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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 171/01)

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

OJ C 158, 21.6.2008

Past publications

OJ C 142, 7.6.2008

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

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 15 May 2008 — Kingdom of Spain v Council of the European Union

(Case C-442/04) [1]

(Fisheries — Regulation (EC) No 1954/2003 — Regulation (EC) No 1415/2004 — Management of the fishing effort — Fixing of the maximum annual fishing effort — Reference period — Community fishing areas and resources — Biologically sensitive areas — Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties — Plea of illegality — Admissibility — Principle of non-discrimination — Misuse of powers)

(2008/C 171/02)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: E. Braquehais Conesa and A. Sampol Pucurull, Agents)

Defendant: Council of the European Union (represented by: J. Monteiro and F. Florindo Gijón, Agents)

Intervener: Commission of the European Communities (represented by T. van Rijn and F. Jimeno Fernández, Agents)

Re:

Annulment of Articles 1 to 6 of Council Regulation (EC) No 1415/2004 of 19 July 2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries (OJ 2004 L 258, p. 1) — Infringement of the principle of non-discrimination — Misuse of powers

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Commission of the European Communities to bear its own costs.*

[1] OJ C 300, 4.12.2004.

Judgment of the Court (Grand Chamber) of 20 May 2008 — Commission of the European Communities v Council of the European Union

(Case C-91/05) [1]

(Action for annulment — Article 47 EU — Common foreign and security policy — Decision 2004/833/CFSP — Implementation of Joint Action 2002/589/CFSP — Combating the proliferation of small arms and light weapons — Community competence — Development cooperation policy)

(2008/C 171/03)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P.J. Kuijper, J. Enegren and M. Petite, Agents)

Intervener in support of the applicant: European Parliament (represented by: R. Passos, K. Lindahl and D. Gauci, Agents)

Defendant: Council of the European Union, (represented by: J.-C. Piris, R. Gosalbo Bono, S Marquardt and E. Finnegan, Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented by: A. Jacobsen, C. Thorning and L. Lander Madsen, Agents), Kingdom of Spain (represented by N. Díaz Abad, Agent), French Republic (represented by G. de Bergues, E. Belliard and C. Jurgensen, Agents), Kingdom of the Netherlands (represented by M. de Grave, C. Wissels and H.G. Sevenster, Agents), Kingdom of Sweden (represented by A. Falk, Agent), United Kingdom of Great Britain and Northern Ireland (represented by R. Caudwell and E. Jenkinson, Agents, assisted by A. Dashwood, Barrister)

Re:

Annulment of Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons (OJ 2004 L 359, p. 65) and a declaration of the unlawfulness of Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP (OJ 2002 L 191, p. 1)

Operative part of the judgment

1. *Annuls Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons.*

2. *Orders the Commission of the European Communities and the Council of the European Union to bear their own costs.*

3. *Orders the Kingdom of Denmark, the Kingdom of Spain, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Fourth Chamber) of 15 May 2008 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — SECAP SpA (C-147/06) v Comune di Torino, intervening parties: Tecnoimprese Srl, Gambarana Impianti Snc, ICA Srl, Cosmat Srl, Consorzio Ravennate, ARCAS SpA, Regione Piemonte, and Santorso Soc. coop. arl (C-148/06) v Comune di Torino, intervening parties: Bresciani Bruno Srl, Azienda Agricola Tekno Green Srl, Borio Giacomo Srl, Costrade Srl

(Joined Cases C-147/06 and C-148/06) ([1])

(Public works contracts — Award of contracts — Abnormally low tenders — Exclusion rules — Works contracts not reaching the thresholds laid down in Directives 93/37/EEC and 2004/18/EC — Obligations upon the contracting authorities deriving from the fundamental principles of Community law)

(2008/C 171/04)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: SECAP SpA (C-147/06), Santorso Soc. coop. arl (C-148/06)

Defendant: Comune di Torino

Intervening parties: Tecnoimprese Srl, Gambarana Impianti Snc, ICA Srl, Cosmat Srl, Consorzio Ravennate, ARCAS SpA, Regione Piemonte (C-147/06), Bresciano Bruno Srl, Azienda Argicola Tekno Green Srl, Borio Giacomo Srl, Costrade Srl (C-148/06)

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) and of Article 55(1) and (2) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Abnormally low tenders — Extent of the obligation to set in motion an examination procedure

Operative part of the judgment

The fundamental rules of the EC Treaty on freedom of establishment and freedom to provide services and the general principle of non-discrimination preclude national legislation which, with regard to contracts with a value below the threshold set by Article 6(1)(a) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, which are of certain cross-border interest, imposes an absolute duty on the contracting authorities, where the number of valid tenders is greater than five, automatically to exclude tenders considered to be abnormally low in relation to the goods, works or services according to a mathematical criterion laid down by that legislation without allowing those contracting authorities any possibility of verifying the constituent elements of those tenders by requesting the tenderers concerned to provide details of those elements. That would not be the case if national or local legislation or even the contracting authorities concerned were to set a reasonable threshold above which abnormally low tenders were automatically excluded on account of there being an unduly large number of tenders, which might oblige the contracting authorities to examine on an inter partes basis such a high number of bids that it would exceed their administrative capacity or might, due to the delay which such an examination would entail, jeopardise the implementation of the project.

([1]) OJ C 143, 17.6.2006.
OJ C 154, 1.7.2006.

Judgment of the Court (Grand Chamber) of 20 May 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Orange European Smallcap Fund N.V.

(Case C-194/06) ([1])

(Articles 56 EC to 58 EC — Free movement of capital — Taxation of dividends — Concession granted to a fiscal investment enterprise on account of tax deducted at source by another State from dividends received by that enterprise — Restriction of that concession to the amount that a shareholder resident in the Member State of establishment of that enterprise who has made an investment without such an enterprise acting as intermediary could have had credited to income tax on the basis of a convention for the prevention of double taxation — Restriction of that concession by reference to the shares of non-resident shareholders in the capital of that enterprise)

(2008/C 171/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Orange European Smallcap Fund N.V.

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 56 EC, 57(1) EC and 58(1) EC — National legislation granting a tax credit to an investment undertaking in respect of tax on dividends deducted at source by another Member State — Limitation in the case of shareholders not resident in the Netherlands or not subject to Netherlands corporation tax

Operative part of the judgment

1. *Articles 56 EC and 58 EC do not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in that Member State on account of tax deducted at source in another Member State from dividends received by those enterprises, and restricts that concession to the amount which a natural person resident in the first Member State could have had credited, on account of similar deductions, on the basis of a double taxation convention concluded with that other Member State.*

2. *Articles 56 EC and 58 EC preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in that Member State on account of tax deducted at source in another Member State or third country from dividends received by those enterprises, and reduces that concession where and to the extent to which the shareholders of those enterprises are natural or legal persons resident or established in other Member States or in third countries, since such a reduction adversely affects all the shareholders of those enterprises without distinction.*

   In that respect, whether the foreign shareholders of a fiscal investment enterprise are resident or established in a State with which the Member State of establishment of that enterprise has concluded a convention providing for reciprocal crediting of tax deducted at source from dividends is irrelevant.

3. *A restriction is covered by Article 57(1) EC as being a restriction on the movement of capital involving direct investment in so far as it relates to investments of any kind undertaken by natural or legal persons and which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (Fourth Chamber) of 22 May 2008 — Evonik Degussa GmbH, formerly Degussa GmbH v Commission of the European Communities and Council of the European Union

(Case C-266/06 P) ([1])

(Appeal — Competition — Cartel — Market in methionine — Fine — Regulation No 17/62 — Article 15(2) — Nulla poena sine lege — Distortion of the facts — Principle of proportionality — Principle of equal treatment)

(2008/C 171/06)

Language of the case: German

Parties

Appellant: Evonik Degussa GmbH, formerly Degussa GmbH (represented by: R. Bechtold, M. Karl and C. Steinle, Rechtsanwälte)

Other parties to the proceedings: Commission of the European Communities (represented by: A. Bouquet, W. Mölls, Agents, and H.-J. Freund, Rechtsanwalt) and Council of the European Union (represented by: S. Marquardt, G. Curmi and M. Simm, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) in Case T-279/02 *Degussa AG* v *Commission*, in which the Court dismissed in part the action seeking annulment of Commission Decision 2003/674/EC of 2 July 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (OJ 2003 L 255, p. 1) — Cartel concerning the market in methionine — Requirements of the *nulla poena sine lege* principle in relation to the system of fines laid down by Article 15(2) of Regulation No 17/62.

Operative part of the judgment

1. *The appeal is dismissed.*

2. *Evonik Degussa GmbH is ordered to bear the costs.*

3. *The Council of the European Union is ordered to pay its own costs.*

([1]) OJ C 190 of 12.8.2006.

Judgment of the Court (Grand Chamber) of 20 May 2008 (reference for a preliminary ruling from the Finanzgericht Köln (Germany)) — Brigitte Bosmann v Bundesagentur für Arbeit — Familienkasse Aachen

(Case C-352/06) ([1])

(Social security — Child benefit — Suspension of entitlement to benefits — Article 13(2)(a) of Regulation (EEC) No 1408/71 — Article 10 of Regulation (EEC) No 574/72 — Legislation applicable — Granting of benefits in the Member State of residence which is not the competent Member State)

(2008/C 171/07)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Brigitte Bosmann

Defendant: Bundesagentur für Arbeit — Familienkasse Aachen

Re:

Reference for a Preliminary Ruling — Finanzgericht Köln — Interpretation of Article 13(2)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition Series I, Chapter 1971 (II), p. 416) — Interpretation of Article 10 of Council Regulation (EEC) No 574/72 of 21 March 1972 for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition, Series I, Chapter 1972 (I), p. 159) — Interpretation of Article 39 EC — Interpretation of general principles — Child benefit for dependent children — Suspension of benefits paid in the State of residence — Right to benefits of the same type in the State of employment.

Operative part of the judgment

1. *Article 13(2)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, does not preclude a migrant worker, who is subject to the social security scheme of the Member State of employment, from receiving, pursuant to the national legislation of the Member State of residence, child benefit in the latter State.*

2. *It is for the referring court to determine whether the fact that a worker, in the situation of the applicant in the main proceedings, returns at the end of each working day to the family residence in the Member State concerned is relevant for the purposes of deciding whether such a worker satisfies the requirements for the grant of the child benefit in question in that State pursuant to its legislation.*

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (Third Chamber) of 22 May 2008 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven) — Feinchemie Schwebda GmbH, Bayer CropScience AG v College voor de toelating van bestrijdingsmiddelen

(Case C-361/06) ([1])

(Plant protection products — Authorisation to place on the market — Ethofumesate — Directives 91/414/EEC and 2002/37/EC — Regulation (EEC) No 3600/92 — Application for reopening of the oral procedure)

(2008/C 171/08)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Feinchemie Schwebda GmbH, Bayer CropScience AG

Defendant: College voor de toelating van bestrijdingsmiddelen

Intervener: Agrichem BV

Re:

Preliminary ruling — College van Beroep voor het Bedrijfsleven — Interpretation of Article 4(1) of Commission Directive 2002/37/EC of 3 May 2002 amending Council Directive 91/414/EEC to include ethofumesate as an active substance (OJ 2002 L 117, p. 10) — Obligation on Member States to withdraw, before 1 September 2003, authorisation for any product containing ethofumesate in the case where the authorisation holder does not have, or does not have access to, a dossier satisfying the conditions set out in Annex II to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1)

Operative part of the judgment

Article 4(1) of Commission Directive 2002/37/EC of 3 May 2002 amending Council Directive 91/414/EEC to include ethofumesate as an active substance must be interpreted as not requiring Member States to terminate, before 1 September 2003, the authorisation of a plant protection product containing ethofumesate on the ground that the holder of that authorisation does not hold, or have access to, a dossier satisfying the requirements set out in Annex II to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market.

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (Fourth Chamber) of 15 May 2008 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Lidl Belgium GmbH & Co. KG v Finanzamt Heilbronn

(Case C-414/06) ([1])

(Freedom of establishment — Direct taxation — Taking account of losses incurred by a permanent establishment situated in a Member State and belonging to a company which has its registered office in another Member State)

(2008/C 171/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Lidl Belgium GmbH & Co. KG

Defendant: Finanzamt Heilbronn

Re:

Preliminary ruling — Bundesfinanzhof — Interpretation of Articles 43 EC and 56 EC — Deduction from a German company's taxable profits of losses resulting from the activities of a permanent establishment in another Member State — Refusal of such deduction on the basis of a bilateral convention concluded with that other Member State for the purpose of preventing double taxation

Operative part of the judgment

Article 43 EC does not preclude a situation in which a company established in a Member State cannot deduct from its tax base losses relating to a permanent establishment belonging to it and situated in another Member State, to the extent that, by virtue of a double taxation convention, the income of that establishment is taxed in the latter Member State where those losses can be taken into account in the taxation of the income of that permanent establishment in future accounting periods.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 22 May 2008 (reference for a preliminary ruling from the Oberlandesgericht Dresden, Germany) — Energy management proceedings between citiworks AG (Intervening party: Sächsisches Staatsministerium für Wirtschaft und Arbeit als Landesregulierungsbehörde), on the one hand, and Flughafen Leipzig/Halle GmbH and Bundesnetzagentur, on the other

(Case C-439/06) ([1])

(Internal market in electricity — Directive 2003/54/EC — Article 20(1) — Open access of third parties to electricity transmission and distribution systems)

(2008/C 171/10)

Language of the case: German

Referring court

Oberlandesgericht Dresden

Applicant in the energy management proceedings

citiworks AG

Interveners in the energy management proceedings in support of the applicant: Sächsisches Staatsministerium für Wirtschaft und Arbeit als Landesregulierungsbehörde,

Defendants in the energy management proceedings: Flughafen Leipzig/Halle GmbH, Bundesnetzagentur

Re:

Reference for a preliminary ruling — Oberlandesgericht Dresden — Interpretation of Article 20(1) of Directive 2003/54/EC of the European Parliament and the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37) — National legislation which excludes networks wholly situated on the premises of an undertaking (Betriebsnetze) from the principle of free access of third persons to electricity transport and distribution networks

Operative part of the judgment

Article 20(1) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC must be interpreted as precluding a provision such as the first point of Paragraph 110(1) of the Law on electricity and gas supply, referred to as 'the Law on energy management' (Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz)) of 7 July 2005, which exempts certain operators of energy supply systems from the obligation to provide third parties with open access to those systems on the grounds that they are located on a geographically connected operation zone and that they predominantly serve to supply the energy needs of the undertaking itself and of connected undertakings.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (First Chamber) of 22 May 2008 (reference for a preliminary ruling from the Cour de cassation, France) — Glaxosmithkline, Laboratoires Glaxosmithkline v Jean-Pierre Rouard

(Case C-462/06) ([1])

(Regulation (EC) No 44/2001 — Section 5 of Chapter II — Jurisdiction over individual contracts of employment — Section 2 of Chapter II — Special jurisdiction — Article 6, point 1 — More than one defendant)

(2008/C 171/11)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Glaxosmithkline, Laboratoires Glaxosmithkline

Defendant: Jean-Pierre Rouard

Re:

Reference for a preliminary ruling — Cour de Cassation (France) — Interpretation of Articles 6(1), 18(1) and 19 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Rules on jurisdiction over individual contracts of employment — Situation of a dismissed worker who had worked, in non-Member States, for two companies in a group with their seats in two different Member States

Operative part of the judgment

The rule of special jurisdiction provided for in Article 6, point 1, of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters cannot be applied to a dispute falling under Section 5 of Chapter II of that regulation concerning the jurisdiction rules applicable to individual contracts of employment.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Fourth Chamber) of 22 May 2008 (reference for a preliminary ruling from the Sąd Okręgowy w Koszalinie, Republic of Poland) — Halina Nerkowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie

(Case C-499/06) ([1])

(Disability pension granted to civilian victims of war or repression — Condition requiring residence in national territory — Article 18(1) EC)

(2008/C 171/12)

Language of the case: Polish

Referring court

Sąd Okręgowy w Koszalinie

Parties to the main proceedings

Applicant: Halina Nerkowska

Defendant: Zakład Ubezpieczeń Społecznych Oddział w Koszalinie

Re:

Reference for a preliminary ruling — Sąd Okręgowy w Koszalinie — Interpretation of Article 18 EC — Compatibility of a national provision under which payment of a benefit granted to victims of war and of its consequences is subject to a requirement of residence in national territory

Operative part of the judgment

Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses, generally and in all circumstances, to pay to its nationals a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State throughout the period of payment of the benefit, but in the territory of another Member State.

([1]) OJ C 20, 27.1.2007.

Judgment of the Court (Sixth Chamber) of 15 May 2008 — Commission of the European Communities v Italian Republic

(Case C-503/06) ([1])

(Failure of a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Derogations from the system of protection of wild birds — Region of Liguria)

(2008/C 171/13)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I. Braguglia, Agent and G. Fiengo, avvocato dello Stato)

Re:

Failure by a Member State to fulfil its obligations — Adoption and application, by the region of Liguria, of legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds (OJ 1979 L 103, p. 1)

Operative part of the judgment

1. *By adopting and applying, for the region of Liguria, legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under that directive.*

2. *The Italian Republic is ordered to bear the costs, including those linked to the interlocutory proceedings.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Third Chamber) of 22 May 2008 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy)) — Ampliscientifica Srl, Amplifin SpA v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-162/07) ([1])

(Sixth VAT directive — Taxable persons — Second subparagraph of Article 4(4) — Parent companies and subsidiaries — Implementation by the Member State of the single taxable person scheme — Conditions — Consequences)

(2008/C 171/14)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ampliscientifica Srl, Amplifin SpA

Defendant: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Re:

Reference for a Preliminary Ruling — Interpretation of the second subparagraph of Article 4(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — 'Persons who, while legally independent, are closely bound to one another by financial, economic and organisational links' — Concept sufficiently precise to enable the Member States to apply the VAT scheme set out? — Concept of link — National provision requiring that a link exist for a minimum period of time in order to prevent the abuse or rights

Operative part of the judgment

1. *The second subparagraph of Article 4(4) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is*

a provision which, in order to be implemented by a Member State, requires prior consultation by that State of the Advisory Committee on value added tax and the adoption of national legislation authorising persons, in particular companies, established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links, no longer to be treated as separate taxable persons for the purposes of value added tax in order to be treated as a single taxable person to whom a single value added tax identification number is allocated and, accordingly, the sole person entitled to submit value added tax declarations. It is for the national court to determine whether national legislation, such as that at issue in the main proceedings, satisfies those criteria, subject to the qualification that, where there has been no prior consultation of the Advisory Committee on value added tax, national legislation which meets those criteria constitutes legislation adopted in breach of the procedural requirement laid down in the second subparagraph of Article 4(4) of Sixth Directive 77/388.

2. *The principle of fiscal neutrality does not preclude national legislation which simply treats taxable persons wishing to opt for a mechanism to simplify value added tax declarations and payments differently according to whether the parent company or body has held more than 50 % of the share capital or stock of the persons with whom it is linked since at least the beginning of the calendar year preceding that in which the declaration was made or, on the contrary, satisfies those conditions only after that date. It is for the national court to determine whether national legislation, such as that at issue in the main proceedings, constitutes such a provision. Moreover, neither the principle prohibiting the abuse of rights nor the principle of proportionality precludes such legislation.*

([1]) OJ C 140, 23.6.2007.

Judgment of the Court (Fifth Chamber) of 22 May 2008 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v Ecco Sko A/S

(Case C-165/07) ([1])

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Heading 6403 — Footwear with uppers of leather — Heading 6404 — Footwear with uppers of textile materials)

(2008/C 171/15)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: Ecco Sko A/S

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 (formerly No 2263/2000) of 13 October 2000, amending Annex I to Council Regulation (EEC) No 2658/87 — Compatibility of Additional Note 1 to Chapter 64 of the Combined Nomenclature, which was incorporated by Commission Regulation No 3800/92 of 23 December 1992 amending Council Regulation No 2658/87, with Note 4(a) to that same Chapter — Footwear with outer soles of rubber, plastics, leather or composition leather — Classification under Combined Nomenclature heading 6403 (footwear with uppers of leather) or under heading 6404 (footwear with uppers of textile materials)

Operative part of the judgment

1. *The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, must be interpreted as meaning that a sandal such as that in question in the main proceedings, with an outer sole of rubber, whose upper is made up of two leather sections glued to the inner sole and linked to each other by leather fastening straps covered with Velcro strips, with the leather making up around 71 % of the upper's external surface area and the elastic textile material underneath the leather remaining exposed in places, falls within:*

   — *heading 6404 of the Combined Nomenclature if the textile material of the upper of the sandal, without the leather sections, fulfils the purpose of an upper, that is to say, provides sufficient support for the foot to enable the wearer to walk in the sandal;*

   — *heading 6403 of the Combined Nomenclature if the textile material of the upper of the sandal, without the leather sections, does not fulfil the purpose of an upper, that is to say, does not provide sufficient support for the foot to enable the wearer to walk in the sandal.*

2. *Additional Note 1 to Chapter 64 of the Combined Nomenclature, inserted by Commission Regulation (EEC) No 3800/92 of 23 December 1992 amending Regulation No 2658/87, is compatible with Note 4(a) to that chapter.*

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (Sixth Chamber) of 20 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-271/07) [1]

(Failure of a Member State to fulfil its obligations — Directive 96/61/EC — Integrated pollution prevention and control — Incomplete and incorrect transposition)

(2008/C 171/16)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and J.-B. Laignelot, Agents)

Defendant: Kingdom of Belgium (represented by: C. Pochet, Agent)

Re:

Failure of a Member State to fulfil its obligations — Partial, incorrect or non-existent transposition of Article 2(2), (3), (4), (5), (6), (7), (9), (10) and (11), Article 3, Article 5, Article 6(1), Article 8, Article 9(3), (4), (5) and (6), Article 10, Article 12(2), Article 13(1) and (2), Article 14, Article 17(2) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, and Annex I and Annex IV thereto (OJ 1996 L 257, p. 26) — Lack of correspondence between the material scope of application of the transposition measures and that of the directive — Over-wide power of assessment given to the regional authorities with regard to the operating permits and the situations in which the conditions of the permit must be re-assessed and/or updated

Operative part of the judgment

1. *By transposing in part or incorrectly Article 2(2), (3), (4), (5), (6), (7), (9), (10) and (11), Article 3, Article 5, Article 6(1), Article 8, Article 9(3), (4), (5) and (6), Article 10, Article 12(2), Article 13(1) and (2) and Article 14 of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, and Annex I and Annex IV thereto, the Kingdom of Belgium has failed to fulfil its obligations under that directive.*

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

[1] OJ C 211 of 8.9.2007.

Judgment of the Court (Seventh Chamber) of 15 May 2008 (reference for a preliminary ruling from the Corte d'appello di Firenze (Italy)) — Nancy Delay v Università degli studi di Firenze, Istituto nazionale della previdenza sociale (INPS), Repubblica italiana

(Case C-276/07) [1]

(Freedom of movement for workers — Discrimination on grounds of nationality — Category of 'exchange assistants' — Former foreign-language assistants — Recognition of acquired rights)

(2008/C 171/17)

Language of the case: Italian

Referring court

Corte d'appello di Firenze

Parties to the main proceedings

Applicant: Nancy Delay

Defendant: Università degli studi di Firenze, Istituto nazionale della previdenza sociale (INPS), Repubblica italiana

Re:

Reference for a preliminary ruling — Interpretation of Article 39 EC — Recognition of the acquired rights of foreign-language assistants — Assistants employed pursuant to a cultural exchange agreement with other Member States ('exchange assistants') — Applicability of the principles flowing from Cases C-21/99 and C-119/04

Operative part of the judgment

It is contrary to Article 39(2) EC that, when a fixed-term contract of employment as an exchange assistant is replaced by a contract of employment for an indefinite period as a linguistic associate, a person in the position of the applicant in the main proceedings should be refused recognition of the rights acquired since the date of her first recruitment, with consequences with regard to remuneration, the account to be taken of seniority and the payment, by the employer, of contributions to a social security scheme, inasmuch as a national worker placed in a comparable situation would have been entitled to such recognition. It is for the national court to ascertain whether that is so in the case in the main proceedings.

[1] OJ C 211, 8.9.2007.

Judgment of the Court (Sixth Chamber) of 15 May 2008 — Commission of the European Communities v Kingdom of Sweden

(Case C-341/07) ([1])

(Failure of a Member State to fulfil its obligations — Enforcement of intellectual property rights — Failure to transpose within the prescribed time-limit)

(2008/C 171/18)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden (represented by: A. Kruse, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to have adopted the provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45 and — corrigendum — OJ 2004 L 195, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed time-limit, all the laws, regulations and administrative provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, the Kingdom of Sweden has failed to fulfil its obligations under that directive.*

2. *Orders the Kingdom of Sweden to bear the costs.*

([1]) OJ C 211, 8.9.2007.

Order of the Court (Seventh Chamber) of 10 April 2008 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy)) — Termoraggi SpA v Comune di Monza

(Case C-323/07) ([1])

(Public procurement — Public service and public supply contracts — Award without call for tenders — Award by a local authority to an undertaking whose capital it controls)

(2008/C 171/19)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties

Applicant: Termoraggi SpA

Defendant: Comune di Monza

Intervener: Acqua Gas Azienda Municipale (AGAM)

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Lombardia — Interpretation of Article 6 of 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, p. 1) — Scope — National provisions attributing, outside of the procedures for the award of public works contracts laid down in the directive, the management of heating installations of certain buildings in a commune to a municipal undertaking

Operative part of the order

Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts and Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts do not apply to a contract concluded between a local authority and a person legally distinct from it, where the local authority exercises over the person concerned a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the controlling local authority or authorities.

Article 6 of Directive 92/50 is applicable only if there are legislative, regulatory or administrative provisions published which grant the beneficiary an exclusive right concerning the subject-matter of the contract awarded.

(1) OJ C 235, 6.10.2007.

Appeal brought on 13 February 2008 by Gateway, Inc. against the judgment of the Court of First Instance (Fifth Chamber) delivered on 27 November 2007 in Case T-434/05: Gateway, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-57/08 P)

(2008/C 171/20)

Language of the case: English

Parties

Appellant: Gateway, Inc. (represented by: C. R. Jones, Solicitor)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fujitsu Siemens Computers GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the decision of the Court of First Instance (Fifth Chamber) of 27 November 2007 in Case T-434/05;

— allow in its entirety the appellant's opposition to the registration of the trade mark applied for;

— order OHIM to pay the costs.

Pleas in law and main arguments

The appellant submits that the Court of First Instance made the following errors:

a) The terms 'media gateway' and 'gateway' have a very specific meaning in the IT market for particular forms of device which convert one protocol or format to another. However, the Court of First Instance wrongly held that when 'gateway' was incorporated as an element of the mark applied for it served to designate descriptive characteristics of all the goods or services covered by the contested specification, whereas in fact none of the goods or services covered by the contested mark are listed as 'media gateways' or 'gateways'.

b) It wrongly defined the relevant public as made up of consumers who only purchase computer goods and services, rather than consumers of all the goods and services covered by the contested specification.

c) It wrongly held that the conflicting marks are not visually, phonetically or conceptually similar.

d) It wrongly held that the question of similarity in respect of two conflicting word marks should be subject to the condition that the overall visual, phonetic or conceptual impression produced by the composite word sign be dominated by the part which is represented by the earlier mark.

e) When conduction its assessment of the similarity between the conflicting marks it failed to give sufficient weight to the distinctiveness of 'gateway' as an earlier trade mark of the appellant's for computer goods and services within the relevant target public.

f) It failed to give sufficient regard to the fact that trade marks with a highly distinctive character, either per se or because of the reputation they possess, enjoy greater protection than marks with a less distinctive character.

g) It wrongly concluded that 'gateway' does not have an independent distinctive role within the mark applied for.

h) It wrongly held that the likelihood of confusion should be subject to the condition that the overall impression produced by the composite sign be dominated by the part which is represented by the earlier mark.

i) It failed to assess properly the likely visual, conceptual and phonetic impact the word 'gateway' would have on the average consumer of the goods and services in issue when incorporated as an element of the mark applied for.

Reference for a preliminary ruling from the Bundesfinanzhof lodged on 2 April 2008 — J.E. Tyson Parketthandel GmbH hanse j. v Hauptzollamt Bremen

(Case C-134/08)

(2008/C 171/21)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: J.E. Tyson Parketthandel GmbH hanse j.

Defendant: Hauptzollamt Bremen

Question referred

Is Article 4(2) of Council Regulation (EC) No 2193/2003 of 8 December 2003 establishing additional customs duties on imports of certain products originating in the United States of America [1] to be interpreted, contrary to its wording, as meaning that products for which it can be demonstrated that they are on their way to the Community on the date of first application of the additional duties and whose destination cannot be changed are not affected by the additional duty?

[1] OJ 2003 L 328, p. 3.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 3 April 2008 — Janko Rottmann v Freistaat Bayern

(Case C-135/08)

(2008/C 171/22)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Janko Rottmann

Defendant: Freistaat Bayern

Questions referred

1. Does Community law preclude the legal consequence of the loss of Union citizenship (and of the associated rights and fundamental freedoms) resulting from the fact that a revocation, lawful as such under national (German) law, of a naturalisation as a national of a Member State (Germany) acquired by intentional deception has the effect, in combination with the national law on nationality of another Member State (Austria) — as with the claimant in the present case because of the non-revival of the original Austrian nationality — that statelessness supervenes?

2. If Question 1 is answered in the affirmative:

   Must the Member State (Germany) which has naturalised the citizen of the Union and now wishes to revoke the naturalisation obtained by deception, having due regard to Community law, refrain altogether or temporarily from revoking the naturalisation if or as long as revocation would have the legal consequence of loss of Union citizenship (and of the associated rights and fundamental freedoms) described in Question 1, or is the other Member State (Austria) of former nationality obliged, having due regard to Community law, to interpret and apply, or even adjust, its national law so that that legal consequence does not supervene?

Reference for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 7 April 2008 — Rakvere Lihakombinaat AS v Põllumajandusminister and Maksu- ja Tolliameti Ida maksu- ja tollikeskus

(Case C-140/08)

(2008/C 171/23)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Rakvere Lihakombinaat AS

Defendants: Põllumajandusminister and Maksu- ja Tolliameti Ida maksu- ja tollikeskus

Questions referred

1. Must frozen mechanically separated chicken meat (mechanically separated meat was defined for the first time in point 1.14 of Annex I to Regulation (EC) No 853/2004 [1] of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin) be classified as from 1 May 2004 under CN code 0207 14 10 or CN code 0207 14 99 in Annex I to Council Regulation (EEC) No 2658/87 [2] of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

2. If the product described in Question 1.1 must be classified under CN code 0207 14 10, to seek a preliminary ruling on the following question:

   2.1 Does Article 4(1) and (2) of Commission Regulation (EC) No 1972/2003 [3] preclude the ascertainment of the amount of an operator's surplus stock by automatically deducting from the surplus stock (regarded as transitional stock) the operator's average stock as at 1 May of the four years of activity preceding 1 May 2004, multiplied by 1.2?

If the answer is in the affirmative, would the answer be different if in determining the amount of the transitional stock and surplus stock it were possible also to take into account the growth of the operator's production, processing or sales volume, the maturation period of the agricultural product, the time when the stocks were built up, and other circumstances independent of the operator?

2.2 Is it compatible with the objective of Commission Regulation (EC) No 1972/2003 to levy the surplus stock charge where the operator is found to have a surplus stock as at 1 May 2004 but the operator shows that he has not obtained a real advantage in terms of a price difference from marketing the surplus stock after 1 May 2004?

(1) OJ L 139, 30.4.2004, p. 55.
(2) OJ L 256, 7.9.1987, p. 1.
(3) Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 293, 11.11.2003, p. 3).

Action brought on 8 April 2008 — Commission of the European Communities v Republic of Finland

(Case C-144/08)

(2008/C 171/24)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: I. Koskinen and D. Triantafyllou)

Defendant: Republic of Finland

Form of order sought

— declare that, by using an incomplete definition of normal residence in order to determine whether the temporary import of certain forms of transport is subject to tax exemptions, the Republic of Finland has failed to fulfil its obligations under Article 7(1) of Council Directive No 83/182/EEC (1) of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another;

— order Republic of Finland to pay the costs.

Pleas in law and main arguments

For the purpose of determining tax exemptions, Article 7(1) of Directive 83/182/EEC governs normal residence, which determines the Member State under whose rules on temporary imports the vehicle in question falls, and the Member State which is entitled to charge tax on that vehicle. Article 7(1) of Directive 83/182/EEC governs certain exceptions to the rule according to which normal residence means the place where a person usually lives for at least 185 days in each calendar year. In particular, the second subparagraph of Article 7(1) states that if the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. However, it is expressly stated that the last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration.

However, Finnish legislation imposes a requirement for the person concerned to return to the place of normal residence also in the case where he is living in Finland in order to carry out a task of a definite duration. Therefore, Finland has failed to correctly transpose Article 7(1) of Directive 83/182/EEC into national law.

(1) OJ 1998 L 105, p. 59.

Appeal brought on 3 April 2008 by Efkon AG against the order of the Court of First Instance (Fifth Chamber) of 22 January 2008 in Case T-298/04, Efkon AG v European Parliament and Council of the European Union

(Case C-146/08 P)

(2008/C 171/25)

Language of the case: German

Parties

Appellant: Efkon AG (represented by: M. Novak, Rechtsanwalt)

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

Form of order sought

— Set aside the order of the Court of First Instance of 22 January 2008 under appeal (T-298/04) as unlawful, and direct the Court to follow due process of law and to reach a decision on the merits;

— in the alternative, annul the contested directive as unlawful, as applied for in the application, and order the defendants to pay the costs;

— declare furthermore that, inasmuch as the order of 22 January 2008 determines an action which was brought on 21 July 2004, the order amounts to a violation of Article 6 of the ECHR owing to the excessive duration of the proceedings and that, on that ground alone, the applicant is to be granted legal redress.

Pleas in law and main arguments

The appellant's appeal against the order of the Court referred to above is based on the erroneous interpretation of the fourth paragraph of Article 230 EC and on the procedural irregularities which occurred in the course of the proceedings.

The Court of First Instance dismissed the application as inadmissible on the ground that the appellant was not directly and individually concerned by the contested measure within the meaning of the fourth paragraph of Article 230 EC.

That view is incorrect in law. The Court fails to recognise that interference with intellectual property in itself gives rise to an individual and direct concern, which results in an individual and direct concern within the meaning of the fourth paragraph of Article 230 EC. The nature of a patent is such that a particular person is granted an exclusive right for a limited period of time. Such a right can necessarily be conferred only on a particular person. No one else may exercise those rights; therefore interference with that right through a Community law measure necessarily has the effect of establishing individual and direct concern.

The Court's argument that there are also other providers of electronic road toll systems besides the appellant who, in certain circumstances, would be affected in the same way as the appellant, and that therefore the appellant is not directly and individually concerned, is not convincing. Direct and individual concern within the meaning of the fourth paragraph of Article 230 EC cannot be ruled out by the fact that there are other persons affected by the contested measure if such persons do not in fact have a patent.

The rejection of the appellant's statement, from which it emerges that the appellant is developing an ISO-CALM Infrared standard for which it has won the State Prize, is invoked as an infringement of the right to a fair hearing. Finally, the four-year duration of the proceedings is also unacceptable and in itself constitutes a serious procedural irregularity.

Reference for a preliminary ruling from the Arbeitsgericht Hamburg (Germany) lodged on 10 April 2008 — Jürgen Römer v Freie und Hansestadt Hamburg

(Case C-147/08)

(2008/C 171/26)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: Jürgen Römer

Defendant: Freie und Hansestadt Hamburg

Questions referred

1. Are supplementary pension payments, governed by the Erstes Ruhegeldgesetz (First law on retirement pensions or 'First RGG') of the Freie und Hansestadt Hamburg, to former employees of the Freie und Hansestadt Hamburg and their survivors 'payments of any kind made by state schemes or similar, including state social security or social protection schemes' within the meaning of Article 3(3) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ([1]), with the consequence that the matters governed by the First RGG fall outside the scope of that directive ('the Directive')?

2. If the above question is answered in the negative:

   2.1 Are the provisions of the First RGG which differentiate, in calculating the amount of pension payable, between married pensioners and all other pensioners, that is, which treat married pensioners more favourably than, specifically, persons who have formed a civil partnership (Lebenspartnerschaft) with a person of the same sex in accordance with the Lebenspartnerschaftsgesetz (Law on civil partnership) of the Federal Republic of Germany, 'laws on marital status and the benefits dependent thereon' within the meaning of recital 22 in the preamble to the Directive?

   2.2 If the above question is answered in the affirmative:

   Does it follow that the Directive does not apply to those provision of the First RGG, even though the Directive itself contains no limitation of its scope corresponding to recital 22 in the preamble?

3. If Question 2.1 or Question 2.2 is answered in the negative:

   In relation to a person who has a formed a civil partnership with a person of the same sex and who is not permanently separated from the latter, does Paragraph 10(6) of the First RGG, under which the pension entitlements of married, not permanently separated, pensioners are calculated on the basis of the notional application of tax category III/0 (more favourable to a taxable person) but the pension entitlements

of all other pensioners are calculated on the basis of the notional application of tax category I (less favourable to a taxable person), constitute an infringement of Article 1 in conjunction with Article 2 and with Article 3(1)(c) of the Directive?

4. If Question 1 or Question 2(2) is answered in the affirmative or Question 3 is answered in the negative:

   Does Paragraph 10(6) of the First RGG infringe Article 141 EC or a general principle of Community law by reason of the provision or legal effect described in Question 3?

5. If Question 3 or Question 4 is answered in the affirmative:

   Does it follow that — until such time as Paragraph 10(6) of the First RGG is amended to remove the unequal treatment complained of — in relation to the calculation of his pension entitlement a pensioner who has formed a civil partnership and is not permanently separated from his partner is entitled to insist that the defendant treats him in the same manner as it does as a married, not permanently separated, pensioner? If so — if the Directive is applicable and Question 3 is answered in the affirmative — does this entitlement apply even before the expiry of the transposition period prescribed in Article 18(1) of the Directive?

6. If Question 5 is answered in the affirmative:

   Is that subject to the qualification — in accordance with the grounds of the Court's judgment in Case C-262/88 Barber — that in the calculation of pension entitlement the principle of equal treatment is to be applied only in respect of that proportion of pension entitlement earned by the pensioner for the period from 17 May 1990?

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

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 14 April 2008 — Siebrand BV, other party: Staatssecretaris van Financiën

(Case C-150/08)

(2008/C 171/27)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden (Netherlands)

Parties to the main proceedings

Appellant in cassation: Siebrand BV

Other party to the proceedings: Staatssecretaris van Financiën

Questions referred

1. Can a beverage which contains a certain amount of distilled alcohol but which otherwise corresponds to the definition of heading 2206 of the Combined Nomenclature (CN) be classified under that heading if the beverage in question is a fermented beverage which, as a result of the addition of water and particular ingredients, has lost the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product?

2. In the event of a positive answer to Question 1, what criterion should govern the determination as to whether the beverage is nevertheless to be classified under heading 2208 of the CN on the ground that it contains distilled alcohol?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain) lodged on 15 April 2008 — Real Sociedad de Fútbol SAD and Nihat Kahveci v Consejo Superior de Deportes and Real Federación Española de Fútbol

(Case C-152/08)

(2008/C 171/28)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicants: Real Sociedad de Fútbol SAD and Nihat Kahveci

Defendants: Consejo Superior de Deportes and Real Federación Española de Fútbol

Question referred

Does Article 37 of the EEC-Turkey Association Agreement ([1]), signed in Ankara on 12 September 1963 and approved by Council Decision 64/732/EEC, and its Additional Protocol of 23 November 1970 ([2]), preclude a sporting federation from applying a rule to a professional sportsman of Turkish nationality, lawfully employed by a Spanish football club, as in the main proceedings, under which clubs may use only a limited number of players from non-member States not belonging to the European Economic Area in national competitions?

([1]) Agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1964 217, p. 3685).

([2]) Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ L 293, p. 1).

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

(Case C-154/08)

(2008/C 171/29)

Language of the case: Spanish

Parties

Applicant(s): Commission of the European Communities (represented by: M. Afonso and F. Jimeno Fernández, acting as Agent(s))

Defendant(s): Kingdom of Spain

Form of order sought

— declare that by considering that the services supplied to an Autonomous Community by land registrars acting as settlement agents in charge of a settlement office of a mortgage district are not subject to VAT, the Kingdom of Spain has failed to fulfil its obligations under Article 2 and Article 4(1) and (2) of the Sixth VAT Directive ([1]).

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. Land registrars are professionals appointed by the Spanish State and charged by it with the management of the land registers. They work on their own account, are free to organise their work, select their own staff and collect the payments which constitute their income themselves. Several Autonomous Communities have entrusted various tasks to them in relation to the settlement of certain taxes. For such services the land registrars receive a certain percentage of the taxes collected.

2. The Spanish administration has traditionally taken the view that, for the purposes of VAT, when they carry out such tasks for the Autonomous Communities, the land registrars must be considered to be contractors or professionals supplying services subject to VAT. The arguments relied on in that regard by the Spanish administration were essentially based on the judgments of the Court of Justice in Case C-235/85 *Commission* v *Netherlands* ([2]) and Case C-202/90 *Ayuntamiento de Sevilla* ([3]).

3. In its judgment of 12 July 2003, the Tribunal Supremo (Supreme Court) of Spain held that land registrars, as regards the specific activities entrusted to them by the Autonomous Communities, consisting in the settlement and collection of certain taxes, are simply public officials and form part of the public administration. Since that judgment, delivered in an appeal on a point of law, the Spanish administration has taken the view that such services are not subject to VAT.

4. However, the Commission considers that the services supplied to the Autonomous Communities by land registrars must be subject to VAT in accordance with the general rule contained in Article 2 of the Sixth Directive. That position is derived from the fact that registrars/settlement agents act as professionals who organise autonomously and independently the human and material resources needed to supply the service, as required by Article 4(1) of that Directive, and, that being so, do not have the characteristics of subordination and dependence which are a prerequisitite if the services in question are to be considered to have been supplied by an official to the administration to which he belongs and, therefore, not subject to VAT. A registrar/settlement agent is neither an administrative body of the Autonomous Community, nor an intrinsic element, incorporated into that body or internal to it, but an independent and distinct party with which the Autonomous Community has concluded a contract for the supply of services for consideration.

5. Similarly, the Commission considers that in the present case the requirements of the case-law are fulfilled for the Kingdom of Spain to be declared liable for a failure to fulfil obligations through an interpretation of Community law which is not consistent with its spirit or purpose or with the case-law of the Court of Justice. First, the Tribunal Supremo has the status of a higher judicial body in all orders, subject to the provisions as regards constitutional guarantees. Second, the ruling has significance and implications which are, in principle, contrary to the interpretation handed down by the Court of Justice, and which entail an absolute turnaround in the case-law of the lower courts and the practice of the Spanish administration to date, given its binding character. Third, there are damaging effects in the VAT sector which may affect the Community's own resources. Consequently, the Spanish administration may not seek protection from the judgment of the Tribunal Supremo to justify its failure to fulfil its obligations under Community law.

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).
([2]) [1987] ECR 1471.
([3]) [1991] ECR I-4247.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 16 April 2008 — E.H.A. Passenheim-van Schoot v Staatssecretaris van Financiën

(Case C-157/08)

(2008/C 171/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: E.H.A. Passenheim-van Schoot

Defendant: Staatssecretaris van Financiën

Question referred

Must Articles 49 and 56 EC be interpreted to mean that, where foreign savings balances or income therefrom are not disclosed to the tax authority of a Member State, those articles do not prevent that Member State from applying legislation which, to compensate for the lack of effective means of monitoring foreign 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 the Member State where such effective means do in fact exist?

Appeal brought on 15 April 2008 by Isabella Scippacercola and Ioannis Terezakis against the judgment of the Court of First Instance (Fifth Chamber) delivered on 16 January 2008 in Case T-306/05: Isabella Scippacercola and Ioannis Terezakis v Commission of the European Communities

(Case C-159/08 P)

(2008/C 171/31)

Language of the case: English

Parties

Appellants: Isabella Scippacercola, Ioannis Terezakis (represented by: Mr B. Lombart, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

— Set aside the judgment of the Court of First Instance in Case T-306/05 Isabella Scippacercola and Ioannis Terezakis v Commission of the European Communities dismissing their application seeking to annul the Commission Decision dated 2 May 2005 taken pursuant to Article 7(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 ([1]) notified to the appellants on 6 February 2008 refusing to open an in-depth investigation concerning the excessive charges levied by the new Athens International Airport of Spata holding a dominant position with respect to the:

(a) passenger security charge

(b) passenger terminal facility charge

(c) charges for car parking services

— Order that the costs of, and occasioned by these proceedings, and the proceedings of the Court of First Instance, be borne by the Commission.

Pleas in law and main arguments

The appellants submit that the Court of First Instance failed to establish that the Commission, by declining to examine AIA's security, terminal facilities and car parking charges in relation to their costs and embarking on inconclusive comparisons of AIA's charges with those levied at other European airports not providing competing services for the purposes of Article 82 EC, infringed Community law as laid down in Case 27/76 United Brands v. Commission and that the Court of First Instance infringed Community law by failing to establish that the Commission, first, did not consider all relevant matters of fact which existed at the time the contested decision was adopted as required by case law C-119/97 Ufex and others v. Commission, and, second, based its contested decision on materially incorrect facts vitiated therefore by a manifest error of assessment and misuse of powers.

It is argued that the Court of First Instance erred in law by not finding that the Commission made an error of assessment when it considered that the security checks did not constitute an economic activity and that the car parking services did not constitute a relevant market for the purposes of Article 82 EC.

With regard to the alleged error of law concerning the application to passengers of a higher terminal facility charge for those on intra-Community and international flights than for those on domestic flights, and the application to passengers on scheduled flights of a terminal facility charge and a security charge which are not applied to those travelling on charter flights, the appellants maintain that the Court of First Instance failed to establish that the Commission declined to take care to ensure that the principle of non discrimination was not infringed by AIA's practices.

Finally, it is submitted that the Court of First Instance failed to rule that the Commission departed from established rights and procedures, first, by disregarding the complainants' figures extracted from official sources showing an excessive pricing by AIA, second, by embarking on a comparison between Spata charges and those levied at other European airports which were irrelevant for the purposes of Article 82 EC and, third, by carrying out a request for information sent to AIA in which it failed, inter alia, to examine the construction cost of the airport and the incorporation expenses and set up costs of AIA.

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

Reference for a preliminary ruling from the Monomeles Protodikio Rethimnon (Greece) lodged on 28 April 2008 — Georgios K. Lagoudakis v Kentro Aniktis Prostasias Ilikiomenon Dimou Rethimnis

(Case C-162/08)

(2008/C 171/32)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnon

Parties to the main proceedings

Applicant: Georgios K. Lagoudakis

Defendant: Kentro Aniktis Prostasias Ilikiomenon Dimou Rethimnis

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, is the reduction in the protection afforded to fixed-term workers in the case of a single fixed-term employment contract (rather than several, successive contracts), under which the worker is in fact to provide services to meet 'fixed and permanent', rather than temporary, exceptional or urgent, requirements, connected to the application of the said Framework Agreement and the above directive and is such a reduction therefore permitted or not permitted from the point of view of Community law?

3. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the scope of the legal measure in question applying the Framework Agreement extends only to successive fixed-term employment contracts or relationships and not to persons who have concluded a single fixed-term contract of employment (rather than several, successive contracts) in order for the worker to meet 'fixed and permanent' requirements of the employer, while the earlier equivalent legal measure applied to all fixed-term contracts of employment, even where the worker concluded a single fixed-term employment contract, under which, in fact, the worker was to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements, and

   (b) when the legal measure in question for application of the Framework Agreement provides, as a legal consequence, for the purpose of protecting fixed-term workers and preventing abuse within the meaning of the Framework Agreement on fixed-term work, for fixed-term contracts thereafter (*ex nunc*) to be qualified as contracts of indefinite duration, while the earlier equivalent legal measure made provision for fixed-term contracts of employment to be qualified as contracts of indefinite duration from the time when they were originally concluded (*ex tunc*)?

4. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the choice made by the Greek legislature, in transposing the above directive into Greek law, on the one hand, to exclude the said cases of abuse in which the worker has concluded a single fixed-time contract, under which, in fact, the worker was to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements, from the scope of protection of the above Presidential Decree 164/2004, and on the other hand, not to enact a similar, effective measure/legal consequence specific to the case, affording to workers in such cases of abuse protection over and above the general protection which is provided as standard under general Greek employment law whenever work is provided under an invalid contract, irrespective of whether or not there has been abuse within the meaning of the Framework Agreement, and which includes a claim on the part of the worker to payment of his wages and severance pay, regardless of whether or not he worked under a valid contract, an unacceptable reduction

in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that a (single) fixed-term contract of employment is recognised as a contract of indefinite duration?

5. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as those in Presidential Decree 164/2004, which tacitly and indirectly (but clearly) deny the relevant protection in cases of abuse when the worker has concluded a single fixed-term contract of employment under which, in fact, he is to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements — and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

6. If the national court finds that a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable in principle to a dispute over fixed-term work and, on the basis of that provision, the finding that even a single contract of employment was concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work offered means that the contract must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional or additional social needs (in this case Law 3250/2004, FEK A 124A/07.07.2004) was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance to convert a fixed-term employment contract or relationship in the public sector to a employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Monomeles Protodikio Rethimnon (Greece) lodged on 28 April 2008 — Dimitros G. Ladakis, Andreas M. Birtas, Konstantinos G. Kiriakopoulos, Emmanouil B. Klambonis and Sophocles E. Mastorakis v Dimos Yeropotamou

(Case C-163/08)

(2008/C 171/33)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnon

Parties to the main proceedings

Applicant: Dimitros G. Ladakis, Andreas M. Birtas, Konstantinos G. Kiriakopoulos, Emmanouil B. Klambonis and Sophocles E. Mastorakis

Defendant: Dimos Yeropotamou (Municipality of Yeropotamos)

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the legal measure in question applying the Framework Agreement was adopted after the time-limit for transposing Directive 1999/70/EC had elapsed, but only fixed-term employment contracts and relationships which were in effect before its entry into force or had expired within a certain period before its entry into force but after the time-limit for transposing the Directive had elapsed fall within its chronological scope, although the equivalent legal measure which already existed does not have a chronologically restricted scope of application and covers all fixed-term employment contracts which had been concluded, were in effect or had expired when Directive 1999/70/EC came into force and the time-limit for its transposition had elapsed;

   (b) when fixed-term employment contracts or relationships only fall within the scope of application of the legal measure in question applying the Framework Agreement if they can be regarded as successive within the meaning of that measure, satisfying the cumulative requirements:

      (i) that there is a maximum period of three months between them;

      (ii) that they extend for a total of at least 24 months before the measure in question enters into force, irrespective of the number of contract renewals or that, on the basis of those renewals, there has been a minimum total period of work of 18 months over an overall period of 24 months from the original contract, provided that there are at least three renewals since the original contract, whereas the existing equivalent legal measure does not lay down such conditions but covers all the fixed-term (successive) employment contracts, irrespective of a minimum total period of work and a minimum number of contract renewals;

   (c) when the legal measure in question applying the Framework Agreement provides as a legal consequence for the protection of fixed-term workers and the prevention of abuse, within the meaning of the Framework Agreement on fixed-term work, for the qualification thereafter (*ex nunc*) of fixed-term employment contracts as contracts of indefinite duration, whereas the pre-existing legal measure provides for the qualification of fixed-term contracts as contracts of indefinite duration from the time they were originally concluded (*ex tunc*)?

3. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 7 of Presidential Decree 164/2004 at issue in the main proceedings an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, when that provides, as the sole means of protection of fixed-term workers from abuse, for an obligation on the part of the employer to pay wages and severance pay where workers have wrongfully been employed under successive fixed-term employment contracts, bearing in mind

   (a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

   (b) that the legal consequence of the application of the earlier equivalent legal measure is that successive fixed-term contracts of employment are recognised as a contract of indefinite duration?

4. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as Articles 7 and 11 of Presidential Decree 164/2004 and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

5. If the national court finds that — in principle — a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable to a dispute over fixed-term work and, on the basis of that provision, the finding that successive contracts of employment were concluded as a fixed-term contract for no objective

reason relating to the nature, type or features of the work offered means that the contracts must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional needs was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance to convert a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Monomeles Protodikio Rethimnon (Greece) lodged on 17 April 2008 — Mikhail Zakharioudakis v Dimos Labis

(Case C-164/08)

(2008/C 171/34)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnon

Parties to the main proceedings

Applicant: Mikhail Zakharioudakis

Defendant: Dimos Labis

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures

   (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and

   (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the legal measure in question applying the Framework Agreement was adopted after the time-limit for transposing Directive 1999/70/EC had elapsed, but only fixed-term employment contracts and relationships which were in effect before its entry into force or had expired within a certain period before its entry into force but after the time-limit for transposing the Directive had elapsed fall within its chronological scope, although the equivalent legal measure which already existed does not have a chronologically restricted scope of application and covers all fixed-term employment contracts which had been concluded, were in effect or had expired when Directive 199/70/EC came into force and the time-limit for its transposition had elapsed;

   (b) when fixed-term employment contracts or relationships only fall within the scope of application of the legal measure in question applying the Framework Agreement if they can be regarded as successive within the meaning of that measure, satisfying the cumulative requirements: (i) that there is a maximum period of three months between them; (ii) that they extend for a total of at least

24 months before the measure in question enters into force, irrespective of the number of contract renewals or that, on the basis of those renewals, there has been a minimum total period of work of 18 months over an overall period of 24 months from the original contract, provided that there are at least three renewals since the original contract, whereas the existing equivalent legal measure does not lay down such conditions but covers all the fixed-term (successive) employment contracts, irrespective of a minimum total period of work and a minimum number of contract renewals;

(c) when the legal measure in question applying the Framework Agreement provides as a legal consequence for the protection of fixed-term workers and the prevention of abuse, within the meaning of the Framework Agreement on fixed-term work, for the qualification thereafter (*ex nunc*) of fixed-term employment contracts as contracts of indefinite duration, whereas the pre-existing legal measure provides for the qualification of fixed-term contracts as contracts of indefinite duration from the time they were originally concluded (*ex tunc*)?

3. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 7 of Presidential Decree 164/2004 at issue in the main proceedings an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, when that provides, as the sole means of protection of fixed-term workers from abuse, for an obligation on the part of the employer to pay wages and severance pay where workers have wrongfully been employed under successive fixed-term employment contracts, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that successive fixed-term contracts of employment are recognised as a contract of indefinite duration?

4. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as Articles 7 and 11 of Presidential Decree 164/2004 and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

5. If the national court finds that — in principle — a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable to a dispute over fixed-term work and, on the basis of that provision, the finding that successive contracts of employment were concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work offered means that the contracts must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional needs was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance to convert a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Corte Costituzionale (Italy) lodged on 21 April 2008 — Presidente del Consiglio dei Ministri v Regione Autonoma della Sardegna

(Case C-169/08)

(2008/C 171/35)

Language of the case: Italian

Referring court

Corte Costituzionale

Parties to the main proceedings

Applicant: Presidente del Consiglio dei Ministri

Defendant: Regione Autonoma della Sardegna

Questions referred

1. Is Article 49 of the Treaty to be interpreted as precluding the application of a rule, such as that laid down in Article 4 of Law No 4 of the Region of Sardinia of 11 May 2006 (Miscellaneous provisions on revenue, reclassification of costs, social policy and development), as amended by Article 3(3) of Law No 2 of the Region of Sardinia of 29 May 2007 (Provisions for the preparation of the annual and long-term budget of the Region — 2007 Finance Law), under which the regional tax on aircraft making stopovers for tourist purposes is levied only on undertakings, operating aircraft which they themselves use for the transport of persons in the course of 'general business aviation' activities, which have tax domicile outside the territory of the Region of Sardinia?

2. Does Article 4 of Law No 4 of 2006 of the Region of Sardinia, as amended by Article 3(3) of Law No 2 of 2007 of the Region of Sardinia, by providing for the imposition of the regional tax on aircraft making stopovers for tourist purposes only on undertakings, operating aircraft which they themselves use for the transport of persons in the course of 'general business aviation' activities, which have tax domicile outside the territory of the Region of Sardinia, constitute, within the meaning of Article 87 of the Treaty, State aid to undertakings carrying on the same activities which have tax domicile in the Region of Sardinia?

3. Is Article 49 of the Treaty to be interpreted as precluding the application of a rule, such as that laid down in Article 4 of Law No 4 of 2006 of the Region of Sardinia, as amended by Article 3(3) of Law No 2 of 2007 of the Region of Sardinia, under which the regional tax on recreational craft making stopovers for tourist purposes is levied only on undertakings, operating recreational craft, which have tax domicile outside the territory of the Region of Sardinia and whose commercial operations involve making such craft available to third parties?

4. Does Article 4 of Law No 4 of 2006 of the Region of Sardinia, as amended by Article 3(3) of Law No 2 of 2007 of the Region of Sardinia, by providing for the imposition of the regional tax on recreational craft making stopovers only on undertakings, operating recreational craft, which have tax domicile outside the territory of the Region of Sardinia and whose commercial operations involve making such craft available to third parties constitute, within the meaning of Article 87 of the Treaty, State aid to undertakings carrying on the same activities which have tax domicile in the Region of Sardinia?

Action brought on 25 April 1998 — Commission of the European Communities v Portuguese Republic

(Case C-171/08)

(2008/C 171/36)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by E. Montaguti, P. Guerra e Andrade and M. Telles Romão, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that, by maintaining special rights for the State and other public bodies in Portugal Telecom S.A., attributed in connection with the State's golden shares (preferential shares) in Portugal Telecom S.A, the Portuguese Republic has failed to fulfil its obligations under Articles 56 and 43 EC;

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

Pleas in law and main arguments

The Portuguese State holds 500 golden shares in Portugal Telecom S.A. (PT). Those shares give the State the right of veto in respect of resolutions for the election of the officers of the General Assembly, the election of the Chairman of the Audit Committee and of the Official Auditor, the application of profit and loss accounts, alteration of the memorandum and articles of association, increase in capital, restriction and removal of preferential rights, issue of bonds and other real property, the fixing of the general aims and fundamental principles of the company's policies, defining of the general policy principles for participation in other companies, authorisation of change of the company seat and authorisation of the purchase of shares representing more than 10 % of share capital by shareholders carrying on, directly or indirectly, an activity in competition with that of the companies controlled by PT, and the right of veto in respect of a third of the total number of directors, including, necessarily, the Chairman of the Board of Directors.

The Commission is of the view that such rights of veto constitute restrictions of movements of capital and of freedom of establishment. Such measures amount to an impediment to direct investment in PT, an impediment to portfolio investment and an impediment to the exercise of freedom of establishment.

Those special rights of the State constitute State measures, for the golden shares are not a consequence of a normal application of company law.

The golden shares have nothing to do with lawful objectives of public interest or, especially, with those pleaded by the Portuguese State, viz., public order and safety, maintaining of cable and copper networks and maintaining of wholesale and retail activity within PT, public service concessions, the pattern for regulating the market in telecommunications and any disturbance of the capital market.

In any case, the Portuguese State has not observed the principle of proportionality, for the measures at issue are not apt to ensure that the objectives pursued are attained and they go beyond what is necessary in order to attain those objectives.

Reference for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 April 2008 — NCC Construction Danmark A/S v Skatteministeriet

(Case C-174/08)

(2008/C 171/37)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: NCC Construction Danmark A/S

Defendant: Skatteministeriet

Questions referred

1. Is the term *'incidental real estate transactions'* in the second sentence of Article 19(2) of the Sixth VAT Directive [1] to be interpreted as covering the activities of a building business which is subject to VAT in connection with the subsequent sale of real estate built by the building business on its own account as an activity fully subject to VAT with a view to resale?

2. For the purposes of the answer to question 1, is the extent to which the sales activities, viewed separately, entail the use of goods and services on which VAT is payable of relevance?

3. Is it consistent with the VAT-law principle of neutrality for a building business which, under the legislation of the Member State in question — based on Article 5(7) and Article 6(3) of the Sixth Directive — is required to pay VAT on its internal supplies in connection with the construction of buildings on its own account with a view to subsequent sale, to have only a partial right to deduct VAT for general costs for the purposes of the building business, given that the subsequent sale of the real estate is, under the Member State's VAT legislation, exempt from VAT on the basis of Article 28(3)(b) of the Sixth VAT Directive, read in conjunction with point 16 of Annex F?

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[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Reference for a preliminary ruling from the Administrative Court of Appeal, Thessaloniki (Greece) lodged on 28 April 2008 — Maria Kastrinaki v A.KH.E.P.A. University Hospital, Thessaloniki

(Case C-180/08)

(2008/C 171/38)

Language of the case: Greek

Referring court

Administrative Court of Appeal, Thessaloniki

Parties to the main proceedings

Applicant: Maria Kastrinaki

Defendant: A.KH.E.P.A. University Hospital, Thessaloniki

Questions referred

1. Where nationals of a Member State, relying upon evidence of a qualification that they believe comes within the scope of Directive 89/48/EEC, have been recruited by a legal person governed by public law and exercise a regulated profession in the host Member State under a contract of employment of unlimited duration governed by private law, having progressed in terms of their career and salary in keeping with the qualification in question, is it subsequently open to the competent authorities, for the purpose of Articles 1, 2, 3 and 4 of the said directive, interpreted in the light of Articles 149 and 150 of the Treaty establishing the European Community, to prevent such persons from exercising their professional rights because they are unable to recognise the academic equivalence of the qualification relied on for the purpose of classification in the job category and salary grade

corresponding to the qualification, purely on the ground that, although it was awarded by an authority in the Member State of origin, it was awarded at the end of a course of which part was completed, under a franchising agreement, at an institution in the host Member State which, although operating freely in the host Member State, is not recognised as an educational establishment in that State under the relevant general provision of its legislation?

2. Is it open to the competent authorities, for the purposes of the provisions of Directive 89/48/EEC, as transposed into Greek law by Joint Ministerial Decision No A4/4112/247/1992, interpreted in the light of Article 39(1), the first paragraph of Article 40, Articles 43, 47(1), 49 and 55 of the Treaty establishing the European Community, to prevent nationals of a Member State employed by a legal person governed by public law, under a contract of employment of unlimited duration governed by private law, who have been granted a professional licence in accordance with the provisions of Directive 89/48/EEC, as transposed into Greek law by Joint Ministerial Decision No A4/4112/247/1992, from exercising professional rights which derive from the professional licence issued, on the ground that the academic equivalence of their educational qualification has not been recognised?

Reference for a preliminary ruling from the Administrative Court of Appeal, Thessaloniki (Greece) lodged on 28 April 2008 — Maria Kastrinaki v A.KH.E.P.A. University Hospital, Thessaloniki

(Case C-186/08)

(2008/C 171/39)

Language of the case: Greek

Referring court

Administrative Court of Appeal, Thessaloniki

Parties to the main proceedings

Applicant: Maria Kastrinaki

Defendant: A.KH.E.P.A. University Hospital, Thessaloniki

Question referred

Is it open to the competent authorities, for the purposes of the provisions of Directive 89/48/EEC, as transposed into Greek law by Joint Ministerial Decision No A4/4112/247/1992, interpreted in the light of Article 39(1), the first paragraph of Article 40, Articles 43, 47(1), 49 and 55 of the Treaty establishing the European Community, to prevent a national of a Member State, the holder of a diploma falling within the scope of Directive 89/48/EEC, who is employed by a legal person governed by public law, under a contract of employment of unlimited duration governed by private law, and who has been granted a licence by the competent authorities of the original Member State to use a professional title and by the competent authorities of the host Member State to practice the profession, in accordance with the provisions of Directive 89/48/EEC, as transposed into Greek law by Joint Ministerial Decision No A4/4112/247/1992, from progressing in career and salary by way of a permanent appointment in a fixed post as a civil servant in the university-education level grade and salary scale, on the ground that recognition of the academic equivalence of the university educational qualification from the original Member State is not possible, since part of the studies were completed in the host Member State under a franchising agreement with a private educational organisation which is not recognised in that Member State as an educational establishment?

Action brought on 7 May 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-190/08)

(2008/C 171/40)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC [1] of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, or in any event by not communicating such measures to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 10 October 2006.

(1) OJ 2004 L 304, p. 12.

Action brought on 7 May 2008 — Commission of the European Communities v Portuguese Republic

(Case C-191/08)

(2008/C 171/41)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC (1) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the Portuguese Republic has failed to fulfil its obligations under Article 38(1) of Directive 2004/83/EC;

— in the alternative, declare that, by failing, in any event, to inform the Commission of the adoption of such measures, the Portuguese Republic has failed to fulfil its obligations under Article 38(1) of Directive 2004/83/EC;

— order Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2004/83/EC into national law expired on 10 October 2006.

(1) OJ 2004 L 304, p. 12.

Reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Republic of Lithuania) lodged on 14 May 2008 — Inga Rinau

(Case C-195/08)

(2008/C 171/42)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania)

Parties to the main proceedings

Appellant: Inga Rinau

Third party: Michael Rinau

Questions referred

1. Can an interested party within the meaning of Article 21 of Council Regulation (EC) No 2201/2003 (1) apply for non-recognition of a judicial decision if no application has been submitted for recognition of that decision?

2. If the answer to Question 1 is in the affirmative: how is a national court, when examining an application for non-recognition of a decision brought by a person against whom that decision is to be enforced, to apply Article 31(1) of Regulation No 2201/2003, which states that '… Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application'?

3. Is the national court which has received an application by the holder of parental responsibility for non-recognition of that part of the decision of the court of the Member State of origin requiring that that holder return to the State of origin the child staying with that holder, and in respect of which the certificate provided for in Article 42 of Regulation No 2201/2003 has been issued, required to examine that application on the basis of the provisions contained in Sections 1 and 2 of Chapter III of Regulation No 2201/2003, as provided for in Article 40(2) of that regulation?

4. What meaning is to be attached to the condition laid down in Article 21(3) of Regulation No 2201/2003 ('Without prejudice to Section 4 of this Chapter')?

5. Do the adoption of a decision that the child be returned and the issue of a certificate under Article 42 of Regulation No 2201/2003 in the court of the Member State of origin, after a court of the Member State in which the child is being unlawfully kept has taken a decision that the child be returned to his or her State of origin, comply with the objectives of and procedures under Regulation No 2201/2003?

6. Does the prohibition in Article 24 of Regulation No 2201/2003 of review of the jurisdiction of the court of the Member State of origin mean that, if it has received an application for recognition or non-recognition of a decision of a foreign court and is unable to establish the jurisdiction of the court of the Member State of origin and unable to identify any other grounds set out in Article 23 of Regulation No 2201/2003 as a basis for non-recognition of decisions, the national court is obliged to recognise the decision of the court of the Member State of origin ordering the child's return in the case where the court of the Member State of origin failed to observe the procedures laid down in the regulation when deciding on the issue of the child's return?

(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 15 May 2008 — Commission of the European Communities v French Republic

(Case C-200/08)

(2008/C 171/43)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Bordes and H. Støvlbæk, agents)

Defendant: French Republic

Form of order sought

— Declare that by refusing to permit German and British snowboard instructors to teach that sport alone in France and by not referring in the amended decree of 4 May 1995 to snowboard instructor qualifications acquired in other Member States, the French Republic has failed to fulfil its obligations under Articles 39, 43 and 49 EC and under Article 6 of Directive 92/51/EEC (1);

— order the French Republic to pay the costs.

Pleas in law and main arguments

While in several Member States ski-ing and snowboarding can be taught by members of professions who have separate instructor qualifications, snowboarding can be taught in France only by ski instructors.

The applicant considers that the refusal to permit access to the profession of snowboard instructor alone cannot be justified having regard to the fundamental principles of free movement of persons, freedom to provide services and the right of establishment. The Commission considers, in addition, that the four cumulative derogating conditions established by the Court's case-law to justify any restriction on those principles — that measures must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must respect the principle of proportionality — are not satisfied.

(1) Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, p. 25).

Action brought on 20 May 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-209/08)

(2008/C 171/44)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: Maria Condou Durande, agent)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (1) or, in any event, by not having informed the Commission of those provisions, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 17 of that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 5 August 2006. At the date of bringing this action, the defendant has not yet taken the measures necessary to transpose the directive or, in any event, has not informed the Commission of them.

([1]) OJ L 261, p. 19.

Action brought on 23 May 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-223/08)

(2008/C 171/45)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Huvelin)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by not adopting the laws regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]) and, in any event, by not having informed the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;

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

Pleas in law and main arguments

The period for transposition of Directive 2006/100/EC expired on the date of accession of Bulgaria and Romania to the European Union, namely 1 January 2007. At the date of bringing this action, no transposing measure had been adopted or notified to the Commission by the defendant.

([1]) OJ L 363, p. 141.

Action brought on 23 May 2008 — Commission of the European Communities v French Republic

(Case C-224/08)

(2008/C 171/46)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]) and, in any event, by not having informed the Commission, the French Republic has failed to fulfil its obligations under Article 2 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2006/100/EC expired on the date of accession of Bulgaria and Romania to the European Union, namely 1 January 2007. At the date of bringing this action, the defendant had not taken the measures necessary to transpose completely the directive, in particular in respect of the medical professions, lawyers and architects.

([1]) OJ L 363, p. 141.

Order of the President of the Court of 28 November 2007 (reference for a preliminary ruling from the Juzgado de lo Social nº 3 Valladolid, Spain) — Vicente Pascual García v Confederación Hidrográfica del Duero

(Case C-87/06) ([1])

(2008/C 171/47)

Language of the case: Spanish

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

([1]) OJ C 121, 20.5.2006.

Order of the President of the Court of 26 February 2008 (reference for a preliminary ruling from the Monomeles Protodikio Verias, Greece) — Georgios Diamantis v Fanco AE

(Case C-315/06) ([1])

(2008/C 171/48)

Language of the case: Greek

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

([1]) OJ C 224, 16.9.2006.

Order of the President of the Sixth Chamber of the Court of 7 April 2008 — Commission of the European Communities v Italian Republic

(Case C-424/06) ([1])

(2008/C 171/49)

Language of the case: Italian

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

([1]) OJ C 310, 16.12.2006.

Order of the President of the Third Chamber of the Court of 28 January 2008 (reference for a preliminary ruling from the Kammarrätten i Jönköping, Sweden) — Mattias Jalkhed v Jordbruksverket

(Case C-18/07) ([1])

(2008/C 171/50)

Language of the case: Swedish

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

([1]) OJ C 56, 10.3.2007.

Order of the President of the Court of 27 November 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-235/07) ([1])

(2008/C 171/51)

Language of the case: German

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

([1]) OJ C 140, 23.6.2007.

Order of the President of the Court of 5 December 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-325/07) ([1])

(2008/C 171/52)

Language of the case: French

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

([1]) OJ C 211, 8.9.2007.

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

(Case C-347/07) ([1])

(2008/C 171/53)

Language of the case: Italian

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

([1]) OJ C 223, 22.9.2007.

COURT OF FIRST INSTANCE

Designation of the Judge replacing the President as the Judge hearing applications for interim measures

(2008/C 171/54)

On 12 June 2008, the Court of First Instance decided to amend the decision of 19 September 2007 in consequence of the resignation of Judge Cooke and, in accordance with Article 106 of the Rules of Procedure, to designate Judge Papasavvas to replace the President of the Court for the purpose of deciding applications for interim measures where the latter is absent or prevented from dealing with them, in respect of the period from 1 July 2008 to 30 June 2009.

Judgment of the Court of First Instance of 21 May 2008 — Belfass v Council

(Case T-495/04) [1]

(Public procurement — Community tender procedure — Obvious clerical error — Award to the tender offering best value for money — Abnormally low tender — Article 139(1) of Regulation (EC, Euratom) No 2342/2002 — Plea of illegality — Specifications — Admissibility)

(2008/C 171/55)

Language of the case: French

Parties

Applicant: Belfass SPRL (Forest, Belguim) (represented by: L. Vogel, lawyer)

Defendant: Council of the European Union (represented by: B. Driessen and A. Vitro, Agents)

Re:

Application, first, for the annulment of the decision of the Council of the European Union of 13 October 2004 to reject both the tenders submitted by the applicant under tender procedure UCA-033/04 and, secondly, for compensation in respect of the damage allegedly suffered by the applicant by reason of the Council's conduct.

Operative part of the judgment

1. *Annuls the decision of the Council of the European Union of 13 October 2004 to reject the tenders of Belfass SPRL submitted under tender procedure UCA-033/04, in so far as that decision rejected Belfass' offer with respect to Lot No 2;*

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

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

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[1] OJ C 57, 5.3.2005.

Judgment of the Court of First Instance of 22 May 2008 — NewSoft Technology v OHIM — Soft (Presto! BizCard Reader)

(Case T-205/06) [1]

(Community trade mark — Invalidity proceedings — Community word mark Presto! BizCard Reader — Earlier national figurative marks Presto — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94)

(2008/C 171/56)

Language of the case: German

Parties

Applicant: NewSoft Technology Corp. (Taipei, Taiwan) (represented by: M. Dirksen-Schwanenland, U. von Sothen and M. Di Stefano, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Soft, SA (Madrid, Spain) (represented by: A. Velázquez Ibáñez and P. Merino Baylos, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 May 2006 (Case R 601/2005-2) relating to invalidity proceedings between Soft, SA and NewSoft Technology Corp.

Operative part of the judgment

1. *The action is dismissed.*

2. *NewSoft Technology Corp. is ordered to pay the costs.*

([1]) OJ C 237, 30.9.2006.

Judgment of the Court of First Instance of 22 May 2008 — Ott and Others v Commission

(Case T-250/06 P) ([1])

(Appeal — Cross-appeal — Admissibility — Civil Service — Officials — Promotion — Promotion for 2004 — Allocation of promotion points — General Implementing Provisions of Article 45 of the Staff Regulations — Plea of illegality — Substitution of grounds — Appeal, in part, manifestly inadmissible and, in part, manifestly unfounded — Dispute capable of being decided — Dismissal of the action)

(2008/C 171/57)

Language of the case: French

Parties

Applicants: Martial Ott (Oberanven, Luxembourg); Fernando Lopez Tola (Luxembourg, Luxembourg); and Francis Weiler (Itzig, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and D. Martin, agents)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 30 June 2006 *Ott and Others* v *Commission* (Case F-87/05, not yet published in the ECR) seeking the annulment of that order.

Operative part of the judgment

The Court:

1. *The order of the Civil Service Tribunal (Second Chamber) of 30 June 2006 Ott and Others v Commission is annulled in so far as it dismissed the action brought by Mr Francis Weiler;*

2. *For the rest, the appeal is dismissed;*

3. *The cross-appeal is dismissed;*

4. *The action brought before the Civil Service Tribunal as Case F-87/05 is dismissed in so far as it was brought by Mr Francis Weiler;*

5. *Mr Martial Ott, Mr Fernando Lopez Tola and Mr Francis Weiler shall bear their own costs in relation to the present instance and four fifths of the costs incurred by the Commission. The Commission shall bear one fifth of its own costs in relation to the present instance;*

6. *Mr Francis Weiler and the Commission shall bear their own costs in relation to the proceedings before the Civil Service Tribunal.*

([1]) OJ C 281 of 18.11.2006.

Judgment of the Court of First Instance of 22 May 2008 — Radio Regenbogen Hörfunk in Baden v OHIM (RadioCom)

(Case T-254/06) ([1])

(Community trade mark — Application for Community word mark RadioCom — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2008/C 171/58)

Language of the case: German

Parties

Applicant: Radio Regenbogen Hörfunk in Baden Geschäftsführungs-GmbH (Mannheim, Germany) (represented by: W. Göpfert, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 July 2006 (Case R 1266/2005-1) concerning an application for registration of thee word mark RadioCom as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Radio Regenbogen Hörfunk in Baden Geschäftsführungs-GmbH to pay the costs.*

([1]) OJ C 261, 28.10.2006.

Judgment of the Court of First Instance of 21 May 2008 — Enercon v OHIM (E)

(Case T-329/06) ([1])

(Community trade mark — Application for Community word mark E — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

(2008/C 171/59)

Language of the case: German

Parties

Applicant: Enercon GmbH (Aurich, Germany) (represented initially by R. Böhm, and subsequently by R. Böhm and U. Sander, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 September 2006 (Case R 394/2006-1) concerning the registration of the word mark E as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Enercon GmbH to pay the costs.*

([1]) OJ C 326 of 30.12.2006.

Order of the Court of First Instance of 19 May 2008 — TF1 v Commission

(Case T-144/04) ([1])

(Action for annulment — Commission decision classifying certain measures adopted by the French Republic in favour of France 2 and France 3 as State aid compatible with the common market — Time-limit for instituting proceedings — Article 44(1)(c) of the Rules of Procedure — Inadmissibility)

(2008/C 171/60)

Language of the case: French

Parties

Applicant: Télévision française 1 SA (TF1) (Nanterre, France) (represented by: J.-P. Hordies and C. Smits, lawyers)

Defendant: Commission of the European Communities (represented by: J. Bundía Sierra, N. Niejahr and C. Giolito, acting as Agents)

Intervener in support of the form of order sought by the defendant: French Republic (represented by: G. de Bergues, Agent)

Re:

Action for annulment of Commission Decision 2004/838/EC of 10 December 2003 on State aid implemented by France for France 2 and France 3 (OJ 2004 L 361, p. 21).

Operative part of the order

1. *The action is dismissed.*

2. *Télévision française 1 SA (TF1) is ordered to bear its own costs and pay those of the Commission.*

3. *The French Republic shall bear its own costs.*

([1]) OJ C 168, 26.6.2004.

Order of the Court of First Instance of 18 April 2008 — Maison de l'Europe Avignon Méditerranée v Commission

(Case T-302/04) ([1])

(Arbitration clause — Creation of an Info Point Europe — Agreement concluded between the Commission and the applicant — Manifest lack of jurisdiction of the Court of first Instance — Action manifestly unfounded)

(2008/C 171/61)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: J.F. Pasquier and E. Manhaeve, agents)

Re:

Action based on an arbitration clause seeking an order for the Commission to pay the applicants the total sum of EUR 394 066,76 on account of its alleged failure to fulfil contractual obligations arising under the agreement on the creation of an Info Point Europe in Avignon.

Operative part of the order

1. *The action is dismissed.*

2. *The Maison de l'Europe Avignon Méditerranéeis ordered to pay the costs.*

([1]) OJ C 262, of 23.10.2004.

Order of the Court of First Instance of 13 May 2008 — SNIV v Commission

(Case T-327/04) ([1])

(Action for annulment — State aid — Time-limit for instituting proceedings — Starting point — Publication of a brief notice in the Official Journal — Internet site — Inadmissibility)

(2008/C 171/62)

Language of the case: French

Parties

Applicant: Syndicat national de l'industrie des viandes (SNIV) (Paris, France) (represented by: N. Coutrelis and S. Henneresse, lawyers)

Defendant: Commission of the European Communities (represented by: D. Triantafyllou and A. Stobiecka-Kuik, acting as Agents)

Intervener in support of the form of order sought by the defendant: French Republic (represented by G. de Bergues, Agent)

Re:

Annulment of Commission Decision C(2004) 936 final of 30 March 2004 in relation to the aid measures planned by the French authorities to finance the public rendering service (State aid No 515/2003 — France)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Syndicat national de l'industrie des viandes shall bear its own costs and pay those of the Commission.*

3. *The French Republic shall bear its own costs.*

([1]) OJ C 273, 6.11.2004.

Order of the Court of First Instance of 30 January 2008 — Arktouros v Commission

(Case T-260/06) ([1])

(Action for annulment — Regulation (EC) No 1655/2000 — Removal of financial assistance granted for an ecological project — Decision ending the project and ordering reimbursement of sums paid by way of an advance — Confirmatory measure — Expiry of the period for bringing an action — Inadmissibility)

(2008/C 171/63)

Language of the case: Greek

Parties

Applicant: Etairia prostasias kai diakhirisis fisikou perivallontos kai agrias zois 'Arktouros' (Association for the Protection and Management of the Natural Environment and Wildlife 'Arktouros') (Thessaloniki, Greece) (represented by: N. Korogiannakis and N. Keramidas, lawyers)

Defendant: Commission of the European Communities (represented by: M. Konstantinidis, Agent)

Re:

Annulment of Commission Decision C(2006) 3181 final of 6 July 2006 ending a project concerning conservation actions in the Northern Pindos National Park (Greece) (Ellas — LIFE03 NAT/GR/000089) and ordering reimbursement of the advance paid to the applicant in respect of the Community financial assistance which had been granted to it in implementation of Commission Decision C(2003) 2919 final of 4 September 2003.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Etairia prostasias kai diakhirisis fisikou perivallontos kai agrias zois 'Arktouros' shall bear its own costs and those incurred by the Commission.*

([1]) OJ C 281 of 18.11.2006.

Order of the Court of First Instance of 21 May 2008 — Kronberger v Parliament

(Case T-18/07) ([1])

(Action for annulment — Act concerning election to the European Parliament — Time-limit for instituting proceedings — Lack of jurisdiction of the Court — Inadmissibility)

(2008/C 171/64)

Language of the case: German

Parties

Applicant: Hans Kronberger (Vienna, Austria) (represented by: W. Weh, lawyer)

Defendant: European Parliament (represented by: H. Krück, N. Lorenz and M. Windisch, acting as Agents)

Re:

Action for annulment of the decision of the European Parliament of 28 April 2005 rejecting as unfounded the applicant's challenge relating to the election of Andreas Mölzer as a Member of the European Parliament, submitted in accordance with the provisions of Article 12 of the Act of 20 September 1976 concerning the election of the representatives of the Parliament by direct universal suffrage

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Hans Kronberger is ordered to pay the costs, including those incurred in the interim proceedings.*

([1]) OJ C 69, 24.3.2007.

Order of the Court of First Instance of 14 May 2008 — Lactalis Gestion Lait and Lactalis Investissements v Council

(Case T-29/07) ([1])

(Action for annulment — Directive 2006/112/EC — Repeal of the First VAT Directive — Partial annulment — Not individually concerned — Inadmissibility)

(2008/C 171/65)

Language of the case: French

Parties

Applicant: Lactalis Gestion Lait SNC and Lactalis Investissements SNC (Laval, France) (represented by: A. Philippart, lawyer)

Defendant: Council of the European Union (represented by: A.-M. Colaert and M. Iosifidou, acting as Agents)

Re:

Action for annulment of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) to the extent that it repeals the fourth and eighth recitals in the preamble to and the first and third paragraphs of Article 1 of Council Directive 67/227/EEC on the harmonisation of legislation of Member States concerning turnover taxes of 11 April 1967 (OJ, English Special Edition 1967, p. 14).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the applications to intervene made by the Commission and the Kingdom of Spain.*

3. *Lactalis Gestion Lait SNC and Lactalis Investissements SNC are ordered to pay the costs.*

(1) OJ C 69, 24.3.2007.

Order of the Court of First Instance of 8 May 2008 — Frankin and Others v Commission

(Case T-92/07 P) (1)

(Appeal — Civil Service — Officials and members of the temporary staff — Pension — Transfer of pension rights — Appeal manifestly inadmissible — Appeal manifestly unfounded)

(2008/C 171/66)

Language of the case: French

Parties

Appellants: Jacques Frankin (Sorée, Belgium) and the 482 other officials and members of the temporary staff of the Commission of the European Communities whose names are listed in the annex to the judgment (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: C. Berardis-Kayser and D. Martin, agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 16 January 2007 in *Frankin and Others* v *Commission* (Case F-3/06, not yet published in the ECR) seeking the annulment of that judgment.

Operative part of the order

1. *The appeal is dismissed;*

2. *Mr Jacques Frankin and the 482 other officials and members of the temporary staff of the Commission whose names are listed in the annex to the judgment shall bear their own costs and the costs incurred by the Commission in the context of the present instance.*

(1) OJ C 117 of 26.5.2007.

Order of the Court of First Instance of 5 May 2008 — Pathé Distribution SAS v Education, Audiovisual & Culture Executive Agency

(Case T-239/07) (1)

(Arbitration clause — Education, Audiovisual & Culture Executive Agency — No need to adjudicate)

(2008/C 171/67)

Language of the case: French

Parties

Applicant: Pathé Distribution SAS (Paris, France) (represented by: P. Deprez, lawyer)

Defendant: Education, Audiovisual & Culture Executive Agency (represented by: H. Monet, agent, assisted by J.-L. Fagnart, lawyer)

Re:

First, annulment of the decision of the Education, Audiovisual & Culture Executive Agency of 8 May 2007 terminating contract No 2006-09120304D1021001FD1507 and, second, an order that the Education, Audiovisual & Culture Executive Agency should pay to the applicant the sum of EUR 9 737 in execution of the said contract.

Operative part of the order

1. *There is no need to adjudicate on the action;*

2. *The Education, Audiovisual & Culture Executive Agency is ordered to pay the costs.*

(1) OJ C 211 of 8.9.2007.

Order of the Court of First Instance of 28 April 2008 — Grohe v OHIM — Compañía Roca Radiadores (ALIRA)

(Case T-315/07) (1)

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

(2008/C 171/68)

Language of the case: German

Parties

Applicant: Grohe AG (Hemer, Germany) (represented by: A. Lensing-Kramer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Compañía Roca Radiadores, SA (Barcelona, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 19 June 2007 (Case R 850/2006-4) relating to opposition proceedings between Grohe AG and Compañía Roca Radiadores, SA.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *The applicant is ordered to bear its own costs and to pay those incurred by the defendant.*

([1]) OJ C 235, 6.10.2007.

Order of the Court of First Instance of 17 April 2008 — Dimos Kerateas v Commission

(Case T-372/07) ([1])

(Action for annulment — Time-limit — Inadmissible)

(2008/C 171/69)

Language of the case: Greek

Parties

Applicant: Dimos Kerateas (Municipality of Keratea), Greece (represented by: A. Papakonstantinou and M. Khaïntarlis, lawyers)

Defendant: Commission of the European Communities (represented by: D. Triantafyllou and A. Steiblytė, Agents)

Re:

Application for annulment of Commission Decision C(2004) 5611 of 22 December 2004 concerning the grant of a financial contribution from the Cohesion Fund for the carrying out of a waste management project in Attica (Greece).

Operative part of the order

1. *The action is dismissed.*

2. *Dimos Kerateas shall pay the costs.*

([1]) OJ C 283 of 24.11.2007.

Order of the Court of First Instance of 18 February 2008 — Earth Products v OHIM — Meynard Designs (EARTH)

(Case T-389/07) ([1])

(Community trade mark — Refusal of registration — Withdrawal of the application for registration — No need to adjudicate)

(2008/C 171/70)

Language of the case: English

Parties

Applicant: Earth Products Inc. (Carlsbad, United States) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Meynard Designs Inc. (Waltham, United States) (represented by: E. Cornu and E. De Gryse, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 August 2007 (Case R 1590/2006-2) relating to opposition proceedings between Meynard Designs Inc. and Earth Products Inc.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *Each party is ordered to bear its own costs.*

([1]) OJ C 297, 8.12.2007.

Order of the President of the Court of First Instance of 11 April 2008 — Cyprus v Commission

(Joined Cases T-54/08 R, T-87/08 R, T-88/08 R, T-91/08 R, T-92/08 R and T-93/08 R)

(Applications for interim relief — Procurement notices for contracts to encourage economic development in the northern part of Cyprus — Applications for suspension of operation of the notices — No urgency)

(2008/C 171/71)

Language of the case: Greek

Parties

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

Defendant: Commission of the European Communities (represented by: P. van Nuffel and I. Zervas, Agents)

Re:

Applications for suspension of the operation of a number of procurement notices issued by the Commission for the encouragement of economic development in the northern part of Cyprus, in the fields of energy, the environment, agriculture, telecommunications, education and crop management and irrigation.

Operative part of the order

1. *Cases T-54/08 R, T-87/08 R, T-88/08 R, T-91/08 R, T-92/08 R and T 93/08 R are joined for the purposes of this order.*

2. *The applications for interim relief are dismissed.*

3. *Costs are reserved.*

Order of the President of the Court of First Instance of 11 April 2008 — Cyprus v Commission

(Case T-119/08 R)

(Application for interim relief — Procurement notice for a contract to encourage economic development in the northern part of Cyprus — Application for suspension of operation of the notice — No urgency)

(2008/C 171/72)

Language of the case: Greek

Parties

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

Defendant: Commission of the European Communities (represented by: P. van Nuffel and I. Zervas, Agents)

Re:

Application for suspension of the operation of a procurement notice issued by the Commission for the encouragement of economic development in the northern part of Cyprus in the field of livestock rearing.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 11 April 2008 — Cyprus v Commission

(Case T-122/08 R)

(Application for interim relief — Procurement notice for a contract to encourage economic development in the northern part of Cyprus — Application for suspension of operation of the notice — No urgency)

(2008/C 171/73)

Language of the case: Greek

Parties

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

Defendant: Commission of the European Communities (represented by: P. van Nuffel and I. Zervas, Agents)

Re:

Application for suspension of the operation of a procurement notice issued by the Commission for the encouragement of economic development in the northern part of Cyprus, concerning the establishment of a programme management unit to support the implementation of investment projects in the field of water, waste water and solid waste.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 21 April 2008 — Victor Guedes-Indústria e Comércio v OHIM — Consorci de l'Espai Rural de Gallecs (GALLECS)

(Case T-151/08)

(2008/C 171/74)

Language in which the application was lodged: English

Parties

Applicant: Victor Guedes-Indústria e Comércio, SA (Lisbon, Portugal) (represented by: B. Braga da Cruz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Consorci de l'Espai Rural de Gallecs (Barcelona, Spain)

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 16 January 2008 in case R 986/2007-2;

— order OHIM to refuse the grant of the registration of Community trademark No 3 710 597 in respect of the goods in classes 29 and 31: and

— order the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Consorci de l'Espai Rural de Gallecs

Community trade mark concerned: The figurative mark 'GALLECS' for goods in classes 29 and 31 — application No 3 710 597

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

Mark or sign cited: The national figurative mark 'GALLO' for goods in class 29; the national figurative mark 'GALLO AZEITE NOVO' for goods in class 29; the national figurative mark 'AZEITE GALLO' for goods in class 29; the national mark 'GALLO AZEITE NOVO' for goods in class 29; the Community figurative mark 'GALLO' for goods in class 29

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) and of Article 8(5) of Council Regulation No 40/94 as the contested mark is similar to earlier marks and its use would be detrimental to the distinctive character of such, taking into account the usual practices in the relevant commercial sector as well as the other circumstances of the case.

Appeal brought on 24 April 2008 by R against the judgment of the Civil Service Tribunal delivered on 19 February 2008 in Case F-49/07, R v Commission

(Case T-156/08 P)

(2008/C 171/75)

Language of the case: French

Parties

Appellant: R (Brussels, Belgium) (represented by Y. Minatchy, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Annul the order of the Civil Service Tribunal of the European Union of 19 February 2008 in Case F-49/07;

— Grant the application for annulment and damages made by the applicant at first instance;

— Order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

In the present appeal, the applicant is seeking the annulment of the order of the Civil Service Tribunal ('the Tribunal') dismissing as inadmissible the action in which he applied, first, for the annulment of his entire probationary period and all the measures produced in that connection, including the end of probationary period report, and, second, for damages by way of compensation for the loss allegedly suffered.

In support of his appeal, the applicant relies, first, on a denial of due process inasmuch as the Tribunal did not take account of certain factors and documents submitted by the applicant and, second, on an erroneous interpretation of the Rules of Procedure of the Civil Service Tribunal and the Staff Regulations of Officials of the European Communities. The applicant also relies on manifest errors in the assessment of the facts.

Action brought on 28 April 2008 — Paroc v OHIM — (INSULATE FOR LIFE)

(Case T-157/08)

(2008/C 171/76)

Language in which the application was lodged: English

Parties

Applicant: Paroc Oy/AB (Vantaa, Finland) (represented by: J. Palm, lawyer)

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

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 21 February 2008 in case R 0054/2008-2; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INSULATE FOR LIFE' for goods and services in classes 6, 17, 19 and 37 — application No 593 2827

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

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 2 May 2008 — Procter & Gamble v OHIM — Bayer (LIVENSA)

(Case T-159/08)

(2008/C 171/77)

Language in which the application was lodged: English

Parties

Applicant: The Procter & Gamble Company (Cincinnati, United States) (represented by: K. Sandberg, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bayer AG (Leverkusen, Germany)

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 11 February 2008 in case R 960/2007-2;

— reject the opposition No B 873 978 dated 3 May 2007;

— order OHIM to bear the costs of the proceedings: and

— order the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings before OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'LIVENSA' for goods in class 5 — application No 004 062 725

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: The Community trade mark 'LYVELSA' for goods in class 5

Decision of the Opposition Division: Rejection of the trade mark application 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 there is no likelihood of confusion between the two trade marks subject to comparison.

Action brought on 29 April 2008 — Frag Comercio Internacional v OHIM — Tinkerbell Modas (GREEN by missako)

(Case T-162/08)

(2008/C 171/78)

Language in which the application was lodged: English

Parties

Applicant: Frag Comercio Internacional, SL (Esparraguera, Spain) (represented by: E. Sugrañes, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tinkerbell Modas, Ltda (São Paulo, Brazil)

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 14 February 2008 in case R 1527/2006-2;

— reject the application for Community trade mark No 3 663 234; and

— order the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'GREEN by missako' for goods and services in classes 3, 25, 35 — application No 3 663 234

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

Mark or sign cited: The Community figurative trade mark 'MI SA KO' for goods in classes 18 and 25; the national figurative trade mark 'MI SA KO' for services in class 35

Decision of the Opposition Division: Dismissal of the opposition

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 a mere global likelihood of confusion among consumers is required in order to deny a Community trade mark application.

Action brought on 29 April 2008 — Arbeitsgemeinschaft Golden Toast v OHIM (Golden Toast)

(Case T-163/08)

(2008/C 171/79)

Language of the case: German

Parties

Applicant: Arbeitsgemeinschaft Golden Toast e.V. (Düsseldorf, Germany) (represented by: A. Späth and G. Hasselblatt, lawyers)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2008 (Case R 761/2007-1);

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'Golden Toast' for goods and services in Classes 5, 8, 9, 11, 14, 16, 21, 24, 25, 28-32, 39 and 41-44 (Application No 4 811 171).

Decision of the Examiner: Application refused in part, in respect of the goods in Classes 11 and 30.

Decision of the Board of Appeal: Dismissal of appeal.

Pleas in law: Breach of the obligation under the first sentence of Article 73 of Regulation (EC) No 40/94 ([1]) to state reasons, in that the appealed decision was based on lack of distinctive character within the meaning of Article 7(1)(b) of that regulation, although that was not examined. In addition, infringement of Article 7(1)(c) of Regulation No 40/94, in that the conditions for the finding of descriptiveness of the trade mark applied for were misconstrued.

([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 9 May 2008 — Microsoft v Commission

(Case T-167/08)

(2008/C 171/80)

Language of the case: English

Parties

Applicant: Microsoft Corp. (represented by: J.-F. Bellis, lawyer, I. Forrester, QC

Defendant: Commission of the European Communities

Form of order sought

— annul the Decision of the European Commission C(2008) 764 final of 27 February 2008 fixing the definitive amount of the periodic penalty payment imposed on Microsoft Corporation by Commission Decision C(2005) 4420 final;

— in the alternative, annul or reduce the amount of the periodic penalty payment imposed;

— order the defendant to bear the costs.

Pleas in law and main arguments

By a decision of 10 November 2005 adopted pursuant to Article 24(1) of Regulation 1/2003 ([1]) the Commission imposed a periodic penalty payment on the applicant for failure to comply with the obligation to make the technical documentation embodying the Interoperability Information available to interested undertakings on reasonable and non-discriminatory terms pursuant to Article 5(a) of Commission Decision 2007/53/EC of 24 March 2004 ([2]). The contested decision fixed the definitive amount of the periodic penalty payment for the period between 21 June 2006 and 21 October 2007 inclusive at EUR 899 million. The applicant seeks the annulment of the contested decision on the following grounds:

1. The Commission erred by subjecting Microsoft to periodic penalty payments to force it to apply 'reasonable' price terms without first specifying what price terms would, in the Commission's view, be 'reasonable' so as to allow Microsoft to know what to do to avoid the imposition of such penalty payment.

2. The Commission committed a manifest error of assessment and violated Article 253 EC by concluding that published rates adopted by Microsoft were unreasonable and contrary to the 2004 decision without taking account of the facts that (i) these published rates were expressly intended to facilitate negotiations between Microsoft and prospective licensees and (ii) Microsoft had, in consultation with the Commission, created a mechanism whereby the trustee would review the rates proposed by Microsoft if any prospective licensee failed to reach agreement which was virtually identical to the mechanism created by the Commission itself in NDC Health/IMS Health: Interim Measures ('IMS Health') ([3]). The Commission also committed a manifest error of assessment by (i) failing to give due weight to the fact that these published rates were set by Microsoft at a figure lower than the rates that a third party expert determined to be reasonable (ii) failing to give due weight to the fact that no prospective licensee failed to reach agreement with Microsoft and (iii) failing to consider the fact that licensees of the 'no patent' licence also obtain rights to use Microsoft's patents.

3. The Commission committed a manifest error of assessment by requiring Microsoft to establish that its trade secrets were innovative under a heightened patentability test in order to justify the imposition of royalties for a licence to such trade secrets. The Commission also violated Article 253 EC by failing to take account of numerous arguments raised by Microsoft on the basis of reports prepared by patent experts which criticised the Commission's approach.

4. The Commission violated Article 233 EC by failing to take the necessary measures to comply with the judgment in Case T-201/04 ([4]) in so far as the Commission based its assessment reports prepared by the trustee on the basis of documents obtained through powers of investigation that the Court of First Instance held to be unlawful.

5. The Commission denied Microsoft's right to be heard by failing to give Microsoft an opportunity to make known its views after the end of the reference period for which Microsoft is fined, there by preventing Microsoft from commenting on all relevant aspects of the case.

6. The amount of the periodic penalty payment is excessive and disproportionate. Among other reasons, the Commission failed to take due account of the fact that the contested decision only concludes that the royalties allegedly established by Microsoft under one particular licence (the 'no patent' licence) were unreasonable, and therefore doesn't challenge (i) the royalties allegedly established by Microsoft for all of its intellectual property rights incorporated in the entirety of the Interoperability Information that Microsoft is required to disclose under Article 5 of the 2004 decision or (ii) the completeness and accuracy of the Interoperability Information.

([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 (Text with EEA relevance) (OJ 2003 L 1, p. 1).
([2]) Commission Decision of 24 May 2004 relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement against Microsoft Corporation (Case COMP/C-3/37.792 — Microsoft) (notified under document number C(2004) 900) (OJ 2007 L 32, p. 23).
([3]) Commission Decision 2002/165/EC of 3 July 2001 relating to a proceeding pursuant to Article 82 of the EC Treaty (Case COMP D3/38.044 — NDC Health/IMS Health: Interim measures) (notified under document number C(2001) 1695) (OJ 2002 L 59, p. 18).
([4]) Case T-201/04, *Microsoft* v. *Commission*, not yet published in the ECR.

Action brought on 13 May 2008 — Commission v I.D. FOS Research

(Case T-170/08)

(2008/C 171/81)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and W. Roels, Agents)

Defendant: I.D. FOS Research EEIG (Mol, Belgium)

Form of order sought

— order the defendant to pay to the Commission the sum of EUR 21 599,26 together with default interest in the sum of EUR 6 375,94;

— order the defendant to pay default interest of EUR 3,99 per day from 8 January 2007 until the date of full repayment of the debt;

— order the defendant to pay the costs.

Pleas in law and main arguments

The European Community, represented by the Commission, entered into Contract BRPR-CT-95-0099 with the defendant on 12 December 1995. The contract concerned a project on improved quality assurance and methods of grouting post-tensioned cables. The contract and the project came into being within the framework of the specific programme for research and technological development, including demonstration, in the field of industrial and materials technologies ([1]).

An examination of the defendant's performance of the contract was undertaken after completion of the contract. On the basis of the results of that examination, the Commission decided to demand repayment of part of the sums paid, in accordance with the general conditions of the contract.

([1]) Council Decision 94/571/EC of 27 July 1994 adopting a specific programme for research and technological development, including demonstration, in the field of industrial and materials technologies (1994-1998) (OJ 1994 L 222, p. 19).

Action brought on 7 May 2008 — Berliner Institut für Vergleichende Sozialforschung v Commission

(Case T-171/08)

(2008/C 171/82)

Language of the case: German

Parties

Applicant: Berliner Institut für Vergleichende Sozialforschung e.V. (Berlin, Germany) (represented by: U. Claus, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision of 30 October 2007 in the form of the letter of 7 March 2008 confirming approval of a payment in the amount of EUR 9 215,20 in the context of the 'Traumatised refugees in the EU' project by reason of 'Grant Agreement JAI/2004/ERF/073' in so far as the applicant was denied payment of more than EUR 9 215,20;

— order the Commission to pay the costs.

Pleas in law and main arguments

In May 2005, the applicant and the Commission signed an agreement on support for a project in connection with the European Refugee Fund. By letter of 30 October 2007, confirmed by letter of 7 March 2008, the defendant sent the applicant a revised calculation of the payment to the applicant that was still outstanding, in which part of the applicant's costs were deemed to be ineligible for support. The applicant brought the present action against the Commission's letter of 7 March 2008.

The applicant claims in support of its action that the contested decision infringes the duty to give reasons since the defendant changed the grounds for its decision on numerous occasions. In addition, there has been an infringement of the fundamental principle of the right to a fair hearing. Finally, the facts of the case were assessed in a manner incompatible with the regulations of the Grant Agreement and the principle of protection of legitimate expectations.

Action brought on 13 May 2008 — Messe Düsseldorf v OHIM — Canon Communications (MEDTEC)

(Case T-173/08)

(2008/C 171/83)

Language in which the application was lodged: English

Parties

Applicant: Messe Düsseldorf GmbH (Düsseldorf, Germany) (represented by: I. Friedhoff, lawyer)

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

Other party to the proceedings before the Board of Appeal: Canon Communications LLC (Los Angeles, United States)

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 6 March 2008 in case R 0989/2005-1; and

— order OHIM/the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'MEDTEC' for goods and services in classes 16, 35 and 41 — application No 2 885 853

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

Mark or sign cited: The national word trade mark 'Metec' for goods and services in classes 16, 35, 37, 38, 41 and 42; the international word trade mark 'Metec' for goods and services in classes 16, 35, 37, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition with respect to all goods and services

Decision of the Board of Appeal: Annulment of the contested decision and rejection of the opposition in its entirety

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal was incorrect to allow the appeal and to state that there is no similarity between the trade marks; infringement of Article 62 of Council Regulation No 40/94 as the Board of Appeal rendered a decision on facts which were not subject to appeal.

Action brought on 9 May 2008 — Infeurope v Commission

(Case T-176/08)

(2008/C 171/84)

Language of the case: English

Parties

Applicant: Infeurope SA (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declare that the European Commission has failed to annul the decision of awarding the framework contracts under the call for tenders procedure AO/042/05 of the OHIM on software maintenance;

— declare that the European Commission has failed to terminate the specific contracts concluded under the said framework contracts;

— order the European Commission to pay to the applicant the sum of EUR 37 002 plus 4 % interest on the amount of EUR 31 650 from 29 August 2006, plus 4 % interest on the amount of EUR 3 650 from 3 December 2007, plus 4 % interest on the amount of EUR 1 702 from 3 May 2008; respectively 8 % interest on sum of EUR 37 002 from the date of judgment;

— order the European Commission to pay to the applicant the sum of EUR 1 209 037 plus 4 % interest on the said sum from 3 May 2008, respectively 8 % interest on the said sum from the date of judgment;

— order the European Commission to produce certain documents relating to the procedure for evaluating the tenders;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the declaration that the Commission failed to annul the decision taken by the Office for Harmonisation in the Internal Market (OHIM) awarding multiple framework contracts for the provision of IT maintenance services under the tender procedure AO/042/05 'E-Alicante: software maintenance relating to OHIM core business systems (management and registration of trade marks and designs)' ([1]) and that it has failed to terminate the corresponding specific contracts under the framework.

The applicant claims that the tender process as well as the implementation of the specific contracts further to the tender suffer from a series of severe irregularities such as: the irregular award criteria, an incorrect composition of the evaluation committee, the fact that the contracts were awarded after the expiry of the period of tender offers' validity and that the OHIM agreed on various considerable changes to the terms of the specific contracts.

The applicant claims that the OHIM, as contracting authority, had breached the principles of equal treatment, of transparency and of good administration and had misused the instrument of framework contracts. It had further infringed a number of stipulations in the Financial Regulation ([2]).

The applicant claims that the Commission, as supervisory body of the OHIM ([3]), had failed to take appropriate action against these infringements. The applicant maintains that the discretion of the Commission whether or not to take action against the breaches of law and establish legality is reduced to zero thus entailing an obligation to act.

Furthermore, the applicant asks to be compensated for the damages suffered as a result of the irregularities in the said tendering procedure and its subsequent implementation.

([1]) OJ 2006/S 135-144019.

([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

([3]) The Article VI.4.2 of the Contract notice concerning the lodging of the appeals makes reference to the Article 118 of the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) which stays that 'Referral shall be made to the Commission within 1 month of the day on which the party concerned first became aware of the act in question'.

Action brought on 13 May 2008 — Schräder v CPVO — Hansson (Sumost 01)

(Case T-177/08)

(2008/C 171/85)

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: Jørn Hansson (Søndersø, Denmark)

Form of order sought

— Annul the decision of the Board of Appeal of the Community Plant Variety Office of 4 December 2007 (Ref. A 005/2007);

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community plant variety rights: Ralf Schräder.

Community plant variety right at issue: 'Sumost 01' (Variety application No 2001/1758).

Proprietor of the opposing Community plant variety right: Jørn Hansson.

Opposing Community plant variety right: 'Lemon Symphony'.

Decision of the Community Plant Variety Office, appealed against before the Board of Appeal: Rejection of the application for Community plant variety rights.

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

Pleas in law:

— Infringement of Article 59(2) of Regulation (EC) No 1239/95 ([1]), in that the applicant was not duly summoned to the oral proceedings;

— Infringement of Article 75 of Regulation (EC) No 2100/94 ([2]), in that the appealed decision was based on grounds and evidence on which the applicant had no opportunity to present his comments;

— Infringement of Article 81(2) and Article 48 of Regulation No 2100/94 on account of the alleged partiality of an employee of the defendant, whose evidence was relied on in the decision;

— Infringement of Article 60 of Regulation No 1239/95, in that no formal decision was issued concerning hearing the oral evidence of an employee of the defendant;

— Infringement of Article 62 of Regulation No 2100/94 by reason of an insufficient and flawed assessment of the facts as regards distinctiveness;

— Infringement of Article 48 of Regulation No 2100/94 on account of alleged partiality on the part of one of the members of the Board of Appeal.

([1]) 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).

([2]) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

Appeal brought on 15 May 2008 by Giuseppe Tiralongo against the order of the Civil Service Tribunal delivered on 6 March 2008 in Case F-55/07, Tiralongo v Commission

(Case T-180/08 P)

(2008/C 171/86)

Language of the case: Italian

Parties

Appellant: Giuseppe Tiralongo (Ladispoli, Italy) (represented by F. Sciaudone, lawyer, R. Sciaudone, lawyer, and S. Frazzani, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— annul the contested order of 6 March 2008 in Case F-55/07, and refer the case back to the Civil Service Tribunal for it to rule on the substance of the case in the light of the guidance which the Court of First Instance sees fit to provide;

— order the Commission to pay the costs of the present proceedings and those of Case F-55/07.

Pleas in law and main arguments

In support of its forms of order sought, the applicant claims:

— misapplication of the case law relating to the independence of legal remedies. In particular, the court of first instance misapplied the principles of case-law referring to compensation for damage caused by unlawful acts to a case in which, on the other hand, the harm was caused by unlawful conduct;

— failure to state the reasons for the contested order inasmuch it is expressly states that the three claims of unlawfulness complained of by the applicant with regard to the conduct of the Commission concern, in fact, the unlawfulness of some acts;

— misinterpretation of the case-law relating to the independence of legal remedies. In particular, the court at first instance was wrong to hold that the principle of the independence of remedies could have no effect in the present case;

— failure to state reasons for the application for compensation for non-material damage. Regarding the many arguments comprehensively set out by the applicant to show the link between the non-material damage and the Commission's conduct, there is nothing in the contested order which makes it possible to understand the reasons on the basis of which those arguments were rejected.

Action brought on 16 May 2008 — Tay Za v Council

(Case T-181/08)

(2008/C 171/87)

Language of the case: English

Parties

Applicant: Pye Phyo Tay Za (Yangoon, Myanmar) (represented by: D. Anderson QC, M. Lester, Barrister and G. Martin, Solicitor)

Defendant: Council of the European Union

Form of order sought

— The annulment of Regulation 194/2008 of 25 February 2008, as a whole or in so far as it concerns the applicant; and

— order that the Council pays the applicant's costs for this action.

Pleas in law and main arguments

The applicant seeks annulment of Regulation (EC) No 194/2008 ([1]) in so far as it applies to him for four reasons:

First, the applicant contends that the regulation has no proper legal basis. He submits to this end that neither Article 60 EC nor Article 301 EC gives the Council the power to freeze the entirety of a person's funds who is not connected with the military regime of Burma/Myanmar. Second, the applicant claims that the regulation infringes the obligation to state reasons on the basis of Article 253 EC. Namely, the applicant claims that the regulation does not provide any reasons why the applicant has been included in Part J of Annex VI of the said regulation which lists members of the Burmese government and people associated with it. Also, the Common Position No 2006/318/CFSP ([2]) requiring Member States to prevent the applicant form entering into and transiting through their territories does allegedly not provide any reasons either for the applicant's inclusion in the list, but simply includes him in a list under a heading 'Persons who benefit from Government Economic Policies'. Third, the applicant submits that the regulation infringes his fundamental rights, since it allegedly interferes in a disproportionate manner with his rights to peaceful enjoyment of his property, to a fair hearing and to effective legal protection. Fourth, according to the applicant the regulation infringes the principle of proportionality.

([1]) Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 (OJ 2008 L 66, p. 1).

([2]) Council Common Position No 2006/318/CFSP of 27 April 2006 renewing restrictive measures against Burma/Myanmar (OJ 2006 L 116, p. 77) extended until 30 April 2009 by Council Common Position 2008/349/CFSP of 29 April 2008 (OJ 2008 L 116, p. 57).

Action brought on 16 May 2008 — Commission v Atlantic Energy

(Case T-182/08)

(2008/C 171/88)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.-M. Rouchaud-Joët, S. Lejeune, Agents, and M. Jarvis, Barrister)

Defendant: Atlantic Energy Ltd (Truro, United Kingdom)

Form of order sought

— to order the defendant to pay the Commission the sum of EUR 383 081,19 being the principal amount of EUR 226 010,00 together with EUR 76 233,61 as late payment interest calculated at the ECB rate + 2 % on the principal amount for the period between 1 June 1996 and 28 February 2002 and EUR 84 448,11 as late payment interest calculated on the principal amount plus interest to 28 February 2002 at the ECB rate + 1,5 % for the period between 16 July 2002 and 31 May 2008 less an off set in the sum of EUR 3 610,53;

— to order the defendant to pay EUR 39,33 per day by way of interest from 31 May 2008 until the date on which the debt is repaid in full; and

— to order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

On 29 March 1996 the European Community, represented by the Commission, entered into a contract BU 183/95 UK/AT with Sidney C. Banks Plc and Jenbacher Energiesysteme AG for the implementation of the project 'Advanced automated gasifier with CHP using waste wood as fuel' under the Community activities in the field of non-nuclear energy ([1]). Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the designated contract coordinator, Sydney C. Banks Plc.

By fax dated 25 September 1996, Sidney C. Banks Plc informed the Commission that it had decided to withdraw from the project. On 17 April 1998 the European Community, represented by the Commission, entered into Addendum No 1 to the contract by which Atlantic Energy Ltd replaced Sidney C. Banks Plc as a party to, and coordinator under the contract.

Pursuant to clause 2 of the Addendum Sidney C. Banks Plc transferred the advance payment received from the Commission (plus interest) to Atlantic Energy Ltd in April 1998.

The Commission claims an order that Atlantic Energy Ltd repay the advance payment plus interest on the grounds either that the project never effectively commenced or, if it did, was terminated by the Commission.

([1]) Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) (OJ L 334, 22.12.1994, p. 87).

Pleas in law and main arguments

Applicant for a Community trade mark: Leder & Schuh AG.

Community trade mark concerned: The word and figurative mark 'jello SCHUHPARK' for goods in Classes 1, 3, 9, 14, 16, 18, 21, 24-26 and 28 (Application No 1 269 372).

Proprietor of the mark or sign cited in the opposition proceedings: Schuhpark Fascies GmbH.

Mark or sign cited in opposition: The German word mark 'Schuhpark' for goods in Class 25 (No 1 007 149), in respect of opposition to the registration for goods in Classes 18, 21, 25 and 26.

Decision of the Opposition Division: Opposition upheld in part and application rejected in part.

Decision of the Board of Appeal: Annulment of the appealed decision and rejection of the opposition.

Pleas in law: Infringement of the second sentence of Article 43(2) and Article 43(3) of Regulation (EC) No 40/94 ([1]) and breach of the second sentence of Rule 22(2) of Regulation (EC) No 2868/95 ([2]) in that the applicant has sufficiently proved that the opposition mark has been used in a manner which preserves its rights.

([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 16 May 2008 — Schuhpark Fascies v OHIM — Leder & Schuh (jello SCHUHPARK)

(Case T-183/08)

(2008/C 171/89)

Language in which the application was lodged: German

Parties

Applicant: Schuhpark Fascies GmbH (Warendorf, Germany) (represented by: A. Peter and J. Braune, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Leder & Schuh AG (Graz, Austria)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 March 2008 in appeal proceedings R 1560/2006-4;

— Order the defendant to pay the costs incurred by the applicant.

Action brought on 13 May 2008 — Rodd & Gunn Australia v OHIM (Representation of a dog)

(Case T-187/08)

(2008/C 171/90)

Language in which the application was lodged: English

Parties

Applicant: Rodd & Gunn Australia Limited (Wellington, New Zealand) (represented by: B. Brandreth, Barrister and N. Jenkins, Solicitor)

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 the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 March 2008 in case R 1245/2007-4;

— order *restitutio in integrum* in respect of Community trade mark No 339 218; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark consisting of a representation of a dog for goods in classes 16, 18, and 25 — Community trade mark No 339 218

Decision of the Trade Marks and Register Department: Refusal of the application for *restitutio in integrum*

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 47 of Council Regulation No 40/94 as renewal of the Community trade mark is permitted not only to the proprietor of such or to its professional representative; the Board of Appeal erred in law and in its assessment of the facts in holding that the Applicant and its authorised representative had failed to exercise due care in the circumstances; the Board of Appeal erred in law in holding that it was careless of the Applicant to appoint Computer Patent Annuities Limited, a trade marks renewals agency, to renew its marks.

Action brought on 13 May 2008 — Infeurope v Commission

(Case T-188/08)

(2008/C 171/91)

Language of the case: English

Parties

Applicant: Infeurope SA (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declare that the European Commission has failed to annul the decision of awarding the framework contracts under the call for tenders procedure AO/026/06 of the OHIM on consultancy services, audits and studies;

— declare that the European Commission has failed to terminate the specific contracts concluded under the said framework contracts;

— order the European Commission to pay to the applicant the sum of EUR 35 950 plus 4 % interest on the amount of EUR 33 050 from 19 December 2006, plus 4 % interest on the amount of EUR 2 900 from 14 December 2007; respectively 8 % interest on sum of EUR 35 950 from the date of judgment;

— order the European Commission to pay to the applicant the sum of EUR 646 631,27, plus 4 % interest on the said sum from 14 May 2008, respectively 8 % interest on the said sum from the date of judgment;

— order the European Commission to produce certain documents relating to the procedure for evaluating the tenders;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the declaration that the Commission failed to annul the decision taken by the Office for Harmonisation in the Internal Market (OHIM) awarding multiple framework contracts under the tender procedure AO/026/06 of the OHIM on 'E-Alicante: consultancy services, audits and studies' ([1]) and that it has failed to terminate the corresponding specific contracts under the framework.

The pleas in law and main arguments raised by the applicant are identical to those raised in Case T-176/08 *Infeurope* v *Commission*.

([1]) OJ 2006/S 210-223510.

Order of the Court of First Instance of 7 May 2008 — Germany and Deutsche Post v Commission

(Case T-490/04 and T-493/04) ([1])

(2008/C 171/92)

Language of the case: German

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

([1]) OJ C 31, 5.2.2005.

Order of the Court of First Instance of 5 May 2008 — Fränkischer Weinbauverband v OHIM (three-dimensional mark 'Bocksbeutel')

(Case T-180/06) ([1])

(2008/C 171/93)

Language of the case: German

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

([1]) OJ C 212, 2.9.2006.

Order of the Court of First Instance of 6 May 2008 — Miguel Torres v OHIM — Bodegas Navarro López

(Case T-17/07) ([1])

(2008/C 171/94)

Language of the case: Spanish

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

([1]) OJ C 82, 14.4.2007.

Order of the Court of First Instance of 14 May 2008 — Slovak Republic v Commission

(Case T-32/07) ([1])

(2008/C 171/95)

Language of the case: Slovak

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

([1]) OJ C 69, 24.3.2007.

Order of the Court of First Instance of 23 May 2008 — RS Arbeitsschutz v OHIM — RS Components (RS)

(Case T-501/07) ([1])

(2008/C 171/96)

Language of the case: English

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

([1]) OJ C 64, 8.3.2008.

Order of the Court of First Instance of 14 May 2008 — Winzer Pharma v OHIM — Oftaltech (OFTASIL)

(Case T-30/08) ([1])

(2008/C 171/97)

Language of the case: German

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

([1]) OJ C 79, 29.3.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 22 January 2008 — Renier v Commission

(Case F-8/08)

(2008/C 171/98)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the individual decision of 11 April 2007 limiting the duration of the applicant's contract as a member of the contract staff to the period between 16 April 2007 and 15 December 2008 and an application for damages.

Form of order sought

The applicant claims that the Tribunal should:

— annul the Commission's decision of 11 April 2007 inasmuch as it limits the duration of the applicant's contract as a member of the contract staff to the period between 16 April 2007 and 15 December 2008;

— order the defendant to pay the costs.

Action brought on 5 February 2008 — Nardin v Parliament

(Case F-12/08)

(2008/C 171/99)

Language of the case: French

Parties

Applicant: Thierry Nardin (Luxembourg, Luxembourg) (represented by: V. Wiot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

First, annulment of the decision of the European Parliament of 2 April 2007 fixing the applicant's rights on taking up his appointment inasmuch as it did not grant him the expatriation allowance and, second, an order that the defendant pay the expatriation allowance and default interest and make good the non-material damage suffered by the applicant.

Form of order sought

— Annul the decision of the European Parliament of 2 April 2007 fixing the applicant's rights on taking up his appointment inasmuch as it did not grant him the expatriation allowance;

— Order the European Parliament to pay to the applicant the expatriation allowance corresponding to a monthly sum of 16 % of the total amount of basic salary plus household allowance and dependent child allowance paid to the applicant per month since April 2007 and for all the months following until payment in full;

— Order payment of default interest on the damages awarded at 8 % per year since the respective dates on which the sums fell due until payment in full;

— Order the European Parliament to pay to the applicant the sum of EUR 10 000 or any other sum, including a higher one, to compensate for the non-material damage which he has suffered;

— Order the European Parliament to pay the costs.

Action brought on 28 February 2008 — Nanopoulos v Commission

(Case F-30/08)

(2008/C 171/100)

Language of the case: Greek

Parties

Applicant: Photius Nanopoulos (Luxembourg, Luxembourg) (represented by: V. Christianos, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

An order against the Commission to pay to the applicant a sum to compensate him for the damage suffered as a result of breach of his fundamental rights to the detriment of his honour and his reputation.

Form of order sought

— Order the Commission to pay to the applicant, by way of compensation for non-material damage suffered, the sum of EUR 850 000, which includes compensation for the detriment to his health;

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

Action brought on 14 March 2008 — Pachtitis v Commission

(Case F-35/08)

(2008/C 171/101)

Language of the case: Greek

Parties

Applicant: Dimitrios Pachtitis (Athens, Greece) (represented by: P. Giatagantzidis, lawyer)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of EPSO's decision not to allow the applicant to take the written tests in competition EPSO/AD/77/06 following the result obtained in the admission tests and annulment of EPSO's decision rejecting the applicant's request relating to, first, a review of the decision not to allow him to take the written tests, and, secondly, a request for some of the competition documents.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decisions of the European Personnel Selection Office ESPO/5000 LM-FR/31.05.2007 and MM./dbD(07) 27442/06.12.2007, and all related measures;

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

Action brought on 22 April 2008 — Bernard v Europol

(Case F-45/08)

(2008/C 171/102)

Language of the case: Dutch

Parties

Applicant: Marjorie Bernard (The Hague, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

First, annulment of the decision of Europol concerning the assessment of the applicant and the implicit rejection of her complaint with regard to that assessment, and, second, an order for Europol to pay damages.

Form of order sought

— Annul the assessment of 25 July 2007 and the implicit decision to reject the complaint lodged by Ms Bernard on 23 October 2007;

— Order Europol to pay damages of up to EUR 7 500;

— Order Europol to pay the costs.

Action brought on 6 May 2008 — Thoss v Court of Auditors

(Case F-46/08)

(2008/C 171/103)

Language of the case: French

Parties

Applicant: Nicole Thoss (Dommeldange, Luxembourg) (represented by: P. Goergen, lawyer)

Defendant: Court of Auditors of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of the Court of Auditors of 20 March 2006 refusing to allocate to the applicant a survivor's pension following the death of her husband.

Form of order sought

— Annul the decision of the Court of Auditors of 20 March 2006 refusing to allocate to the applicant the survivor's pension laid down in Article 16(1) of Regulation 2290/77 and the subsequent decision of 28 September 2006;

— Order the Court of Auditors of the European Communities to allocate to the applicant the survivor's pension laid down in Article 16(1) of Regulation 2290/77 with retroactive effect from 1 December 2003;

— Order the Court of Auditors of the European Communities to pay the costs.

Action brought on 30 April 2008 — Buschak v European Foundation for the Improvement of Living and Working Conditions

(Case F-47/08)

(2008/C 171/104)

Language of the case: French

Parties

Applicant: Willy Buschak (Bonn, Germany) (represented by: L. Lévi and C. Ronzi, lawyers)

Defendant: European Foundation for the improvement of living and working conditions

The subject-matter and description of the proceedings

Application for annulment of the decision amending the applicant's job description and an order that the defendant pay him a sum by way of compensation for the material and non-material harm suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision delivered by the director of the European Foundation for the Improvement of Living and Working Conditions to the applicant on 4 July 2007, amending his job description;

— so far as necessary, annul the decision of 29 or 30 January 2008 rejecting the applicant's complaint;

— order the European Foundation for the Improvement of Living and Working Conditions to pay EUR 50 000 by way of compensation for the harm suffered;

— order the European Foundation for the Improvement of Living and Working Conditions to pay the costs.

Action brought on 27 April 2008 — Ortega Serrano v Commission

(Case F-48/08)

(2008/C 171/105)

Language of the case: Spanish

Parties

Applicant: Antonio Ortega Serrano (Cádiz, Spain) (represented by: A. Ortega Serrano, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of the selection board in competition EPSO/AD/26/05 not to include the applicant's name on the list of successful candidates.

Form of order sought

— Annul the decision not to include the applicant's name in the reserve list of competition EPSO/AD/26/05 or to afford him the opportunity of taking the oral test again;

— Order the Commission to set a new date for the oral test;

— Order the Commission to state the reasons for its decision EPSO/900/R;

— Grant the applicant access to the records of the oral test;

— Grant the applicant access to all the documents which form part of his personal file;

— Declare that the applicant, who is a lawyer practising before the Spanish courts, may represent himself;

— Order the examination of the personal files of all the candidates whose names are included in the list of successful candidates in order to verify that all of them have a level of education which corresponds to completed university studies of at least three years attested by a diploma in law and that they submitted their applications within the time limits and in the correct form;

— Declare the documents presented as annexes in French and English to be admissible;

— Order the defendant to pay the costs.