to affect its validity.

([1]) OJ C 74, 25.3.2006.

Judgment of the Court (Grand Chamber) of 6 May 2008 — European Parliament v Council of the European Union

(Case C-133/06) ([1])

(Action for annulment — Common policy on asylum — Directive 2005/85/EC — Procedures in Member States for granting and withdrawing refugee status — Safe countries of origin — European safe third countries — Minimum common lists — Procedure for adopting or amending the minimum common lists — Article 67(1) and first indent of Article 67(5) EC — No power)

(2008/C 158/04)

Language of the case: French

Parties

Applicant: European Parliament (represented by: H. Duintjer Tebbens, A. Caiola, A. Auersperger Matić and K. Bradley, Agents)

Intervener in support of the applicant: Commission of the European Communities (represented by: C. O'Reilly, P. Van Nuffel and J.-F. Pasquier, Agents)

Defendant: Council of the European Union (represented by: M. Simm, M. Balta and G. Maganza, Agents)

Intervener in support of the defendant: French Republic (represented by G. de Bergues and J.-C. Niollet, Agents)

Re:

Annulment of Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13)

Operative part of the judgment

The Court:

1. *Annuls Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;*

2. *Orders the Council of the European Union to pay the costs;*

3. *Orders the French Republic and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (First Chamber) of 8 May 2008 — Eurohypo AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-304/06 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(b) — Word mark EUROHYPO — Absolute ground for refusal of registration — Trade mark devoid of any distinctive character)

(2008/C 158/05)

Language of the case: German

Parties

Appellant: Eurohypo AG (represented by: C. Rohnke and M. Kloth, Rechtsanwälte)

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

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 3 May 2006 in Case T-439/04 *Eurohypo AG* v *OHIM* in which the Court of First Instance dismissed the action for annulment of the decision refusing to register the word mark EUROHYPO for services in Class 36 — Distinctive character of a mark which consists exclusively of signs or indications which may serve, in trade, to designate the characteristics of a service

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 3 May 2006 in Case T-439/04 Eurohypo v OHIM (EUROHYPO), inasmuch as the Court of First Instance of the European Communities held that the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) did not infringe Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 3288/94 of 22 December 1994, by refusing, in its decision of 6 August 2004 (Case R 829/2002-4), to register the term EUROHYPO as a Community trade mark for services in Class 36 of the Nice Agreement of 15 June 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised and amended, corresponding to the following description: 'financial affairs; monetary affairs; real estate affairs; provision of financial services; financing …';*

2. *Dismisses the action against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 August 2004 (Case R 829/2002-4);*

3. *Orders Eurohypo AG to pay the costs of the proceedings at both instances.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Third Chamber) of 8 May 2008 (reference for a preliminary ruling from the Vestre Landsret, Denmark) — Danske Svineproducenter v Justitsministeriet

(Case C-491/06) ([1])

(Directive 91/628/EEC — Protection of animals during transport — Implementation — Margin of discretion — Domestic animals of the porcine species — Journeys exceeding eight hours — Minimum height of each deck of the vehicle — Loading density)

(2008/C 158/06)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Danske Svineproducenter

Defendant: Justitsministeriet

Intervener: Den Europæiske Dyre- og Kødhandelsunion (UECBV)

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of points 2(b), 47(D) and the third indent of point 48(3) of the Annex to Council Directive 91/628/EEC on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17), as amended by Council Directive 95/29/EC of 29 June 1995 (OJ 1995 L 148, p. 52) — Minimum height and loading density in each deck in vehicles transporting pigs where the transport exceeds eight hours

Operative part of the judgment

1. *National rules such as those at issue in the main proceedings, comprising figures for the animal compartment height in order that transporters may refer to more precise standards than those set out in Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Directive 95/29/EC of 29 June 1995, may fall within the margin of discretion conferred on the Member States by Article 249 EC, on condition that those rules, which comply with the objective pursued by that directive, as amended, of protecting animals during transport do not, contrary to the principle of proportionality, prevent attainment of the objectives, also pursued by that directive, as amended, of eliminating technical barriers to trade in live animals and allowing market organisations to operate smoothly. It is for the national court to establish whether those rules comply with those principles.*

2. *Section D of point 47 in Chapter VI of the annex to Directive 91/628, as amended by Directive 95/29, must be interpreted as meaning that a Member State is entitled to introduce national rules under which, in the case of transport operations of over eight hours' duration, the available space per animal must be at least 0,50 m² per 100 kg of pig.*

(1) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 8 May 2008 (reference for a preliminary ruling from the Bundesgerichtshof, Germany) — Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin

(Case C-14/07) (1)

(Judicial cooperation in civil matters — Regulation (EC) No 1348/2000 — Service of judicial and extrajudicial documents — Annexes to the document not translated — Consequences)

(2008/C 158/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ingenieurbüro Michael Weiss und Partner GbR

Defendant: Industrie- und Handelskammer Berlin

Joined party: Nicholas Grimshaw & Partners Ltd

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 8(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37) — Refusal to accept an application served in another Member State and drawn up in the language of that Member State addressed on the ground that the annexes to the application are available only in the language of the Member State of transmission, the language designated by the parties as the language of correspondence in a contract concluded between them

Operative part of the judgment

1. *Article 8(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters is to be interpreted as meaning that the addressee of a document instituting the proceedings which is to be served does not have the right to refuse to accept that document, provided that it enables the addressee to assert his rights in legal proceedings in the Member State of transmission, where annexes are attached to that document consisting of documentary evidence which is not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, but which has a purely evidential function and is not necessary for understanding the subject matter of the claim and the cause of action.*

It is for the national court to determine whether the content of the document instituting the proceedings is sufficient to enable the defendant to assert his rights or whether it is necessary for the party instituting the proceedings to remedy the fact that a necessary annex has not been translated.

2. *Article 8(1)(b) of Regulation No 1348/2000 is to be interpreted as meaning that the fact that the addressee of a document served has agreed in a contract concluded with the applicant in the course of his business that correspondence is to be conducted in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language, but is evidence which the court may take into account in determining whether that addressee understands the language of the Member State of transmission.*

3. *Article 8(1) of Regulation No 1348/2000 is to be interpreted as meaning that the addressee of a document served may not in any event rely on that provision in order to refuse acceptance of annexes to the document which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands where the addressee concluded a contract in the course of his business in which he agreed that correspondence was to be conducted in the language of the Member State of transmission and the annexes concern that correspondence and are written in the agreed language.*

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Second Chamber) of 8 May 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-39/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 89/48/EEC — Recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration — National legislation not providing for the recognition of diplomas allowing access to the profession of hospital pharmacist — Failure to transpose the directive)

(2008/C 158/08)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose 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), as far as the profession of hospital pharmacist is concerned

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the measures necessary to transpose 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 far as the profession of hospital pharmacist is concerned, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Third Chamber) of 8 May 2008 (reference for a preliminary ruling from the Commissione tributaria provinciale — Italy) — Ecotrade SpA v Agenzia Entrate Ufficio Genova 3

(Joined Cases C-95/07 and C-96/07) ([1])

(Sixth VAT Directive — Reverse charge procedure — Right to deduct — Time-bar — Irregularity in accounts and tax returns affecting transactions subject to the reverse charge procedure)

(2008/C 158/09)

Language of the case: Italian

Referring court

Commissione tributaria provinciale

Parties to the main proceedings

Applicant: Ecotrade SpA

Defendant: Agenzia Entrate Ufficio Genova 3

Re:

Reference for a preliminary ruling — Commissione tributaria provinciale — Interpretation of Articles 17, 18(1)(d), 21(1) and 22 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of valued added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Right to deduct upstream VAT — National provision making the exercise of the right to a deduction dependent on compliance with a two-year time limit

Operative part of the judgment

1. *Articles 17, 18(2) and (3) and 21(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2000/17/EC of 30 March 2000, do not preclude national legislation which lays down a limitation period for the exercise of the right to deduct, such as that at issue in the main proceedings, provided that the principles of equivalence and effectiveness are respected. The principle of effectiveness is not infringed merely because the tax authority has a longer period in which to recover unpaid value added tax than the period granted to taxable persons for the exercise of their right to deduct.*

2. *However, Articles 18(1)(d) and 22 of the Sixth Directive 77/388, as amended by Directive 2000/17, do preclude a practice whereby tax returns are reassessed and value added tax recovered which penalises misapprehension, first, of obligations arising from formalities laid down in national legislation pursuant to Article 18(1)(d), and, second, of the obligations relating to accounts and tax returns under Article 22(2) and (4) respectively, such as that in the main proceedings, by denying the right to deduct in the case of a reverse charge procedure.*

(1) OJ C 117, 26.5.2007.

Judgment of the Court (Seventh Chamber) of 8 May 2008 — Commission of the European Communities v Portuguese Republic

(Case C-233/07) (1)

(Failure of a Member State to fulfil obligations — Environment — Directive 91/271/EEC — Urban waste water treatment — Decision 2001/720/EC — Derogation regarding urban waste water treatment for the agglomeration of the Estoril coast — Infringement of Articles 2, 3 and 5 of Decision 2001/720/EC)

(2008/C 158/10)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and P. Andrade, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes and M.J. Lois, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3 and 5 of the Commission Decision of 8 October 2001 granting Portugal a derogation regarding urban waste water treatment for the agglomeration of the Estoril coast (OJ 2001 L 269, p. 14)

Operative part of the judgment

The Court:

1. *Declares that the Portuguese Republic has failed to fulfil its obligations under Articles 2, 3 and 5 of Commission Decision 2001/720/EC granting Portugal a derogation regarding urban waste water treatment for the agglomeration of the Estoril coast, by:*

   — *failing to subject, during the bathing season, the urban waste water from the agglomeration of the Estoril coast, prior to discharge into the sea, to at least advanced primary treatment and to a disinfection system in accordance with Article 2 of that decision,*

   — *failing to subject, outside the bathing season, the urban waste water from the agglomeration of the Estoril coast, prior to discharge, to at least primary treatments, in accordance with Article 3 of that decision, and*

   — *suffering the discharge of urban waste water from the agglomeration of the Estoril coast to produce adverse effects on the environment;*

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

(1) OJ C 170, 21.7.2007.

Judgment of the Court (Seventh Chamber) of 8 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-392/07) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/19/EC — Common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States — Failure to transpose within the period prescribed)

(2008/C 158/11)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of Belgium (represented by: D. Haven, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 2005 L 58, p. 19)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

(1) OJ C 235, 6.10.2007.

Appeal brought on 7 March 2008 by Portela & Companhia SA against the judgment delivered by the Court of First Instance (Fifth Chamber) on 11 December 2007 in Case T-10/06, Portela & Companhia SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-108/08 P)

(2008/C 158/12)

Language of the case: Portuguese

Parties

Appellant: Portela & Companhia (represented by J. Conceição Pimenta, advogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Juan Torrens Cuadrado and Josep Gilbert Sanz

By order of 22 April 2008 the President of the Court of Justice ordered the removal of the case from the Court's register.

Action brought on 11 March 2008 — Commission of the European Communities v Republic of Austria

(Case C-110/08)

(2008/C 158/13)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

The applicant asks the Court to:

— declare that, by still not having submitted to the Commission a complete list of proposed sites of Community importance or because the present list transmitted to the Commission is still incomplete with regard to six natural habitat types in the Alpine biogeographical region (3230, 6520, *7220, 8130, 9110 and 9180), and ten natural habitat types (*1530, 3240, *6110, *6230, 6520, 8150, 8220, 9150, 91F0 and *91I0) and twelve species (*Vertigo moulinsiana, *Osmoderma eremita, Rutilus pigus, Triturus cristatus, Triturus carnifex, Rhinolophus hipposideros, Barbastella barastellus, Myotis emarginatus, Myotis myotis, Mannia triandra, Buxbaumia viridis, Drepanocladus vernicosus*) in the Continental biogeographical region, the defendant has failed to fulfil its obligations under Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

— order the Republic of Austria to bear the costs.

Pleas in law and main arguments

In order to set up a coherent European ecological network of special areas of conservation according to a specified timetable, Article 4(1) of Directive 92/43/EEC requires the Member States to draw up, on the basis of the criteria set out in Annex III to the Directive and relevant scientific information, a list of sites hosting natural habitat types in Annex I and species in Annex II that are native to its territory. This national list is to include the sites which host the priority natural habitat types and species selected by the Member States on the basis of the criteria set out in Annex III. 'Priority' species and natural habitats are those which are in danger of disappearance and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the European territory of the Member States. This list was to be transmitted to the Commission within three years of the notification of the Directive, together with information on each site. The Directive entered into force for the Republic of Austria, as amended by the Treaty of Accession, upon its accession to the European Union on 1 January 1995, and the time-limit for transposition has in any case by now unquestionably expired.

As the Republic of Austria has still not submitted to the Commission a complete list of proposed sites of Community importance, it has infringed its obligations under Article 4(1) of Directive 92/43/EEC.

According to the Commission, the Republic of Austria relies on alleged procedural defects which make the Commission's action unlawful.

The defendant's first objection relates to the so-called 'reserves lists', that is the lists of natural habitat types and species in respect of which the Commission has determined the network to be incomplete in its decisions on the lists of the sites of Community importance for the Alpine and Continental biogeographical regions. The defendant argues that as the drawing up of reserves lists is not provided for under the Directive, the Commission is not entitled to rely on them in order to accuse the defendant of an incomplete notification of areas of conservation.

That argument cannot however be accepted. It is not at all relevant whether the directive regulates the drawing up of reserves lists or not; what matters is solely whether the national lists of suggested sites proposed to the Commission are complete. From the viewpoint of the Commission, the reserves lists represent merely stocktaking of the gaps in the process of drawing up a complete Natura 2000 network. While the Directive may not provide for such lists, it does not preclude them from being drawn up.

By virtue of the notification of additional subsequent nominations, the defendant's argument that it cannot defend itself, because it is not able to understand the scientific evidence relied upon by the Commission, lacks substance: the defendant was obviously in a position to see for itself that further nominations were required. Moreover, the defendant was indisputably involved in the biogeographical procedures.

The long period of time between the first reasoned opinion and the first and second supplementary reasoned opinions did not deny the defendant any procedural rights and cannot therefore be held against the Commission. The Commission refrained from bringing an action against the defendant immediately already in 1998 only because it had reason to believe that the defendant would soon comply with its obligation under the Directive. On a total of three occasions the defendant was given a time-limit within which to transmit the complete notification to the Commission. It therefore enjoyed an unusually long period of time within which it could both have commented on the Commission's allegations and dealt with the subject-matter of the action.

The argument that the Commission's demands for subsequent nominations were made pursuant to the procedure laid down in Article 4 of the Directive and therefore 'could not at the same time be regarded as a continuation of the infringement procedure' does not appear valid. Precisely because the demands for subsequent nominations took place according to Article 4 of the Directive, although the nomination phase should have long since been concluded, those demands for subsequent nominations provided clear indications of the fact that the defendant had still not complied with its obligation under Article 4. By virtue of the fact that the Commission accepted subsequent nominations over many years without bringing an action, the defendant obtained further opportunities to make the procedure devoid of purpose by fulfilling its obligations.

It must be stated in conclusion that, contrary to the defendant's argument, the consultation procedure provided for in Article 5 of the Directive is not applicable. That procedure is envisaged only in exceptional cases in which a dispute between the

Commission and a Member State on scientific grounds is to be resolved, but not in cases which, like the present case, are concerned only with incomplete notification of sites generally.

The procedural objections put forward by the defendant are therefore not well founded.

Appeal brought on 1 April 2008 by Dorel Juvenile Group, Inc. against the judgment of the Court of First Instance (Fifth Chamber) delivered on 24 January 2008 in Case T-88/06, Dorel Juvenile Group, Inc. v Office for Harmonization in the Internal Market (Trade Mark and Designs) (OHIM)

(Case C-131/08 P)

(2008/C 158/14)

Language of the case: English

Parties

Appellant: Dorel Juvenile Group, Inc. (represented by: Dr. G. Simon, Rechtsanwältin)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court should:

— annul judgment of the Court of First Instance (Fifth Chamber) of 24 January 2008, Case T-88/06;

— annul the Decision of the Second Board of Appeal of 11 January 2006, Case R 616/2004-2 and

— order the defendant to pay the costs.

Pleas in law and main arguments

The appellant submits that the CFI's assessment of the conditions for registration of a trademark is too restrictive. The appellant argues that the CFI assessed the character of the term 'SAFETY 1st' by means of a separate analysis of the element '1st' and based its judgment on the presumption that as the element '1st' was devoid of a distinctive character it cannot acquire such character when combined with the trademark element 'SAFETY'. According to the appellant the CFI should have assessed the distinctive character of the mark on the overall perception of the wording 'SAFETY 1st' by the average consumer. The splitting by the Court of the trademark 'SAFETY 1st' into its component parts does not reflect the view and approach adopted by consumers.

The contested judgment relies on a criterion according to which the expression safety first is used to designate the goods covered by the mark applied for 'as information relating to a quality or characteristic of the goods'. The appellant submits that that criterion is relevant in the context of Article 7(1)(c) of Regulation No 40/94 but it is not the yardstick against which Article 7(1)(b) thereof should be judged. Therefore, the Court based its view that the sign in question fell within the scope of Article 7(1)(b) on the fat that it did not satisfy the criteria for protection governed by Article 7(1)(c).

Finally the appellant submits that the CFI also ignored the fact that Article 12(b) of Regulation No 40/94 [1] constitutes a corrective to the interpretation of Article 7(1)(b).

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

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 2 April 2008 — Intercontainer Interfrigo (ICF) SC v Balkenende Oosthuizen BV and MIC Operations BV

(Case C-133/08)

(2008/C 158/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Intercontainer Interfrigo (ICF) SC

Respondents: Balkenende Oosthuizen BV and MIC Operations BV

Questions referred

(a) Must Article 4(4) of the 1980 Convention on the law applicable to contractual obligations ([1]) be construed as meaning that it relates only to voyage charter parties and that other forms of charter party fall outside the scope of that provision?

(b) If Question (a) is answered in the affirmative, must Article 4(4) of the 1980 Convention then be construed as meaning that, in so far as other forms of charter party also relate to the carriage of goods, the contract in question comes, so far as that carriage is concerned, within the scope of that provision and the applicable law is for the rest determined by Article 4(2) of the 1980 Convention?

(c) If Question (b) is answered in the affirmative, which of the two legal bases indicated should be used as the basis for examining a contention that the legal claims based on the contract are time-barred?

(d) If the predominant aspect of the contract relates to the carriage of goods, should the division referred to in Question (b) not be taken into account and must then the law applicable to all constituent parts of the contract be determined pursuant to Article 4(4) of the 1980 Convention?

With regard to the ground set out in 3.6.(ii) above:

(e) Must the exception in the second clause of Article 4(5) of the 1980 Convention be interpreted in such a way that the presumptions in Article 4(2), (3) and (4) of the 1980 Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or indeed if it is clear therefrom that there is a stronger connection with some other country?

([1]) Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980.

Appeal brought on 7 April 2008 by Foshan Shunde Yongjian Housewares & Hardware against the judgment delivered on 29 January 2008 in Case T-206/07, Foshan Shunde Yongjian Housewares & Hardware v Council of the European Union

(Case C-141/08 P)

(2008/C 158/16)

Language of the case: French

Parties

Appellant(s): Foshan Shunde Yongjian Houewares & Hardware Co. Ltd (represented by: J.-F. Bellis, avocat, G. Vallera, barrister)

Other party/parties to the proceedings: Council of the European Union

Form of order sought

— Annul the judgment under appeal;

— Grant the forms of order sought in the proceedings before the Court of First Instance in Case T-206/07, that is to say, annulment of Regulation (EC) No 452/2007 ([1]) insofar as it applies to the appellant;

— Order the Council to pay the costs incurred before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The appellant relies on two pleas in law in support of its appeal.

By its first plea, the appellant complains that the Court of First Instance did not address the first plea which it raised in support of annulment in rejecting that plea on the basis of a finding which was manifestly not supported by the documents on the file, that is to say, that the discussion concerning the interpretation of Article 2(7)(c) of the Basic Regulation ([2]) and of paragraph 44 of the judgment of the Court of First Instance of 14 November 2006 in Case T-138/02 *Nanjing Metalink* v *Council* [2006] ECR II-4347 was without relevance. As the Council itself observed in its defence, it is precisely because the Commission considered that the necessary conditions for the amendment of the initial determination, as set out in that judgment, were not met that it revoked its final decision granting the appellant market economy treatment. Therefore, the Court of First Instance based its reasoning on inaccurate findings and failed to rule on the interpretation of Article 2(7)(c) of the Basic Regulation and on the question whether or not that article allows the Commission to revise, in the course of the procedure, its initial position on the subject of the grant of market economy treatment.

By its second plea, the applicant submits that the Court of First Instance wrongly concluded that the infringement of its rights to a fair hearing, despite having been established and declared by that court, cannot entail the annulment of the contested regulation on the ground that there is no possibility that the administrative procedure could have led to a different result. The debate concerning the interpretation of Article 2(7)(c) of the Basic Regulation and of paragraph 44 of the judgment in *Nanjing Metalink* played a decisive role in the administrative

procedure and, if the Commission had complied with the procedural requirements of Article 20(5) of the Basic Regulation, the appellant could have validly put forward its own interpretation of Article 2(7)(c) of the Basic Regulation.

(1) Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12).
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña, Spain lodged on 14 April 2008 — N.N. Renta, S.A. v Generalitat de Catalunya

(Case C-151/08)

(2008/C 158/17)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña, Spain

Parties to the main proceedings

Applicant: N.N. Renta, S.A.

Defendants: Generalitat de Catalunya

Question referred

Is it compatible with Article 33 of the Sixth Council Directive 77/388/EEC (1) of 17 May 1977 to maintain the variable or proportional amount of the duty on documented legal transactions when the latter is chargeable on the conclusion of a purchase by an undertaking whose business activity consists of buying and selling immovable property or purchasing immovable property for development or letting, the chargeable event or transaction, the basis of assessment and the taxable person in respect of the duty on documented legal transactions being the same as those in respect of value added tax, which is chargeable simultaneously in respect of the same purchase?

(1) OJ L 145, p. 1; EE 09/01, p. 54.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 16 April 2008 — X v Staatssecretaris van Financiën

(Case C-155/08)

(2008/C 158/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X

Respondent: Staatssecretaris van Financiën

Questions referred

1. Must Articles 49 EC and 56 EC be interpreted as meaning that, in cases where foreign savings balances, or income therefrom, are not disclosed to the tax authorities of a Member State, those articles do not prevent that Member State from applying a statutory rule which, in order to compensate for the lack of effective means of monitoring foreign credit balances, provides for a recovery period of twelve years, whereas a recovery period of five years applies in the case of savings balances, or income therefrom, held in that Member State, in which such effective means do exist?

2. Does it make a difference to the answer to Question 1 whether the credit balances are held in a Member State in which banking secrecy applies?

3. If the answer to Question 1 is affirmative, do Articles 49 EC and 56 EC similarly not preclude a fine for failure to disclose income or capital on which tax has been subsequently recovered from being determined as a proportion of the amount recovered over that longer period?

Reference for a preliminary ruling from the Commissione Tributaria Regionale di Trieste (Italy) lodged on 16 April 2008 — Agenzia Dogane Ufficio delle Dogane Trieste v Pometon S.p.A.

(Case C-158/08)

(2008/C 158/19)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale di Trieste

Parties to the main proceedings

Appellant: Agenzia Dogane Ufficio delle Dogane Trieste (Trieste Customs Authority)

Respondent: Pometon S.p.A.

Questions referred

1. Can it be correctly held that the inward processing procedure, as implemented by Pometon S.p.A., can infringe the principles of the customs policy of the Community, and, in particular, those of the general and specific anti-dumping legislation, as well as those of the Community Customs Code (Regulation (EEC) No 2913/92)? ([1]) In particular, is Article 13 of Regulation (EC) No 384/96 ([2]) to be interpreted as a principle of general application, applicable as a general stipulation of the Community legal order, also directly binding in relations between national authorities and taxpayers, as well as in the procedure for imposing anti-dumping duty; for example, can that principle be invoked in carrying out customs controls, as defined in Article 4(14) of the Community Customs Code (Regulation (EEC) No 2913/92?

2. Can the combined provisions of Article 13 of Regulation (EC) No 384/96, in respect of evasion of anti-dumping rules, of Article 114 *et seq*. of the Community Customs Code (Regulation (EEC) No 2913/92), in respect of inward processing, and of Articles 202, 204, 212 and 240 thereof, in respect of the incurrence of the customs debt, be interpreted as meaning that the subjection of goods to anti-dumping duty is not precluded by the prearranged acquisition of the same product from an entity with the nationality of a country not subject to anti-dumping duty, which has, in its turn, acquired that product in a country subject to such duty and has, without altering it in any way, imported it temporarily into the Community under the inward processing procedure, in order to re-import it processed, but temporarily and for only a few hours, and re-sell it immediately to the same Community company which had undertaken the inward processing?

3. Whether, in the absence of Community provisions on sanctions, which this court has failed to find, the court of the Member State may apply rules of its own legal order which enable it to declare, their requirements being met, the annulment of the contracts of assignment for inward processing and of sale of the compensating product, such as Articles 1343 (illegality), 1344 (contract to evade the law) and 1345 (illegal motive) of the Italian Civil Code, and Article 1414 *et seq*. of the Italian Civil Code in respect of pretence, where infringement of the Community principles referred to above is established?

4. Whether, for any other reasons or criteria of interpretation which it may please the Court to state, the operation described above, where it is prearranged in order to circumvent anti-dumping duty, complies with the inward processing procedure or whether it actually infringes customs principles for the application of anti-dumping duty which the Court may wish to indicate?

5. Whether, for any other reasons or criteria of interpretation which it may please the Court to state, the operation in question constitutes a definitive import of product subject to anti-dumping duty?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 1996 L 56, p. 1.

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 21 April 2008 — Iaszlo Hadadi (Hadady) v Csilla Marta Mesko, married name Hadadi (Hadady)

(Case C-168/08)

(2008/C 158/20)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Laszlo Hadadi (Hadady)

Defendant: Csilla Marta Mesko, married name Hadadi (Hadady)

Questions referred

1. Is Article 3(1)(b) [of Regulation No 2201/2003] ([1]) to be interpreted as meaning that, in a situation where the spouses hold both the nationality of the State of the court seised and the nationality of another Member State of the European Union, the nationality of the State of the court seised must prevail?

2. If the answer to Question 1 is in the negative, is that provision to be interpreted as referring, in a situation where the spouses each hold dual nationality of the same two Member States, to the more dominant of the two nationalities?

3. If the answer to Question 2 is in the negative, should it therefore be considered that that provision offers the spouses an additional option, allowing those spouses the choice of seising the courts of either of the two States of which they both hold the nationality?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Action brought on 29 April 2008 — Commission of the European Communities v Republic of Austria

(Case C-181/08)

(2008/C 158/21)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: V. Kreuschitz, Agent)

Defendant: Republic of Austria

Form of order sought

— declare that the Republic of Austria, by not adopting the laws, regulations and administrative provisions necessary to transpose Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work ([1]) or by not communicating those provisions to the Commission, has failed to fulfil its obligations under Article 2(1) of that directive.

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The time limit for transposition of the directive expired on 15 April 2006.

([1]) OJ 2003 L 97, p. 48.

Action brought on 29 April 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-184/08)

(2008/C 158/22)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver and J.-B. Laignelot, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by failing to adopt sanctions under Article 18 of Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents ([1]) or by not informing the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 18(1) and (2) of that regulation;

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

Pleas in law and main arguments

According to Article 18 of Regulation No 648/2004, the Member States are to adopt, no later than 8 October 2005, dissuasive, effective and proportionate sanctions for any infringement of that regulation and they are immediately to inform the Commission thereof. At the date at which the present action was brought, the defendant had still not adopted sanctions pursuant to the abovementioned article or, at least, had not informed the Commission thereof.

([1]) OJ 2004 L 104, p. 1.

Action brought on 5 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-187/08)

(2008/C 158/23)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and J.-B. Laignelot, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ([1]) or by not informing the Commission thereof, the Kingdom of Belgium has failed to fulfil its obligations under Article 15 of the Directive;

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the Directive 2002/91/EC expired on 4 January 2006. At the date on which the present action was brought, the defendant had still not adopted the measures necessary to transpose the directive in regard to the Walloon Region or, at least, had not informed the Commission thereof.

([1]) OJ 2003 L 1, p. 65.

COURT OF FIRST INSTANCE

Order of the Court of First Instance of 30 April 2008 — Sonia Rykiel création et diffusion de modèles v OHIM — Cuadrado (SONIA SONIA RYKIEL)

(Case T-131/06) ([1])

(Community trade mark — Application for the Community figurative mark SONIA SONIA RYKIEL — Earlier national word mark SONIA — Relative ground for refusal — Genuine use of the mark — Article 43(2) and (3) of Regulation (EC) No 40/94)

(2008/C 158/24)

Language of the case: English

Parties

Applicant: Sonia Rykiel création et diffusion de modèles (Paris, France) (represented by: E. Baud and S. Strittmatter, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Cuadrado, SA (Seville, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 January 2006 (Case R 329/2005-1) relating to opposition proceedings between Cuadrado, SA and Sonia Rykiel création et diffusion de modèles.

Operative part of the order

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 January 2006 (Case R 329/2005-1).*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 165, 15.7.2006.

Judgment of the Court of First Instance of 6 May 2008 — Redcats v OHIM — Revert & Cía (REVERIE)

(Case T-246/06) ([1])

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

(2008/C 158/25)

Language of the case: English

Parties

Applicant: Redcats SA (Roubaix France) (represented by: A. Bertrand, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Manuel Revert & Cía, SA (Onteniente, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 10 July 2006 (Case R 171/2005-4), relating to opposition proceedings between Manuel Revert & Cía, SA, and Redcats SA

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Redcats SA to pay the costs.*

([1]) OJ C 261, 28.10.2006.

Order of the Court of First Instance of 10 April 2008 — Imelios v Commission

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

(Application for annulment — Action for damages — Fifth framework programme of the Community for research, technological development and demonstration activities (1998-2002) — Arbitration clause — Debit note — Inadmissible)

(2008/C 158/26)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: C. Ladenburger and E. Manhaeve, agents)

Re:

First, application for annulment of the decision adopted by the Commission following an audit report by the European Anti-Fraud Office (OLAF) to recover, by way of the debit note of 17 January 2007, payments made in the framework of the contract, reference number IST-1999-10934-Assist relating to the 'Knowledge for Help Desk Operators' programme, concluded in the context of the Fifth Framework Programme of the Community for research, technological development and demonstration activities (1998-2002) in the field of user-friendly information, second, a request for payment of EUR 34 368 in respect of an instalment of a grant still to be paid under the contract and, third, a claim for compensation for damage allegedly suffered by the applicant as a result of that decision.

Operative part of the order

1. *The action is dismissed.*

2. *Imelios SA is to bear its own costs and pay those incurred by the Commission.*

([1]) OJ C 129, 9.6.2007.

Order of the Court of First Instance of 28 April 2008 — PubliCare Marketing Communications v OHIM (Publicare)

(Case T-358/07) ([1])

(Community trade mark — Application for Community word mark Publicare — Time limit for bringing proceedings — Fortuitous event — Excusable error — Manifest inadmissibility)

(2008/C 158/27)

Language of the case: German

Parties

Applicant: PubliCare Marketing Communications (Frankfurt-am-Main, Germany) (represented by: B. Mohr, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 27 June 2007 (Case R-157/2007-4) concerning an application for registration of word mark Publicare as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders PubliCare Marketing Communications GmbH to bear its own costs.*

([1]) OJ C 283, 24.11.2007.

Order of the President of the Court of First Instance (Interim measures) of 30 April 2008 — Spain v Commission

(Case T-65/08 R)

(Interim proceedings — Control of concentrations — Article 21 of Council Regulation (EC) No 139/2004 — Conditions imposed by the Spanish authorities on parties to a concentration declared incompatible with the common market — Application for stay of execution — Prima facie case — Lack of urgency — Balance of interests)

(2008/C 158/28)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: V. Di Bucci, F. Castillo de la Torre and É. Gippini Fournier, acting as Agents)

Re:

Application for stay of execution of Commission Decision C(2007) 5913 Final of 5 December 2007 (Case No COMP/M.4685 — Enel/Acciona/Endesa) in relation to a procedure pursuant to Article 21 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1)

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the Court of First Instance of 18 April 2008 — CPEM v Commission

(Case T-106/08 R)

(Applications for interim measures — Suspension of operation — Further application — New fact — None — Inadmissibility — Article 109 of the Rules of Procedure of the Court of First Instance)

(2008/C 158/29)

Language of the case: French

Parties

Applicant(s): CPEM (Marseille, France) (represented by: C. Bonnefoi, lawyer)

Defendant(s): Commission of the European Communities (represented by: L. Flynn and A Steiblytė)

Re:

Application for suspension of operation of debit note No 3240912189 of 17 December 2007 relating to Commission Decision C(2007) 4645 of 4 October 2007 cancelling the assistance from the European Social Fund (ESF) granted to CPEM by Decision C(1999) 2645 of 17 August 1999.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 15 April 2008 — E.ON Energie v Commission

(Case T-141/08)

(2008/C 158/30)

Language of the case: German

Parties

Applicant: E.ON Energie AG (Munich, Germany) (represented by: A. Röhling, C. Krohs and F. Dietrich, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the defendant's Decision C(2008) 377 Final of 30 January 2008 in Case COMP/B-1/39.326 — E.ON Energie;

— In the alternative, reduce the amount of the fine imposed on the applicant to an appropriate amount;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2008) 377 Final of 30 January 2008 in Case COMP/B-1/39.326 — E.ON Energie AG. In that decision the Commission imposed a fine on the applicant as it broke a seal affixed by representatives of the Commission under Article 20(2)(d) of Regulation (EC) No 1/2003 [1] and, at least negligently, infringed Article 23(1)(e) of that regulation.

The applicant relies on nine pleas in law in support of its action. In the first six pleas the applicant attempts to state that there is insufficient evidence of an infringement of the law. It is submitted in particular that there was failure to have regard to the full burden of proof which lies with the defendant, infringement of the inquisitorial principle, an erroneous assumption that the seal was affixed properly, a false assumption that there was something amiss with the condition of the seal on the following day, a false assumption as to the suitability of the security foil, and that there was failure on the defendant's part to consider alternative scenarios.

With the seventh plea it is submitted that the presumption of innocence was disregarded and thus essential rules as to procedure and form were infringed.

Eighth, the applicant submits that the defendant erred in making the accusation of fault for the purpose of Article 23 of Regulation No 1/2003.

Lastly, it is submitted that there were infringements of the law when the fine was calculated. According to the applicant there was infringement of the principle prohibiting arbitrary measures and of the obligation to state reasons laid down in Article 253 EC. There was failure to have regard to mitigating circumstances and an erroneous acceptance of aggravating circumstances.

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

Action brought on 17 April 2008 — Atlas Transport v OHIM — Atlas Air (ATLAS)

(Case T-145/08)

(2008/C 158/31)

Language in which the application was lodged: German

Parties

Applicant: Atlas Transport GmbH (Düsseldorf, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, Rechstanwälte)

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

Other party to the proceedings before the Board of Appeal of OHIM: Atlas Air, Inc. (New York, United States of America)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 January 2008 (Case R 1023/2007-1);

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'ATLAS' for goods and services in classes 9, 36 and 39 (Community trade mark No 2 970 788).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Atlas Air, Inc.

Trade mark right of applicant for the declaration: In particular the figurative mark 'ATLASAiR' registered in the Benelux States for goods in class 39 (No 555 184).

Decision of the Cancellation Division: Community trade mark declared partially invalid for services in class 39.

Decision of the Board of Appeal: Applicant's appeal dismissed as inadmissible.

Pleas in law: Infringement of the third sentence of Article 59 of Regulation (EC) No 40/94 ([1]), as the grounds of the appeal were linked to very specific assumptions and implicit grounds were not regarded as being sufficient. Further, analogous infringement of Article 61 of Regulation No 40/94 in conjunction with Rule 20(7) of Regulation (EC) No 2868/95 ([2]), as the proceedings before OHIM should necessarily have been suspended.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 17 April 2008 — Deutsche Rockwool Mineralwoll v OHIM — Redrock Construction (REDROCK)

(Case T-146/08)

(2008/C 158/32)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Rockwool Mineralwoll GmbH & Co. OHG (Gladbeck, Germany) (represented by: S. Beckmann, Rechstanwältin)

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

Other party to the proceedings before the Board of Appeal of OHIM: Redrock Construction s.r.o. (Prague, Czech Republic)

Form of order sought

— Annul the defendant's decision of 18 February 2008 in Case R 506/2007-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Redrock Construction s.r.o

Community trade mark concerned: Figurative mark 'REDROCK' for goods and services in classes 1, 2, 17, 19, 36 and 37 (application No 3 866 365).

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

Mark or sign cited in opposition: German word mark 'Rock' for goods and services in classes 1, 6-8, 17, 19, 37 and 42 (No 302 29 274); the opposition concerns registration in all classes with the exception of class 36.

Decision of the Opposition Division: Opposition allowed and application refused in part.

Decision of the Board of Appeal: Contested decision annulled and opposition rejected.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1], as there is a likelihood of confusion, or at least a likelihood of association, between the opposing marks.

[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 21 April 2008 — REWE-Zentral v OHIM — Aldi Einkauf (Clina)

(Case T-150/08)

(2008/C 158/33)

Language in which the application was lodged: German

Parties

Applicant: REWE-Zentral AG (Cologne, Germany) (represented by: M. Kinkeldey, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Aldi Einkauf GmbH & Co. OHG (Essen, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 February 2008 in Case R 1484/2006-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Clina' for goods in Classes 3 and 21 (Application No 3 921 079)

Proprietor of the mark or sign cited in the opposition proceedings: Aldi Einkauf GmbH & Co. OHG

Mark or sign cited in opposition: the word mark 'CLINAIR' for goods in Classes 3 and 5 (Community trade mark No 1 769 850)

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and rejection of the trade mark application

Pleas in law: Infringement of Article 8(1) of Regulation (EC) No 40/94 [1] as there is no likelihood of confusion between the opposing marks.

[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 21 April 2008 — Kido Industrial v OHIM — Amberes (SCORPIONEXO)

(Case T-152/08)

(2008/C 158/34)

Language in which the application was lodged: Spanish

Parties

Applicant: Kido Industrial Ltd (Seoul, Republic of Korea) (represented by: M. Mall, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Amberes, SA

Form of order sought

— Annulment in their entirety of the decision of the Board of Appeal No R 0287/2007-1 and of the decision of the Opposition Division No B 855 728 and

— Order that Amberes pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Kido Industrial Ltd.

Community trade mark concerned: Word mark 'SCORPIONEXO' (registration application No 3.886.249) for goods in Classes 9 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: Amberes, SA.

Mark or sign cited in opposition: Spanish figurative marks (No 339.142, No 499.599, No 499.600 and No 339.140) and international figurative marks (No 206.346 and No 206.347) composed of the design of a scorpion and the word 'ESCORPION', for goods in Classes 6, 8, 12, 16, 20, 21 and 28; and in Classes 22, 24, 25 and 26 respectively. Spanish word mark 'ESCORPION' (No 555.764) for goods in Class 25. Community word mark 'ESCORPION' (No 778.217) for goods in Classes 22, 24, 25 and 26.

Decision of the Opposition Division: The Opposition Division, founding its decision solely on the earlier Spanish figurative mark No 339.142 allowed the opposition in respect of goods in Classes 9 and 28, and refused entirely the application for registration in respect of those goods.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 25 April 2008 — Shenzhen Taiden Industrial v OHIM — Bosch Security Systems (design of communications equipment)

(Case T-153/08)

(2008/C 158/35)

Language in which the application was lodged: English

Parties

Applicant: Shenzhen Taiden Industrial Co., Ltd (Shenzhen, China) (represented by: M. Hartmann, M. Helmer, lawyers)

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

Other party to the proceedings before the Board of Appeal: Bosch Security Systems BV (Eindhoven, Netherlands)

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 11 February 2008 in case R 1437/2006-3; and

— order OHIM to pay the costs, including those incurred in the proceedings before the Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: A design for the product 'communications equipment' — registered Community design No 214903-0001

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

Design produced as evidence by the party requesting the declaration of invalidity: An earlier design made available to the public by Koninklijke Philips Electronics NV registered as an international design under No DM/055655

Decision of the Invalidity Division: Dismissal of the application for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the decision of the Invalidity Division and declaration that the contested design is invalid

Pleas in law: Infringement of Article 63(1) of Council Regulation No 6/2002 as the Third Board of Appeal relied on alleged facts presented by the party requesting the declaration of invalidity for which no evidence was submitted; infringement of Articles 4(1) and 6(1) of Council Regulation No 6/2002 as the Third Board of Appeal erred in holding that the contested design lacked individual character and failed to assess and compare the designs at hand from the point of view of an informed user.

Action brought on 30 April 2008 — Italian Republic v Commission of the European Communities

(Case T-164/08)

(2008/C 158/36)

Language of the case: Italian

Parties

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

Defendants: Commission of the European Communities and European Personnel Selection Office

Form of order sought

— annulment of notice of open competition EPSO/AD/125/08 (AD7 and AD 9) for the constitution of a reserve from which to recruit 4 and 9 doctors in the 'Commission channel' and 'other institutions channel' respectively, published in the English, French and German editions of the *Official Journal of the European Union* C 48 A of 21 February 2008.

Pleas in law and main arguments

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

([1]) Not yet published in the Official Journal.

Order of the Court of First Instance of 10 April 2008 — Republic of Poland v Commission

(Case T-41/06) ([1])

(2008/C 158/37)

Language of the case: Polish

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

([1]) OJ C 96, 22.4.2006.

Order of the Court of First Instance of 29 April 2008 — Republic of Cyprus v Commission

(Case T-54/08) ([1])

(2008/C 158/38)

Language of the case: Greek

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

([1]) OJ C 79, 29.3.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 8 May 2008 — Suvikas v Council

(Case F-6/07)

(Staff case — Members of the temporary staff — Preliminary plea — Confidential documents — Documents obtained unlawfully — Removal of documents — Recruitment — Vacant post — Unlawful rejection of candidature — Annulment — Action for damages — Loss of the opportunity to be recruited — Equitable assessment)

(2008/C 158/39)

Language of the case: French

Parties

Applicant: Risto Suvikas (Helsinki, Finland) (represented by: M.-A. Lucas, lawyer)

Defendant: Council of the European Union (represented by: M. Arpio Santacruz and I. Šulce, Agents)

Re:

First, annulment of the decision of the Advisory Selection Committee not to include the applicant's name on the list of the best candidates for selection in relation to Council notice of vacancy B/024 and, second, annulment of that list and the Council decisions to recruit the candidates whose names were included therein to the posts to be filled and not to recruit the applicant — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Orders that the documents produced by Mr Suvikas in Annex A 14 to A 16 to the application be removed from the case file;*

2. *Annuls the decision of the contracting authority of 20 February 2006 not to include Mr Suvikas on the list of the best candidates following the selection of Council/B/024 members of the temporary staff;*

3. *Orders the Council of the European Union to pay to Mr Suvikas the sum of EUR 20 000 to compensate him for the material damage which he has suffered;*

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

5. *Orders the Council of the European Union to pay the costs.*

Judgment of the Civil Service Tribunal (Third Chamber) of 30 April 2008 — Dragoman v Commission

(Case F-16/07)

(Staff case — Competition — Selection Board — Principle of impartiality of the Selection Board — Article 11a of the Staff Regulations — Equal treatment of internal and external candidates — Exclusion of a candidate — Duty to state reasons — Scope — Respect for the secrecy of the deliberations of the selection board)

(2008/C 158/40)

Language of the case: Romanian

Parties

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

Defendant: Commission of the European Communities (represented by: K. Herrmann, F. Telea and M. Velardo, Agents)

Re:

Annulment of the decisions of the selection board of competition EPSO/AD/34/05 (for the constitution of a reserve list for the recruitment of Romanian-speaking conference interpreters) to award the applicant a mark for the first interpreting test which did not permit her to be admitted to the subsequent tests of that competition — Plea of illegality in respect of Article 6 of Annex III of the Staff Regulations.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

Judgment of the Civil Service Tribunal (Third Chamber) of 5 March 2008 — Toronjo Benitez v Commission

(Case F-33/07)

(Civil Service — Officials — Promotion — Former members of the temporary staff whose remuneration falls under research credits — Removal of points from the applicant's balance — Transfer of an official from the Research part to the Operational part of the general budget — Unlawfulness of Article 2 of the Commission's decision of 16 June 2004 on the promotion procedure for officials whose remuneration falls under the 'Research' credits of the general budget)

(2008/C 158/41)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, Agents)

Re:

First, annulment of the Commission's decision to remove the 44,5 points from the applicant's balance which he had accumulated as a member of the temporary staff and, second, a declaration that Article 2 of the Commission's decision on the promotion procedure for officials whose remuneration falls under the 'Research' credits of the general budget is unlawful.

Operative part of the judgment

The Tribunal:

1. *Dismisses the application;*

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

Judgment of the Civil Service Tribunal (Third Chamber) of 16 April 2008 — Doktor v Council

(Case F-73/07)

(Staff cases — Officials — Recruitment — Dismissal at the end of the probationary period)

(2008/C 158/42)

Language of the case: French

Parties

Applicant: Frantisek Doktor (Bratislava, Slovakia) (represented by: S. Rodrigues, R. Albelice and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union (represented by: M. Arpio Santacruz and M. Simm, Agents)

Re:

First, annulment of the decision of the Council's Appointing Authority of October 2006 dismissing the applicant at the end of his probationary period and, secondly, an application for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

Order of the President of the Civil Service Tribunal of 25 April 2008 — Bennett and Others v OHIM

(Case F-19/08 R)

(Civil service — Interim measures — Application to suspend the operation of a measure — Competition notice — Urgency — None)

(2008/C 158/43)

Language of the case: French

Parties

Applicants: Kelly-Marie Bennett (Alicante, Spain) and Others (represented by: G. Vandersanden, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: I. de Medrano Caballero and E. Maurage, Agents)

Re:

Application to suspend the operation of Competition Notices OHIMIAD/02/07 and OHIMIAST/02/07 until judgment has been delivered on the substance of the case, with the effect that the applicants are not required to take part in the tests in those competitions and that their contracts cannot be terminated by reason of the fact that they are not on the reserve lists.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 14 February 2008 — Wybranowski v Commission

(Case F-17/08)

(2008/C 158/44)

Language of the case: Polish

Parties

Applicant: Andrzej Wybranowski (Warsaw, Poland) (represented by: Z. Wybranowski, lawyer)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Application for amendment of the decision of 15 November 2007 of the selection board for competition EPSO/AD/60/06 to award the applicant 20/50 points in the oral test and, consequently, not to include him on the reserve list, and the decision of 20 December 2007 of the same selection board not to increase the number of points obtained, after a review of the oral test, by means of including the applicant on the reserve list. In the alternative, an application for annulment of those decisions and for an order that the defendant and/or competition selection board adopt a new decision including the applicant on the reserve list.

Form of order sought

The applicant claims that the Tribunal should:

— amend the decision of 15 November 2007 of the selection board for competition EPSO/AD/60/06 to award the applicant 20/50 points in the oral test and, consequently, not to include him on the reserve list, and the decision of 20 December 2007 of the same selection board not to increase the number of points obtained, after a review of the oral test, by means of including the applicant on the reserve list;

— in the alternative, annul those decisions and order the defendant and/or competition selection board to adopt a new decision including the applicant on the reserve list;

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

Action brought on 29 February 2008 — Simões dos Santos v OHIM

(Case F-27/08)

(2008/C 158/45)

Language of the case: French

Parties

Applicant: Manuel Simões dos Santos (Alicante, Spain) (represented by: A. Creus Carreras, lawyer)

Defendant: Office for Harmonisation in the Internal Market

The subject-matter and description of the proceedings

Application for annulment of several decisions of the Office for Harmonisation in the Internal Market in so far as they do not correctly enforce the judgment in Case T-435/04, not granting the applicant the balance of points whose elimination was annulled by the Court of First Instance, and for payment of default interest on the amount corresponding to the difference in salary which the applicant should have received.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the Office for Harmonisation in the Internal Market of 3 December 2007 rejecting the complaint brought by the applicant on 8 August 2007, and the decision No PERS-01-07 relating to the award of promotion points under the 2003 promotion procedure, the decision ADM-07-17 interpreting decision ADM-03-35 relating to the career and promotion of officials and members of the temporary staff and the letter of 15 June 2007, entitled, 'Definitive awarding of 2007 promotion points adopted by the Appointing Authority';

— order OHIM to pay the applicant the default interest on the amount corresponding to the difference in salary which he should have received had the elimination of the balance of his promotion points not occurred, calculated at a rate fixed by the Court;

— order the Office for Harmonisation in the Internal Market to pay the costs.

Action brought on 25 February 2008 — Tomas v Parliament

(Case F-31/08)

(2008/C 158/46)

Language of the case: Lithuanian

Parties

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

Defendant: European Parliament

The subject-matter and description of the proceedings

Annulment of the decision of the Appointing Authority to dismiss the applicant and compensation for the material and non-material harm suffered.

Form of order sought

The applicant claims that the Tribunal should:

— 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 compensation for the material and non-material harm suffered;

— order the European Parliament to pay the costs.

Action brought on 4 March 2008 — V v Commission

(Case F-33/08)

(2008/C 158/47)

Language of the case: French

Parties

Applicant: V (represented by: C. Ronzi, lawyer)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the Commission's decision of 15 May 2007 informing the applicant that she did not satisfy the requirements of physical fitness for the performance of duties with the European Commission, removal from her personal file of certain expert reports, and application for compensation for non-pecuniary and pecuniary damage suffered.

Form of order sought

— Annul the decision of 15 May 2007 informing the applicant that she did not satisfy the requirements of physical fitness for the performance of duties with the European Commission;

— So far as necessary, annul the decision of 12 July 2007 rejecting the applicant's complaint of 1 June 2007;

— Order removal from the applicant's personal file of the expert reports issued on 15 September 2006, 21 September 2006 and 28 March 2007, and, consequently, rule that reference should be made to the initial medical opinion of 26 June 2006 in which the applicant was declared fit for work;

— Order the defendant to pay compensation for the pecuniary and non-pecuniary damage suffered by the applicant, provisionally and fairly estimated at EUR 170 900 (with the addition of default interest to be calculated at the rates set by the European Central Bank for main refinancing transactions, plus two points, from 1 August 2006);

— Order extension on behalf of the applicant of the reserve list which includes her name, as an interim measure, if the judgment of the Civil Service Tribunal is to be handed down after February 2009 (when the validity of the reserve list expires);

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

Action brought on 31 March 2008 — Liotti v Commission

(Case F-38/08)

(2008/C 158/48)

Language of the case: French

Parties

Applicant: Amerigo Liotti (Senningerberg, Luxembourg) (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.

Form of order sought

— Annul the applicant's career development report (REC/CDR) for the reference period 1.1.2006 to 31.12.2006;

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

Action brought on 31 March 2008 — Lebedef v Commission

(Case F-39/08)

(2008/C 158/49)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of several decisions relating to the deduction of 32 days of the applicant's leave entitlement for the year 2007.

Form of order sought

— Annul the decisions of 29 May 2007, 20 June 2007, 28 June 2007 and 6 July 2007, two decisions of 26 July 2007 and the decision of 2 August 2007 relating to the deduction of 32 days of the applicant's leave entitlement for the year 2007;

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

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Action brought on 31 March 2008 — Marcuccio v Commission

(Case F-42/08)

(2008/C 158/50)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, avvocato)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Confirmation of the fact that, on 18 March 2002, the Delegation of the European Commission in Angola despatched by fax a note, dated 18 March 2002 and addressed to the applicant, to a tele-fax machine which was neither under the applicant's control nor at his disposal; confirmation of the unlawful nature of that action; and an order directing the defendant to pay the sum of EUR 100 000 by way of damages.

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision — in whatever form — rejecting the application dated 8 March 2007;

— annul, in so far as is necessary, the decision — in whatever form — rejecting the complaint dated 10 September 2007;

— annul, in so far as is necessary, the note dated 9 January 2008;

— confirm that, on 18 March 2002, the Delegation of the European Commission in Angola despatched by fax a note, dated 18 March 2002 and addressed to the applicant, to a tele-fax machine identified by the telephone/fax number +39.0833.54xxxx, and confirm and declare that that action was unlawful;

— order the defendant to pay the applicant, by way of compensation for past and present damage suffered in relation to the act which gave rise to the damage and caused by that act, the sum of EUR 100 000 — or, in the alternative, whatever sum, greater or smaller, that the Tribunal considers to be fair and just — together with compound interest, at the rate of 10 % *per annum*, calculated from the date of the application dated 8 March 2007 until the date of satisfaction;

— order the defendant to reimburse the applicant in respect of all costs, charges and fees incurred in the proceedings, including those relating to the drawing up of an expert's report, which may prove necessary for the purposes of verifying that there is sufficient evidence to justify ordering the defendant to pay the applicant the abovementioned sums, as well as the existence of any other fact relevant for the purposes of deciding the present dispute.

Action brought on 8 April 2008 — Tsarnavas v Commission

(Case F-44/08)

(2008/C 158/51)

Language of the case: French

Parties

Applicant: Vassilios Tsarnavas (Glyfada, Greece) (represented by: N. Lhoëst)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the decision of the appointing authority rejecting the applicant's request for compensation of EUR 6 800 for the pecuniary and non-pecuniary damage suffered in consequence of breaches of procedure or wrongful acts in the performance of public duties by the Commission in the promotion years 1998 and 1999, and an order that the Commission pay that sum.

Form of order sought

— Annul the decision of the appointing authority of 14 August 2007 rejecting the applicant's request for compensation of EUR 6 800 for the pecuniary and non-pecuniary damage suffered in consequence of breaches of procedure or wrongful acts in the performance of public duties by the Commission in the promotion years 1998 and 1999;

— So far as necessary, annul the implicit decision of the Commission rejecting the complaint brought by the applicant on 14 November 2007;

— Order the defendant to pay compensation of EUR 6 800 for the pecuniary and non-pecuniary damage suffered in consequence of repeated breaches of procedure or wrongful acts in the performance of public duties by the Commission in the promotion years 1998 and 1999, in consequence of judgment of 19 March 2003 (Joined Cases T-188/01 and T-189/01);

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