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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 209/01)

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

OJ C 197, 2.8.2008

Past publications

OJ C 183, 19.7.2008

OJ C 171, 5.7.2008

OJ C 158, 21.6.2008

OJ C 142, 7.6.2008

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OJ C 116, 9.5.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 1 July 2008 — Kingdom of Sweden, Maurizio Turco v Council of the European Union, Kingdom of Denmark, Republic of Finland, United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities

(Joined Cases C-39/05 P and C-52/05 P) ([1])

(Appeals — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Legal opinion)

(2008/C 209/02)

Language of the case: English

Parties

Appellants: Kingdom of Sweden (represented by: K. Wistrand and A. Falk, acting as Agents) Maurizio Turco (represented by: O.Brouwer and C. Schillemans, advocaten)

Intervener in support of the appellant: Kingdom of the Netherlands (represented by: H.G. Sevenster, C.M. Wissels and M. de Grave, acting as Agents)

Other parties to the proceedings: Council of the European Union (represented by: J.-C. Piris, M. Bauer and B. Driessen, acting as Agents) Kingdom of Denmark (represented by: B. Weis Fogh, acting as Agent), Republic of Finland (represented by: A. Guimaraes-Purokoski and J. Heliskoski, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson, S. Nwaokolo and T. Harris, acting as Agents, and J. Stratford, Barrister), Commission of the European Communities (represented by: M. Petite, C. Docksey and P. Aalto, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) in Case T-84/03 *Turco* v *Council*, by which the Court of First Instance dismissed the action brought in that case for the annulment of the Council's decision refusing, in part, Mr Turco's application for access to certain documents appearing on the agenda of the 2455th meeting of the Justice and Home Affairs Council of 14 and 15 October 2002

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 23 November 2004 in Case T-84/03 Turco v Council in so far as it relates to the decision of the Council of the European Union of 19 December 2002 refusing Mr Turco access to opinion No 9077/02 of the Council's legal service concerning a proposal for a Council directive laying down minimum standards for the reception of applicants for asylum in Member States and orders Mr Turco and the Council each to pay half of the costs;*

2. *Annuls the decision of the Council of the European Union of 19 December 2002 refusing Mr Turco access to opinion No 9077/02 of the Council's legal service;*

3. *Orders the Council of the European Union to pay the costs incurred by the Kingdom of Sweden in the appeal proceedings and those incurred by Mr Turco in the appeal proceedings and the proceedings at first instance which resulted in that judgment of the Court of First Instance of the European Communities;*

4. *Orders the Kingdom of Denmark, the Kingdom of the Netherlands, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland, the Council of the European Union and the Commission of the European Communities to bear their own costs relating to the appeal;*

5. *Orders the Council of the European Union to bear its own costs relating to the proceedings at first instance.*

([1]) OJ C 106, 30.4.2005.

Judgment of the Court (Fourth Chamber) of 12 June 2008 — Commission of the European Communities v Portuguese Republic

(Case C-462/05) ([1])

(Failure of a Member State to fulfil its obligations — Admissibility — Res judicata — Sixth VAT Directive — Article 4(5), first subparagraph, Article 12(3)(a) and Article 28(2)(e))

(2008/C 209/03)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic (represented by: L. Fernandes, Â. Seiça Neves and R. Laires, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 12 and 28 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) — Maintaining in force a reduced rate of 5 % on tolls on road crossings of the river Tagus in Lisbon

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force a reduced rate of value added tax of 5 % applicable to road tolls for crossing the Tagus at Lisbon, the Portuguese Republic has failed to fulfil its obligations under Articles 12 and 28 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, as amended by Council Directive 2001/4/EC of 19 January 2001;*

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

([1]) OJ C 60, 11.3.2006.

Judgment of the Court (First Chamber) of 19 June 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-39/06) ([1])

(Failure to fulfil obligations — State aid — Subsidies for investment and employment — Obligation to recover — Non-compliance — Principle of protection of legitimate expectations)

(2008/C 209/04)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: K. Gross and T. Scharf, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 249 EC and Articles 1, 2 and 3 of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (notified under document number C(2003) 1520; Aid No C-62/00, ex NN 142/99) (OJ 2003 L 227, p. 12) — Failure to take, within the prescribed time-limit, the measures necessary to recover aid which was declared incompatible with the common market

Operative part of the judgment

The Court:

1. *Declares that, in failing to take all the measures necessary to recover certain aid declared incompatible with the common market by Article 1(2)(d) and (g) of the Commission Decision of 30 October 2002, as it appears in Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH, the Federal Republic of Germany has failed to fulfil its obligations under Articles 1 to 3 of that decision;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court (Fourth Chamber) of 26 June 2008 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Finanzamt Hamburg-Am Tierpark v Burda GmbH, formerly Burda Verlagsbeteiligungen GmbH

(Case C-284/06) ([1])

(Tax legislation — Freedom of establishment — Directive 90/435/CEE — Corporation tax — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Company with a share capital — Distribution of revenue and of increases in share capital — Withholding tax — Tax credit — Treatment of resident shareholders and non-resident shareholders)

(2008/C 209/05)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Hamburg-Am Tierpark

Defendant: Burda GmbH, formerly Burda Verlagsbeteiligungen GmbH

Re:

Reference for a preliminary ruling — Bundesfinanzhof (Germany) — Interpretation of Article 5(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6), now Article 5 in the version as amended by Council Directive 2003/123/EC of 22 December 2003 amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2004 L 7, p. 41) — Concept of withholding tax — National law providing that, where profits are distributed by a subsidiary to its parent company, income and asset increases of the capital company are to be taxed, even though they would not be taxed if they remained with the subsidiary — Interpretation of Articles 43 EC, 56 EC and 58 EC — National law providing for set-off arrangements for the distribution of profits by a capital company using its own capital, resulting in taxation even where dividends are distributed to non-resident shareholders which are unable to set off the corporation tax against their own tax liability

Operative part of the judgment

1. *A provision of national law which, in relation to cases where profits are distributed by a subsidiary to its parent company, provides for the taxation of income and asset increases of the subsidiary which would not have been taxed if they had remained with the subsidiary and had not been distributed to the parent company does not constitute withholding tax within the meaning of Article 5(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.*

2. *Article 52 of the Treaty (now, after amendment, Article 43 EC) must be interpreted as not precluding the application of a national measure, such as Paragraph 28(4) of the Law on Corporation Tax 1996 (Körperschaftsteuergesetz 1996), in the version applicable to the facts of the main proceedings, under which the taxation of profits distributed by a subsidiary resident in a Member State to its parent company is subject to the same corrective mechanism regardless of whether the parent company is resident in the same Member State or in another Member State even though — unlike a resident parent company — a non-resident parent company is not granted a tax credit by the Member State in which the subsidiary is resident.*

([1]) OJ C 237, 30.9.2006.

Judgment of the Court (First Chamber) of 19 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-319/06) ([1])

(Failure of a Member State to fulfil obligations — Posting of workers — Freedom to provide services — Directive 96/71/EC — Public policy provisions — Weekly rest days — Obligation to produce documents relating to a posting on demand by the national authorities — Obligation to designate an ad hoc agent residing in Luxembourg to retain all the documents necessary for monitoring purposes)

(2008/C 209/06)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and G. Rozet, acting as Agents)

Defendant(s): Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 49 EC and 50 EC and incorrect implementation of Article 3(1) and (10) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) — Obligation to have an ad hoc agent resident in Luxembourg to keep all the documents necessary for the purposes of controls — Application of national provisions on working and employment conditions both going beyond and falling short of the requirements of the directive

Operative part of the judgment

The Court:

1) *Declares that*

— *by declaring the provisions of points (1), (2), (8) and (11) of Article 1(1) of the Law of 20 December 2002 transposing Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and the monitoring of the implementation of labour law to be mandatory provisions falling under national public policy;*

— *by failing fully to transpose Article 3(1)(a) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;*

— *by setting out, in Article 7(1) of that Law of 20 December 2002, conditions relating to access to the basic information necessary for monitoring purposes by the competent national authorities with insufficient clarity to ensure legal certainty for undertakings wishing to post workers to Luxembourg; and*

— *by requiring, in Article 8 of that Law, that documents necessary for monitoring purposes be retained in Luxembourg by an ad hoc agent resident there,*

the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 3(1) of Directive 96/71, read in conjunction with Article 10 thereof, and Articles 49 EC and 50 EC.

2) *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Third Chamber) of 26 June 2008 (reference for a preliminary ruling from the Verwaltungsgericht Sigmaringen, Verwaltungsgericht Chemnitz (Germany)) — Arthur Wiedemann (C-329/06) v Land Baden-Württemberg and Peter Funk (C-343/06) Stadt Chemnitz

(Joint Cases C-329/06 and C-343/06) ([1])

(Directive 91/439/EEC — Mutual recognition of driving licences — Withdrawal of a licence in one Member State for use of narcotic drugs or alcohol — New licence issued in another Member State — Refusal to recognise right to drive in the first Member State — Residence not in accordance with Directive 91/439/EEC)

(2008/C 209/07)

Language of the case: German

Referring court

Verwaltungsgericht Sigmaringen, Verwaltungsgericht Chemnitz (Germany)

Parties to the main proceedings

Applicants: Arthur Wiedemann (C-329/06), Peter Funk (C-343/06)

Defendants: Land Baden-Württemberg (C-329/06), Stadt Chemnitz (C-343/06)

Re:

Preliminary ruling — Verwaltungsgericht Sigmaringen — Interpretation of Articles 1(2), 7(1)(a) and 8(2) and (4), and Annex III, of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 96/47/EC of 23 July 1996 amending Directive 91/439/EEC on driving licences (OJ 1996 L 235, p. 1) — Refusal to recognise the validity of a driving licence fraudulently obtained in another Member State by a holder who was the subject of an

administrative decision to withdraw his national driving licence in his State of residence on grounds of the use of drugs — Abuse of rights

Operative part of the judgment

1) *On a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State beyond any period in which the person concerned is forbidden to apply for a new licence and, therefore, to recognise the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.*

In the same circumstances, it is not contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

2) *It is contrary to Articles 1(2) and 8(2) and (4) of Directive 91/439, as amended by Regulation No 1882/2003, for a Member State bound, in accordance with that directive, to recognise the right to drive stemming from a driving licence issued by another Member State, to suspend that right temporarily while the latter Member State investigates the procedure followed in the issuing of that licence. In contrast, in that same context, it is not contrary to those provisions for a Member State to decide to suspend that right if it is clear from entries in that licence or from other incontestable information supplied by that other Member State that the condition of residence imposed in Article 7(1)(b) of that directive was not satisfied at the moment when that licence was issued.*

([1]) OJ C 249, 14.10.2006.
OJ C 281, 18.11.2006.

Judgment of the Court (Third Chamber) of 26 June 2008 (reference for a preliminary ruling from the Verwaltungsgericht Chemnitz (Germany)) — Matthias Zerche (C-334/06) and Manfred Seuke (C-336/06) v Landkreis Mittweida and Steffen Schubert (C-335/06) v Landkreis Mittlerer Erzgebirgskreis

(Joint Cases C-334/06 to C-336/06) ([1])

(Directive 91/439/EEC — Mutual recognition of driving licences — Withdrawal of a licence in one Member State for use of narcotic drugs or alcohol — New licence issued in another Member State — Refusal to recognise right to drive in the first Member State — Residence not in accordance with Directive 91/439/EEC)

(2008/C 209/08)

Language of the case: German

Referring court

Verwaltungsgericht Chemnitz

Parties to the main proceedings

Applicants: Matthias Zerche (C-334/06), Manfred Seuke (C-336/06), Steffen Schubert (C-335/06)

Defendants: Landkreis Mittweida, Landkreis Mittlerer Erzgebirgskreis

Re:

Reference for a preliminary ruling — Verwaltungsgericht Chemnitz (Germany) — Interpretation of Arts. 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) — Refusal to recognise the validity of a driving licence issued by another Member State after the expiry of a ban imposed on the holder who has had his national licence withdrawn for drunk driving, and who has been unable to produce the medical/psychological report which is required in order to obtain a new licence in his State of residence — Abuse of law

Operative part of the judgment

On a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently

issued by another Member State beyond any period in which the person concerned is forbidden to apply for a new licence and, therefore, to recognise the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.

In the same circumstances, it is not contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Grand Chamber) of 1 July 2008 — Chronopost SA (C-341/06 P), La Poste (C-342/06 P) v Union française de l'express (UFEX), DHL Express (France) SAS, Federal express international (France) SNC, CRIE SA, Commission of the European Communities, French Republic

(Joined Cases C-341/06 P and C-342/06 P) ([1])

(Appeal — Proper conduct of the proceedings before the Court of First Instance — Judgment of the Court of First Instance — Quashed — Referral back to the Court of First Instance — Second judgment of the Court of First Instance — Composition of the Chamber hearing the case — State aid — Postal sector — Public undertaking entrusted with a service of general economic interest — Logistical and commercial assistance to a subsidiary — Subsidiary not operating in a reserved sector — Transfer of the express delivery business to that subsidiary — Concept of 'State aid' — Commission decision — Assistance and transfer not constituting State aid — Statement of reasons)

(2008/C 209/09)

Language of the case: French

Parties

Appellants: Chronopost SA (represented by: D. Berlin, avocat) (C-341/06 P), La Poste (represented by H. Lehman, avocat) (C-342/06 P)

Other parties to the proceedings: Union française de l'express (UFEX), DHL Express (France) SAS, Federal express international (France) SNC, CRIE SA (represented by E. Morgan de Rivery and J. Derenne, avocats), Commission of the European Communities (represented by C. Giolito, Agent), French Republic (represented by G. de Bergues and F. Million, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 7 June 2006 in Case T-613/97 *Ufex and Others* v *Commission*, by which the latter annulled Commission Decision 98/365/EC of 1 October 1997 concerning alleged State aid granted by France to SFMI-Chronopost, in that it finds that neither the logistical and commercial assistance provided by La Poste to its subsidiary, SFMI-Chronopost, nor the transfer of Postadex constitute State aid to SFMI-Chronopost — Infringement of the right to a fair hearing due to lack of impartiality of the Court (Chamber partially identical to that which adopted a previous judgment, quashed by the Court) — Misuse of powers and infringement of Articles 230 EC and 253 EC — Failure to apply the concept of State aid and, therefore, infringement of Article 87 EC

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the Court of First Instance of the European Communities of 7 June 2006 in Case T-613/97 Ufex and Others v Commission in so far as it (i) annuls Commission Decision 98/365/EC of 1 October 1997 concerning alleged State aid granted by France to SFMI-Chronopost inasmuch as that decision finds that neither the logistical and commercial assistance provided by La Poste to its subsidiary, SFMI-Chronopost, nor the transfer of Postadex constitute State aid to SFMI-Chronopost and (ii) allocates the burden of costs accordingly;*

2) *Dismisses the action brought before the Court of First Instance of the European Communities in Case T-613/97;*

3) *Orders each of the parties and the French Republic to bear their own costs.*

([1]) OJ C 249, 14.10.2006.

Judgment of the Court (Third Chamber) of 19 June 2008 (reference for a preliminary ruling from the Bundesvergabeamt, Austria) — pressetext Nachrichtenagentur GmbH v Republik Österreich (Bund), APA-OTS Originaltext — Service GmbH, APA Austria Presse Agentur registrierte Genossenschaft mit beschränkter Haftung

(Case C-454/06) ([1])

(Public procurement — Directive 92/50/EEC — Procedures for the award of public service contracts — Concept of 'award of a contract')

(2008/C 209/10)

Language of the case: German

Referring court

Bundesvergabeamt, Austria

Parties to the main proceedings

Applicant: pressetext Nachrichtenagentur GmbH

Defendants: Republik Österreich (Bund), APA-OTS Originaltext — Service GmbH, APA Austria Presse Agentur registrierte Genossenschaft mit beschränkter Haftung

Re:

Reference for a preliminary ruling — Bundesvergabeamt — Interpretation of Article 82 EC, of Article 3(1), Articles 8 and 9 and Article 11(3)(b) 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), of Article 1(3) and Article 2(1)(c) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) and of general principles of Community law — Contract for services of indefinite duration concluded on behalf of the State with a press agency, regarded as the sole national press agency, outside the procedures for awarding public contracts — Transfer, with the consent of the contracting authority, of performance of various parts of the contract to a company entirely controlled by the service provider, and other contract amendments concerning waiver of the right to termination of the contract by contracting authority, payment for the services provided and the rebate granted to the contracting authority — Whether those subsequent amendments are to be classified as a new 'contract award' necessitating prior publication of a contract notice

Operative part of the judgment

1. *The terms 'awarding' and 'awarded', used in Articles 3(1), 8 and 9 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not covering a situation, such as that in the main proceedings, where services supplied to the contracting authority by the initial service provider are transferred to another service provider established as a limited liability company, the sole shareholder of which is the initial service provider, controlling the new service provider and giving it instructions, provided that the initial service provider continues to assume responsibility for compliance with the contractual obligations.*

2. *The terms 'awarding' and 'awarded', used in Articles 3(1) and 8 and 9 of Directive 92/50, must be interpreted as not covering an adjustment of the initial agreement to accommodate changed external circumstances, such as the conversion to euros of prices initially expressed in national currency, the minimal reduction in the prices in order to round them off, and the reference to a new price index where provision was made in the initial agreement to replace the price index fixed previously.*

3. *The terms 'awarding' and 'awarded', used Articles 3(1), 8 and 9 of Directive 92/50, must be interpreted as not covering a situation such as that at issue in the main proceedings, where a contracting authority, through the use of a supplemental agreement, agrees with the contractor, during the period of validity of a contract concluded with it for an indefinite period, to renew for a period of three years a waiver of the right to terminate the contract by notice, the waiver no longer being in force at the time of the amendment, and agrees with it to lay down higher rebates than those initially provided for in respect of certain volume-related prices within a specified area of supply.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Fourth Chamber) of 12 June 2008 (reference for a preliminary ruling from the Regeringsrätten, Sweden) — Skatteverket v Gourmet Classic Ltd

(Case C-458/06) ([1])

(Jurisdiction of the Court — Directive 92/83/EEC — Harmonisation of the structures of excise duties on alcohol and alcoholic beverages — Article 20, first indent — Alcohol contained in cooking wine — Exemption from the harmonised duty)

(2008/C 209/11)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Gourmet Classic Ltd

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of the first indent of Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Exemption from duty — Product based on wine, with an alcoholic content of 4.8 % per 100 kg of finished product, intended for cooking

Operative part of the judgment

The alcohol contained in cooking wine is, if it has an alcoholic strength exceeding 1.2 % by volume, to be classified as ethyl alcohol as referred to in the first indent of Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (First Chamber) of 12 June 2008 (reference for a preliminary ruling from the Court of Appeal, United Kingdom) — O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited

(Case C-533/06) ([1])

(Trade marks — Directive 89/104/EEC — Article 5(1) — Exclusive rights of the trade mark proprietor — Use of a sign identical with, or similar to, a mark in a comparative advertisement — Limitation of the effects of a trade mark — Comparative advertising — Directives 84/450/EEC and 97/55/EC — Article 3a(1) — Conditions under which comparative advertising is permitted — Use of a competitor's trade mark or of a sign similar to that mark)

(2008/C 209/12)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: O2 Holdings Limited, O2 (UK) Limited

Defendant: Hutchison 3G UK Limited

Re:

Reference for a preliminary ruling — Court of Appeal — Interpretation of Article 5(1)(a) and (b) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) and Article 3a of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17) — Use of a competitor's trade mark in an advertisement for the purposes of comparing the characteristics of the goods or services sold by the advertiser with those of the competitor

Operative part of the judgment

1. *Article 5(1) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and Article 3a(1) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, must be interpreted to the effect that the proprietor of a registered trade mark is not entitled to prevent the use by a third party of a sign identical with, or similar to, his mark, in a comparative advertisement which satisfies all the conditions, laid down in Article 3a(1) of Directive 84/450, under which comparative advertising is permitted.*

   However, where the conditions required in Article 5(1)(b) of Directive 89/104 to prevent the use of a sign identical with, or similar to, a registered trade mark are met, a comparative advertisement in which that sign is used cannot satisfy the condition, laid down in Article 3a(1)(d) of Directive 84/450, as amended by Directive 97/55, under which comparative advertising is permitted.

2. *Article 5(1)(b) of Directive 89/104 is to be interpreted as meaning that the proprietor of a registered trade mark is not entitled to prevent the use by a third party, in a comparative advertisement, of a sign similar to that mark in relation to goods or services identical with, or similar to, those for which that mark was registered where such use does not give rise to a likelihood of confusion on the part of the public, and that is so irrespective of whether or not the comparative advertisement satisfies all the conditions laid down in Article 3a of Directive 84/450, as amended by Directive 97/55, under which comparative advertising is permitted*

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Grand Chamber) of 1 July 2008 (reference for a preliminary ruling from the Diikitiko Efetio Athinon, Greece) — Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio

(Case C-49/07) ([1])

(Articles 82 EC and 86 EC — Concept of 'undertaking' — Non-profit-making association representing, in Greece, the International Motorcycling Federation — Concept of 'economic activity' — Special legal right to give consent to applications for authorisation to organise motorcycling events — Exercise in parallel of activities such as the organisation of motorcycling events and the conclusion of sponsorship, advertising and insurance contracts)

(2008/C 209/13)

Language of the case: Greek

Referring court

Diikitiko Efetio Athinon, Greece

Parties to the main proceedings

Applicant: Motosykletistiki Omospondia Ellados NPID (MOTOE)

Defendant: Elliniko Dimosio

Re:

Reference for a preliminary ruling — Diikitiko Efetio Athinon — Interpretation of Articles 82 EC and 86 EC — Concept of 'undertaking' — Non-profit-making automobile association (ELPA) representing the Fédération internationale de motocyclisme (the International Motorcycling Federation) in Greece and having the exclusive right to authorise events in the field of motor sport — Association engaging, in parallel, in economic activities such as advertising, the conclusion of sponsorship agreements and the financing of prizes

Operative part of the judgment

A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC. Those articles preclude a national rule which confers on a legal person, which organises motorcycling competitions and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (Grand Chamber) of 24 June 2008 (reference for a preliminary ruling from the Cour de cassation, France) — Commune de Mesquer v Total France SA, Total International Ltd

(Case C-188/07) ([1])

(Directive 75/442/EEC — Waste management — Concept of waste — 'Polluter pays' principle — Holder — Previous holders — Producer of the product from which the waste came — Hydrocarbons and heavy fuel oil — Shipwreck — International Convention on Civil Liability for Oil Pollution Damage — International Oil Pollution Compensation Fund)

(2008/C 209/14)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Commune de Mesquer

Defendants: Total France SA, Total International Ltd

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and of Category Q4 of Annex 1 and of Article 1(b) and (c) and Article 15 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) — Definition of waste — Inclusion of hydrocarbons and heavy fuel oil, by itself or mixed with water and sand? — Responsibility of the producer and/or holder of the waste where it is transported by a third party

Operative part of the judgment

1. *A substance such as that at issue in the main proceedings, namely heavy fuel oil sold as a combustible fuel, does not constitute waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, where it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing.*

2. *Hydrocarbons accidentally spilled at sea following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, constitute waste within the meaning of Article 1(a) of Directive 75/442, as amended by Decision 96/350, where they are no longer capable of being exploited or marketed without prior processing.*

3. *For the purposes of applying Article 15 of Directive 75/442, as amended by Decision 96/350, to the accidental spillage of hydrocarbons at sea causing pollution of the coastline of a Member State:*

   — *the national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of Article 1(b) of Directive 75/442, as amended by Decision 96/350, and thereby as a 'previous holder' for the purposes of applying the first part of the second indent of Article 15 of that directive, if that court, in the light of the elements which it alone is in a position to assess, reaches the conclusion that that seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship;*

   — *if it happens that the cost of disposing of the waste produced by an accidental spillage of hydrocarbons at sea is not borne by the International Oil Pollution Compensation Fund, or cannot be borne because the ceiling for compensation for that accident has been reached, and that, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and/or the charterer, even though they are to be regarded as 'holders' within the meaning of Article 1(c) of Directive 75/442, as amended by Decision 96/350, such a national law will then, in order to ensure that Article 15 of that directive is correctly transposed, have to make provision for that cost to be borne by the producer of the product from which the waste thus spread came. In accordance with the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.*

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (Third Chamber) of 19 June 2008 (reference for a preliminary ruling from the Raad van State van België (Belgium)) — Nationale Raad van Dierenkwekers en Liefhebbers VZW, Andibel VZW v Belgische Staat

(Case C-219/07) ([1])

(Article 30 EC — Regulation (EC) No 338/97 — Protection of species of wild fauna and flora — Prohibition on holding mammals of certain species referred to by that regulation or not covered by it — Holding permitted in other Member States)

(2008/C 209/15)

Language of the case: Dutch

Referring court

Raad van State van België

Parties to the main proceedings

Applicants: Nationale Raad van Dierenkwekers en Liefhebbers VZW, Andibel VZW

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Raad van State van België (Belgium) — Interpretation of Article 30 EC and of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1996 L 61, p. 1) — National legislation providing a list of species which may be held in the Member State concerned, whose effect is to rule out the holding of the species referred to in Annexes B, C or D to the regulation and of those not covered by the regulation — Holding authorised in other Member States whose legislation complies with the regulation

Operative part of the judgment

Articles 28 EC and 30 EC, read separately or in conjunction with Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, do not preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation, if the protection of or compliance with the interests and requirements referred to in paragraphs 27 to 29 of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.

It is for the national court to determine:

— *whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;*

— *whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;*

— *whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and*

— *whether conditions for the holding of specimens of mammals not referred to in that list, such as those set out in Article 3bis(2)(3)(b) and (6) of the Law of 14 August 1986 concerning the protection and welfare of animals, as amended by the Law of 4 May 1995, are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.*

([1]) OJ C 155, 7.7.2007.

Judgment of the Court (Fourth Chamber) of 19 June 2008 — Commission of the European Communities v French Republic

(Case C-220/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/22/EC — Electronic communications — Designation of the undertakings entrusted with the provision of universal service — Incorrect transposition)

(2008/C 209/16)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and B. Messmer, Agents)

Re:

Failure of a Member State to fulfil its obligations — Incorrect transposition [of Articles 8, 12 and 13] of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive') (OJ 2002 L 108, p. 51) — Obligation to use an efficient, objective, transparent and non-discriminatory mechanism to designate undertakings entrusted with the provision of universal service — National legislation immediately excluding economic operators which are not capable of ensuring the provision of that service throughout the national territory

Operative part of the judgment

The Court:

1. *Declares that, by transposing into national law in the way it did the provisions concerning the designation of the undertakings capable of guaranteeing the provision of universal service, the French Republic failed to fulfil its obligations under Articles 8(2), 12 and 13 and Annex IV of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive').*

2. *Orders the French Republic to bear the costs.*

([1]) OJ C 211 of 8.9.2007.

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

(Case C-272/07) ([1])

(Public procurement — Directive 2004/18/EC — Coordination of procedures for the award of public works contracts, public supply contracts and public service contracts — Failure to implement within the prescribed time-limit)

(2008/C 209/17)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and D. Kukovec, Agents,)

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the prescribed time-limit, the measures necessary to comply with 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)

Operative part of the judgment

The Court:

1. *Declares that, in failing to adopt, within the prescribed time-limit, all the laws, regulations and administrative provisions necessary to comply with 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, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 211, 8.9.2007.

Order of the Court (Fourth Chamber) of 23 April 2008 (reference for a preliminary ruling from the Chancery Division of the High Court of Justice of England and Wales (United Kingdom)) — The Test Claimants in the CFC and Dividend Group Litigation v Commissioners of Inland Revenue

(Case C-201/05) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom of establishment — Free movement of capital — Direct taxation — Corporation tax — Share dividends paid to a resident company by a non-resident company — Rules on controlled foreign companies ('CFCs') — Situation as regards a non-member country — Classification of claims brought against the tax authority — Liability of a Member State for breach of Community law)

(2008/C 209/18)

Language of the case: English

Referring court

Chancery Division of the High Court of Justice of England and Wales

Parties

Applicant: The Test Claimants in the CFC and Dividend Group Litigation

Defendant: Commissioners of Inland Revenue

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 43, 49 and 56 EC — National tax legislation — Corporation tax — Exemption — Dividends paid by other companies to a company established in national territory — Situation differing according to the State where the other companies are established

Operative part of the order

1. *Article 43 EC is to be interpreted as meaning that it does not preclude legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, when that State imposes corporation tax on dividends which a resident company receives from a non-resident company in which the resident company has a shareholding enabling it to exercise a definite influence over the decisions of that non-resident company and to determine its activities, while at the same time granting a tax credit for the tax actually paid by the company making the distribution in the Member State in which it is resident, provided that the rate of tax applied to foreign-sourced dividends is no higher than the rate of tax applied to nationally-sourced dividends and that the tax credit is at least equal to the amount paid in the Member State of the company making the distribution, up to the limit of the amount of the tax charged in the Member State of the company receiving the distribution.*

   Article 56 EC is to be interpreted as meaning that it does not preclude legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, when that State imposes corporation tax on dividends which a resident company receives from a non-resident company in which the resident company holds at least 10 % of the voting rights, while granting a tax credit for the tax actually paid by the company making the distribution in the Member State in which it is resident, provided that the rate of tax applied to foreign-sourced dividends is no higher than the rate of tax applied to nationally-sourced dividends and that the tax credit is at least equal to the amount paid in the Member State of the company making the distribution, up to the limit of the amount of the tax charged in the Member State of the company receiving the distribution.

   Article 56 EC is, furthermore, to be interpreted as meaning that it precludes legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, where that State levies corporation tax on dividends which a resident company receives from a non-resident company in which it holds less than 10 % of the voting rights, without granting the company receiving the dividends a tax credit for the tax actually paid by the company making the distribution in the State in which the latter is resident.

2. *Article 56 EC is to be interpreted as meaning that it precludes legislation of a Member State which allows an exemption from corporation tax for certain dividends received from resident companies by resident insurance companies but excludes such an exemption for similar dividends received from non-resident companies, in so far as it entails less favourable treatment of the latter dividends.*

3. *Articles 43 EC and 48 EC must be interpreted as precluding the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable.*

Accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, that despite the existence of tax motives, that controlled foreign company is actually established in the host Member State and carries on genuine economic activities there.

However, Articles 43 EC and 48 EC are to be interpreted as not precluding national tax legislation which imposes certain compliance requirements where the resident company seeks exemption from taxes already paid on the profits of that controlled foreign company in the State in which it is resident, provided that the aim of those requirements is to verify that the controlled foreign company is actually established and that its economic activities are genuine without that entailing undue administrative constraints.

4. *Articles 56 EC to 58 EC are to be interpreted as not precluding the legislation of a Member State which grants a corporation tax concession in respect of certain dividends received from resident companies by resident companies but excludes such a concession for dividends received from companies established in a non-member country particularly where the grant of that concession is subject to conditions compliance with which can be verified by the competent authorities of that Member State only by obtaining information from the non-member country where the distributing company is established.*

5. *In the absence of Community legislation, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, including the classification of claims brought by injured parties before national courts and tribunals. Those courts and tribunals are, however, obliged to ensure that individuals have an effective legal remedy enabling them to obtain reimbursement of the tax unlawfully levied on them and the amounts paid to that Member State or withheld by it directly against that tax. As regards other loss or damage which a person may have sustained by reason of a breach of Community law for which a Member State is liable, the latter is under a duty to make reparation for the loss or damage caused to individuals under the conditions set out in paragraph 51 of the judgment in Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur and Factortame [1996] ECR I-1029, but that does not preclude the State from being liable under less restrictive conditions, where national law so provides.*

Where it is established that the legislation of a Member State constitutes a restriction on freedom of establishment prohibited by Article 43 EC or a restriction on the free movement of capital prohibited by Article 56 EC, the national court may, in order to establish the recoverable losses, determine whether the injured parties have shown reasonable diligence in order to avoid those losses or to limit their extent and whether, in particular, they availed themselves in time of all legal remedies available to them. However, in order to prevent the exercise of the rights which Articles 43 EC and 56 EC confer on individuals from being rendered impossible or excessively difficult, the national court may determine whether the application of that legislation, coupled, where appropriate, with the relevant provisions of Double Taxation Conventions, would, in any event, have led to the failure of the claims brought by the claimants in the main proceedings before the tax authorities of the Member State concerned.

([1]) OJ C 182, 23.7.2005.

Order of the Court (Second Chamber) of 12 June 2008 (references for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy)) — Confcooperative Friuli Venezia Giulia (C-23/07), Luigi Soini (C-23/07 and C-24/07), Azienda Agricola Vivai Pinato Mario e figlio (C-23/07), Cantina Produttori Cormòns Soc. cons. arl (C-24/07) v Ministero delle Politiche Agricole, alimentari e forestali, Regione Friuli Venezia Giulia

(Joined Cases C-23/07 and C-24/07) ([1])

(Agriculture — Regulations (EC) Nos 1493/1999, 753/2002 and 1429/2004 — Common organisation of the market in wine — Labelling of wines — Use of names of vine varieties or synonyms thereof — Geographical indication 'Tokaj' for wines originating in Hungary — Possible use of vine variety name 'Tocai friulano' or 'Tocai italico' in addition to the geographical indication of certain wines originating in Italy — Exclusion after a transitional period of thirteen years expiring on 31 March 2007 — Validity — Legal basis — Article 34 EC — Principle of non-discrimination — Principles of international law on treaties — Accession of Hungary to the European Union — Articles 22 to 24 of the TRIPs Agreement)

(2008/C 209/19)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicants: Confcooperative Friuli Venezia Giulia (C-23/07), Luigi Soini (C-23/07 and C-24/07), Azienda Agricola Vivai Pinato Mario e figlio (C-23/07), Cantina Produttori Cormòns Soc. cons. arl (C-24/07)

Defendants: Ministero delle Politiche Agricole, alimentari e forestali and Regione Friuli Venezia Giulia

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale del Lazio — Interpretation of Regulations 1493/1999 and 753/2002 as amended by Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ 2004 L 263, p. 11) — Interpretation of Article 34(2) EC — Designation of wines produced in Hungary and in the Community — Abolition of the designation 'Tocai friulano' — Discrimination against the producers and users of that designation as compared to the producers and users of other designations

Operative part of the order

1. *The Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded must be interpreted as meaning that, under Article 2 of that Act, the provisions of Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products, in so far as they prohibit the use of the name 'Tocai' to designate and present certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007, form an integral part of the acquis communautaire existing on 1 May 2004 and, after being reproduced in Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation No 753/2002, continued to apply after that date.*

2. *Article 53 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine constitutes an adequate legal basis on which the Commission of the European Communities may adopt the provisions of Regulation No 753/2002, reproduced in Regulation No 1429/2004, prohibiting the use of the name 'Tocai' to designate and present certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007.*

3. *The second subparagraph of Article 34(2) EC does not preclude the provisions of Regulation No 753/2002, reproduced in Regulation No 1429/2004, prohibiting the use of the name 'Tocai' to designate and present certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007.*

4. *Article 19(2) of Regulation No 753/2002 must be interpreted as meaning that it does not preclude the provisions of Regulation No 753/2002, reproduced in Regulation No 1429/2004, prohibiting the use of the name 'Tocai' to designate and present certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007.*

5. *Article 50 of Regulation No 1493/1999 must be interpreted as meaning that, in implementing the provisions of Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) and in particular the provision in Article 24(6) of that agreement, those provisions do not preclude the adoption of measures such as those laid down in Regulation No 753/2002, reproduced in Regulation No 1429/2004, prohibiting the use of the name 'Tocai' to designate and present certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007.*

([1]) OJ C 82, 14.4.2007.

Order of the Court (First Chamber) of 14 May 2008 (reference for a preliminary ruling from the Prud'homie de pêche (France)) — Jonathan Pilato v Jean-Claude Bourgault

(Case C-109/07) ([1])

(Meaning of court or tribunal of a Member State — Lack of jurisdiction of the Court of Justice)

(2008/C 209/20)

Language of the case: French

Referring court

Prud'homie de pêche

Parties to the main proceedings

Applicant: Jonathan Pilato

Defendant: Jean-Claude Bourgault

Re:

Reference for a preliminary ruling — Prud'homie de pêche de Martigues — Interpretation of Article 11a of Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources (OJ 1997 L 132, p. 1), as amended by Council Regulation (EC) No 1239/98 of 8 June 1998 (OJ 1998 L 171, p. 1) — Definition of 'drift-net' — Whether that definition includes the 'thonaille' — Environmental objective of the prohibitive measure laid down in Article 11a — Validity of this provision in the light, in particular, of the legal basis used for its adoption

Operative part of the order

The Court of Justice of the European Communities clearly does not have jurisdiction to reply to the questions referred by the Prud'homie de pêche de Martigues by decision of 17 December 2006.

([1]) OJ C 95, 28.4.2007.

Order of the Court (Eighth Chamber) of 16 April 2008 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Canarias (Spain)) — Club Náutico de Gran Canaria v Comunidad Autónoma de Canarias

(Case C-186/07) ([1])

(Reference for a preliminary ruling — Sixth VAT Directive — Exemptions — Services connected with the practice of sport or physical education — Application to the Canary Islands — Purely internal situation — Referral — Manifest inadmissibility of the reference for a preliminary ruling)

(2008/C 209/21)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Canarias (Spain)

Parties

Applicant: Club Náutico de Gran Canaria

Defendant: Comunidad Autónoma de Canarias

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Canarias (High Court of Justice of the Canary Islands) — Interpretation of the judgment of the Court in Case C-124/96 which found that national legislation placing restrictions on exemption from VAT of certain services closely connected with the practice of sport or physical education is incompatible with Article 13A(1)(m) 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) — Application to the Canary Islands

Operative part of the order

The reference for a preliminary ruling made by the Tribunal Superior de Justicia de Canarias, by decision of 26 November 2006, is inadmissible.

([1]) OJ C 129, 9.6.2007.

Order of the Court (Fifth Chamber) of 11 April 2008 — Focus Magazine Verlag GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Merant GmbH

(Case C-344/07 P) ([1])

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

(2008/C 209/22)

Language of the case: German

Parties

Applicant: Focus Magazine Verlag GmbH (represented by: M. Herrmann and B. Müller, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, agent), Merant GmbH (represented by: A. Schultz, Rechtsanwält)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 16 May 2007 in Case T-491/04 *Merant* v *OHIM*, by which the Court annulled decision R 542/2002-2 of the Second Board of Appeal of the Office for Harmonisation in the internal Market (Trade Marks and Designs) (OHIM) of 18 October 2004 upholding an action against the opposition decision which partially rejected the application for registration of Community word mark 'FOCUS' for goods and services in classes 3, 6, 7, 8, 9, 14, 15, 16, 21, 24, 25, 26, 28, 29, 32, 33, 34, 35, 36, 38, 39, 41 and 42 in opposition proceedings brought by the proprietor of the national figurative mark 'MICRO FOCUS' for goods and services in classes 9, 16, 41 and 42 — Likelihood of confusion between two marks

Operative part of the order

1. *The appeal is dismissed.*

2. *Focus Magazin Verlag GmbH is ordered to pay the costs.*

([1]) OJ C 79, 29.3.2008.

Order of the Court (Seventh Chamber) of 5 May 2008 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — Hospital Consulting Srl, ATI HC, Kodak SpA, Tecnologie Sanitarie SpA v Esaote SpA, ATI, Ital Tbs, Telematic & Biomedical Service SpA, Draeger Medica Italia SpA, Officina Biomedica Divisione Servizi SpA

(Case C-386/07) ([1])

(Rules of procedure — Articles 92(1) and 104(3) — Community competition rules — National rules concerning lawyers' fees — Setting of professional scales of charges — Partial inadmissibility — Answers to questions which may be deduced from the case-law of the Court)

(2008/C 209/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties

Applicants: Hospital Consulting Srl, ATI HC, Kodak SpA, Tecnologie Sanitarie SpA

Defendants: Esaote SpA, ATI, Ital Tbs Telematic & Biomedical Service SpA, Draeger Medica Italia SpA, Officina Biomedica Divisione Servizi SpA

Intervener: Azienda Sanitaria locale ULSS No 15 (Alta Padovana, Regione Veneto, Italy)

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 10 and 81(1) EC and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36) — Fixing by a national professional organisation of mandatory tariffs for lawyers' services subject to ministerial approval — National rules prohibiting judges in decisions on costs from derogating from the set minimum fees

Operative part of the order

1. *Articles 10 EC and 81 EC do not preclude a national law which in principle prohibits derogation from minimum fees approved by ministerial decree, on the basis of a draft drawn up by a professional body of members of the Bar such as the Consiglia nazionale forense, and which also prohibits the judge, when he decides the amount of costs that the unsuccessful party must pay to the other party, from derogating from those minimum fees.*

2. *The third question referred by the Consiglio di Stato by decision of 13 January 2006 is clearly inadmissible.*

([1]) OJ C 283, 24.11.2007.

Order of the Court (Seventh Chamber) of 21 May 2008 (reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovak Republic) — Karol Mihal v Daňový úrad Košice V

(Case C-456/07) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Sixth VAT Directive — Taxable persons — Article 4(5), first subparagraph — Bodies governed by public law — Bailiffs — Natural and legal persons)

(2008/C 209/24)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

([1]) OJ C 315, 22.12.2007.

Parties

Applicant: Karol Mihal

Defendant: Daňový úrad Košice V

Re:

Reference for a preliminary ruling — Najvyšší súd Slovenskej republiky — Interpretation of the first subparagraph of Article 4(5) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Treatment of a body governed by public law as a non-taxable person in respect of activities or operations engaged in as a public authority — Inclusion of bailiffs in the exercise of their public duties — Direct effect

Operative part of the order

An activity exercised by a private individual, such as that of a bailiff, is not exempted from value added tax merely because it consists in engaging in acts falling within the rights and powers of a public authority. Even on the assumption that, in the exercise of his duties, a bailiff does carry out such acts, he does not, under legislation such as that at issue in the main proceedings, exercise his activity in the form of a body governed by public law, not being integrated into the organisation of the public administration, but in the form of an independent economic activity carried out in a self-employed capacity, and, consequently, he is not covered by the exemption provided for in the first subparagraph of Article (5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.

Order of the Court (Eighth Chamber) of 22 May 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — M. Ilhan v Staatssecretaris van Financiën

(Case C-42/08) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom to provide services — Articles 49 EC to 55 EC — Motor vehicles — Use in one Member State of a motor vehicle registered and leased in another Member State — Taxation of that vehicle in the first Member State)

(2008/C 209/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden Den Haag

Parties to the main proceedings

Applicant: M. Ilhan

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Articles 49 EC to 55 EC — National rules providing for imposition of a registration tax on first use of a vehicle on the national road network irrespective of the duration of use of that network — Liability to tax of a person established in that Member State who has leased a vehicle which is registered in another Member State and which is intended for use essentially in the first Member State for professional and private purposes for a period of three years

Operative part of the order

Articles 49 EC to 55 EC preclude the application of national rules, such as those at issue in the main proceedings, by virtue of which a person, residing or established in a Member State, who uses — primarily in that Member State — a motor vehicle registered and leased in another Member State, must, on first use of that vehicle on the road network of the first Member State, pay a tax which is calculated without taking into account the duration of the leasing agreement for that vehicle or the length of time that vehicle will be used on that road network.

([1]) OJ C 92, 12.4.2008.

Appeal brought on 3 April 2008 by Japan Tobacco, Inc. against the judgment delivered on 30 January 2008 by the Court of First Instance (Fifth Chamber) in Case T-128/06, Japan Tobacco, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Torrefacção Camelo

(Case C-136/08 P)

(2008/C 209/26)

Language of the case: French

Parties

Appellant: Japan Tobacco, Inc. (represented by: A. Ortiz López, abogada, S. Ferrandis González, abogado and E. Ochoa Santamaría, abogada)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) Torrefacção Camelo L[da]

Form of order sought

— set aside the judgment of the Court of First Instance of the European Communities of 30 January 2008 delivered in Case T-128/06 and deliver a judgment amending the judgment of the Court of First Instance and declaring it necessary to apply the prohibition contained in Article 8(5) of the Community Trade Mark Regulation ([1]) to this case and, consequently, in considering the arguments submitted by Japan Tobacco, decide to refuse the registration of Community trade mark No 1 469 121;

— order OHIM to pay the costs of these proceedings.

Pleas in law and main arguments

By its appeal, the appellant claims that the Court of First Instance infringed the Community Trade Mark Regulation and, more specifically, Article 8(5) thereof. Despite the fact that the Court of First Instance recognised the reputation of the earlier mark, the similarity between the marks in question and the connection between the goods designated by the marks, it required actual, real and current evidence of harm to the earlier mark, whilst Article 8(5) requires a mere likelihood of harm to that mark, of unfair advantage being taken of its distinctive character or of detriment to it.

([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 16 April 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-160/08)

(2008/C 209/27)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by failing to publish notices of contracts awarded and by failing to make a public call for tenders or failing transparently to award service contracts in the field of public ambulance services, the Federal Republic of Germany has failed to fulfil its obligations under Directives 92/50/EEC ([1]) and 2004/18/EC ([2]) and infringed the principles of freedom of establishment and freedom to provide services (Articles 43 EC and 49 EC);

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

Pleas in law and main arguments

The Commission states that its attention has been drawn by several complaints to the procurement practice for service contracts in the field of public ambulance services in the Federal Republic of Germany. Those complaints objected to the fact that contracts in that field were, as a rule, not the subject of a call for tenders and not awarded transparently. In the Commission's view, the generally small number of Europe-wide calls for tenders for ambulance services by local authorities as bodies responsible for the public ambulance service (13 contract notices in a period of six years, by only 11 out of the 400-plus German districts and cities with district status) is evidence of a widespread practice in Germany of not awarding those ambulance services in accordance with the requirements of the European procurement directives and the fundamental principles of Community law. Moreover, those contracts were awarded without measures to ensure the appropriate transparency and to avoid discrimination.

It says that by that award practice the Federal Republic of Germany has failed to fulfil its obligations under Directives 92/50/EEC and 2004/18/EC and infringed the principles of freedom of establishment and freedom to provide services laid down in Articles 43 EC and 49 EC, in particular the prohibition of discrimination contained in those principles.

Local authorities as bodies responsible for the ambulance service are contracting authorities within the meaning of Article 1(b) of Directive 92/50/EEC or Article 1(9) of Directive 2004/18/EC. It should also be undisputed that contracts awarded in the field of public ambulance services constitute public contracts for consideration that are caught by those directives and clearly exceed the relevant threshold value for the directives to be applicable. It follows from all those circumstances that the contracts for services in question should have been awarded in the procedures laid down by the directives and in compliance with their general provisions on equal treatment and non-discrimination.

Since the present case concerns contracts of obvious cross-border interest, in addition to the obligations under Directives 92/50/EEC and 2004/18/EC the general principles of freedom of establishment and freedom to provide services under the EC Treaty were also infringed by the awards that were made without transparency.

Ambulance services, like transport services and medical services in the context of the public ambulance service, do not fall within the exceptions in Article 45 EC in conjunction with Article 55 EC, under which activities which in a given Member State are connected, even occasionally, with the exercise of official authority are excluded, as far as that State is concerned, from the chapter of the EC Treaty on freedom of establishment and freedom to provide services. The exception in Article 45 EC, which as an exception to the fundamental freedoms must be interpreted strictly, is strictly limited to those activities which constitute as such a direct and specific participation in the exercise of public power. The question of whether public power is being exercised is not to be answered by reference to the public-law nature of the activity in question; rather, what is decisive is the possibility of making use, as against the citizen, of public powers and powers of coercion.

The Commission is convinced that the award practice in the field of the ambulance service could, even if foreign providers of services take part, be designed in such a way that a comprehensive, rapid and high-quality ambulance service is ensured throughout the country.

(1) OJ 1992 L 209, p. 1.
(2) OJ 2004 L 134, p. 114.

Appeal brought on 29 April 2008 by the Commission of the European Communities against the judgment delivered on 14 February 2008 in Case T-351/05, Provincia di Imperia v Commission of the European Communities

(Case C-183/08 P)

(2008/C 209/28)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: D. Martin and L. Flynn, Agents)

Other party to the proceedings: Provincia di Imperia

Form of order sought

— annul the judgment of the Court of First Instance of 14 February 2008 in Case T-351/05;

— declare that the action brought by the Provincia di Imperia in that case was inadmissible;

— order the Provincia di Imperia to pay the Commission's costs in the present case.

Pleas in law and main arguments

By its appeal, the Commission complains that the judgment under appeal failed to apply the conditions governing the admissibility of an action for annulment brought under Article 230 EC, in particular by considering that the applicant at first instance had an interest in bringing an action. An action for annulment brought by a natural or legal person is only admissible in so far as the outcome of the action is likely to produce a benefit for the applicant. In the present case, the action brought by the applicant is manifestly inadmissible since a judgment annulling the contested act would, in itself, in no way produce a 'benefit' for that applicant. The granting of a subsidy is effectively a concession agreed to by the Commission and a party responding to a call for proposals consequently has no right to such a subsidy.

Alternatively, the Commission submits that, even if the applicant at first instance did have an interest in bringing an action on the day it brought its action, that interest would in any event have disappeared by the time the judgment under appeal was delivered, since the entire budget set aside for the call for proposals had been used up and the programming had come to an end.

Appeal brought on 16 May 2008 by American Clothing Associates SA against the judgment delivered on 28 February 2008 by the Court of First Instance (Fifth Chamber) in Case T-215/06, American Clothing Associates SA v OHIM

(Case C-202/08 P)

(2008/C 209/29)

Language of the case: French

Parties

Appellant: American Clothing Associates SA (represented by: P. Maeyaert, N. Clarembeaux and C. De Keersmaeker, lawyers)

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

Form of order sought

— Set aside the decision of the Court of First Instance in so far as it held that the First Board of Appeal of OHIM had not infringed Article 7(1)(h) of the Community Trade Mark Regulation ([1]) by adopting its decision of 4 May 2006 (Case R 1463/2005-1) in so far as it relates to the registration of the trade mark applied for in respect of goods in Classes 18 'Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery' and 25 'Clothing, footwear, headgear';

— Order OHIM to pay the costs.

Pleas in law and main arguments

The appellant raises a single plea in law in support of its appeal, alleging infringement of Articles 7(1)(h) of the Community Trade Mark Regulation and 6*ter*(1)(a) of the Paris Convention for the Protection of Intellectual Property of 20 March 1883, as revised and amended. ([2]) That plea is essentially based on four arguments.

By its first argument, the appellant complains that the judgment under appeal failed to have regard to the relevance of the essential function of a State emblem when assessing the scope of protection of an emblem. A State emblem refers to symbols of the identity and sovereignty of a State, which are designed according to an artistic language and a very precise science, relating to armorial bearings. Whatever its nature, an emblem could therefore be refused registration as a trade mark or an element of a trade mark only if it is capable of undermining the identity or sovereignty of a State. However, the mere reproduction of a sign similar to a State emblem displaying no, or few, heraldic characteristics as an element of a trade mark is not such as to affect the essential function of that emblem.

By its second argument, the appellant criticises the Court of First Instance for having failed to have regard to the relevance of the heraldic characteristics of a State emblem by holding that a number of artistic interpretations of one and the same emblem on the basis of the same heraldic description are possible. According to the appellant, Article 6*ter*(1)(a) of the Paris Convention and the concept of 'imitation from a heraldic point of view' do not seek to protect the symbol as such, but seek to protect a very precise artistic interpretation or a specific graphic work resulting from the implementation of the rules governing heraldic art and science.

By its third argument, the appellant complains that the judgment under appeal misconstrued the scope of the concept of 'heraldic imitation' and, in so doing, that it affirms an interpretation of the Community Trade Mark Regulation and the Paris Convention which confers on the States concerned a virtually absolute monopoly on signs having no heraldic characteristics or no heraldic characteristics which are very pronounced in relation to their registration or use as an element of a trade mark.

By its fourth argument, the appellant lastly criticises the Court of First Instance for having rejected at the outset, as irrelevant, certain circumstances specific to the present case, such as the nature of the heraldic characteristics whose protection is relied on, the overall impression given by a trade mark which contains as an element a State emblem or an imitation thereof, the nature of the protection offered in the country of origin of the State emblem concerned or the conditions of use of the trade mark concerned.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).
([2]) United Nations Treaty Series, Vol. 828, No 11847, p. 108.

Reference for a preliminary ruling from the Umweltsenat (Austria) lodged on 19 May 2008 — Umweltanwalt von Kärnten, other parties Kärnter Landesregierung, Alpe Adria Energia SpA

(Case C-205/08)

(2008/C 209/30)

Language of the case: German

Referring court

Umweltsenat

Parties to the main proceedings

Applicant: Umweltanwalt von Kärnten

Other parties: Kärnter Landesregierung, Alpe Adria Energia SpA

Question referred

Is Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ([1]), as amended by the Amending Directive, Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ([2]) and the Public Participation Directive, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC ([3]), to be interpreted as meaning that a Member State must provide for an obligation to carry out an assessment in the case of types of projects listed in Annex I to the directive, in particular in point 20 (construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km), where the proposed scheme is to extend over the territory of two or more Member States, even if the threshold giving rise to the obligation to carry out an assessment (here, a length of 15 kilometres) is not reached or exceeded by the part of the scheme situated on its national territory but is reached or exceeded by adding the parts of the scheme proposed to be situated in a neighbouring State or States?

([1]) OJ 1985 L 175, p. 40.
([2]) OJ 1997 L 73, p. 5.
([3]) OJ 2003 L 156, p. 17.

Reference for a preliminary ruling from the Panevėžio apygardos teismas lodged on 20 May 2008 — Criminal proceedings against Edgar Babanov

(Case C-207/08)

(2008/C 209/31)

Language of the case: Lithuanian

Referring court

Panevėžio apygardos teismas

Party to the main proceedings

Edgar Babanov

Questions referred

1. Is Article 265 of the Criminal Code of the Republic of Lithuania, in so far as it imposes criminal liability unconditionally for the cultivation of any type of hemp without exception, irrespective of the amount of active substance in it, contrary to provisions of the European Union and, specifically, which ones?

2. If it is contrary to those provisions, may a court of the Republic of Lithuania adopt a decision applying national law (Article 265 of the Criminal Code), if the active substance in the hemp cultivated does not exceed 0,2 %?

Appeal brought on 20 May 2008 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment delivered on 28 February 2008 by the Court of First Instance (Fifth Chamber) in Case T-215/06, American Clothing Associates v OHIM

(Case C-208/08 P)

(2008/C 209/32)

Language of the case: French

Parties

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

Other party to the proceedings: American Clothing Associates SA

Form of order sought

— set aside the judgment of the Court of First Instance of 28 February 2008 in Case T-215/06 in so far as it held that Article 7(1)(h) of the Community Trade Mark Regulation ([1]) does not apply to marks designating services;

— order American Clothing Associates SA to pay the costs.

Pleas in law and main arguments

The appellant raises a single plea in support of its appeal, alleging infringement of Article 7(1)(h) of the Community Trade Mark Regulation, read in conjunction with Article 6 ter of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended ([2]). Contrary to what the Court of First Instance held, that Article 6 ter, to which Article 7(1)(h) of the Community Trade Mark Regulation refers, applies without distinction to marks designating goods and marks designating services.

In this respect, the appellant states, first, that the Court of First Instance erred in law in interpreting Article 6 ter of the Paris Convention literally and out of context, without taking account of the spirit of that provision and of the Convention in general, which, since its review carried out by the Lisbon Act of 31 October 1958, requires extending all the provisions relating to trade marks to service marks, with the exception of certain provisions which are not applicable in the present case.

The appellant claims, second, that the Community legislature itself contests that it is necessary to draw a distinction between trade marks for goods and trade marks for services since Article 29 of the Community Trade Mark Regulation, which transposes Article 4 A of the Paris Convention, relating to rights of priority, mentions explicitly the services covered by a trade mark application.

The appellant observes third that, contrary to what the Court of First Instance held in the judgment under appeal, Article 16 of the Trademark Law Treaty, adopted at Geneva on 27 October 1994, must be interpreted as meaning that it clarifies the field of application of the Paris Convention, without however extending its field of application to situations that that convention excludes in its current wording.

Lastly, the appellant states that, in a recent judgment, the Court of Justice itself admitted, at least implicitly, that the Paris Convention requires equal treatment as between trade marks for goods and trade marks for services.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).
([2]) United Nations Treaty Series, Vol. 828, No 11847, p. 108.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 22 May 2008 — E. Friz GmbH v Carsten von der Heyden

(Case C-215/08)

(2008/C 209/33)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: E. Friz GmbH

Defendant: Carsten von der Heyden

Questions referred

1. Must the first sentence of Article 1(1) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises ([1]) be interpreted as meaning that it applies to a consumer's entry into a partnership, commercial partnership, association or cooperative if the principal purpose of joining is not to become a member of the partnership, association or cooperative but — as frequently applies in particular in relation to participation in a closed-end real estate fund — participation as a member is simply another means of capital investment or of obtaining services which are typically the object of reciprocal contracts?

2. Must Article 5(2) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises be interpreted as meaning that it precludes a legal effect under national (judge-made) law within the meaning of Article 7 of the directive which states that, where a consumer becomes a member in a doorstep-selling situation, the consequence is that, in the event that the membership is cancelled, the consumer cancelling the membership has a claim against the partnership, association or cooperative, calculated at the time that the cancellation takes effect, to his severance balance, that is, a sum corresponding to the value of his interest in the partnership, association or cooperative at the time of retirement from membership, with the (possible) effect that, as a result of the economic development of the partnership, association or cooperative, he either gets back less than the value of his capital contribution or even finds himself exposed to payment obligations which, because the severance balance is negative, go beyond the loss of the capital contribution paid?

([1]) OJ L 372, 31.12.1985, p. 31.

Action brought on 22 May 2008 — Commission of the European Communities v Ireland

(Case C-221/08)

(2008/C 209/34)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— declare that by imposing minimum and maximum retail prices for cigarettes, Ireland has failed to comply with its obligations under Article 9(1) of Council Directive 95/59/EC ([1]) of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco;

— declare that by failing to provide the necessary information on the applicable Irish legislation in order to enable the Commission to fulfil its duty to monitor compliance with Directive 95/59, Ireland has failed to comply with its obligations under Article 10 EC;

— order Ireland to pay the costs.

Pleas in law and main arguments

By virtue of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (No 2) Regulations 1986 and the arrangements made in implementation of those regulations with tobacco manufacturers and importers, Ireland imposes a minimum price for cigarettes corresponding to a level no more than 3 % below the weighted average price for cigarettes in the category in question. Moreover, in so far as manufacturers and importers may not set prices more than 3 % above that weighted average price, Ireland also imposes a maximum price for cigarettes. Such a system is contrary to Article 9(1) of directive 95/59, under which tobacco manufacturers are 'free to determine the maximum retail selling price for each of their products'.

Pursuant to Article 10 EC, the Member States have a duty to facilitate the Commission's tasks, in particular by complying with requests for information made in the course of infringement proceedings. The Commission submits that by failing to provide any information on the applicable Irish legislation, despite the Commission's repeated requests, Ireland has failed to comply with its obligations under Article 10 EC.

([1]) OJ L 291, p. 40.

Action brought on 21 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-222/08)

(2008/C 209/35)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. van Vliet and A. Nijenhuis, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by virtue of the transposition into national law of the provisions on the costing and financing of universal service obligations, the Kingdom of Belgium has failed to fulfil its obligations under Articles 12(1), 13(1), and Annex IV, part A, of Directive 2002/22/EC;

— order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The objective of Directive 2002/22 is, inter alia, to define the situations in which the market does not satisfactorily meet the needs of end-users and the directive contains provisions regarding the availability of the universal service. Article 12(1) of the directive provides that where national regulatory authorities consider that the provision of universal service may represent an unfair burden on undertakings designated to provide universal service, they are to calculate the net costs of its provision in the manner set out in that article. Annex IV, part A, contains provisions concerning the calculation of the net costs. Article 13(1) provides that where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, the Member States are, upon request from a designated undertaking, to decide to introduce a compensation mechanism.

According to the Commission, Belgium has not correctly transposed the provisions of Article 12(1), Article 13(1) and Annex IV, part A, of the directive. The Belgian legislation provides for no assessment of the question whether the provision of social tariffs in the course of performing the universal service represents an unfair burden for the undertakings concerned. Furthermore the Belgian legislation does not satisfy the requirement concerning the costing of net costs set out more particularly in the last section of Annex IV, part A, to the directive.

Reference for a preliminary ruling from the Verwaltungsgericht Oldenburg (Germany) lodged on 26 May 2008 — Stadt Papenburg v Bundesrepublik Deutschland

(Case C-226/08)

(2008/C 209/36)

Language of the case: German

Referring court

Verwaltungsgericht Oldenburg

Parties to the main proceedings

Applicant: Stadt Papenburg

Defendant: Bundesrepublik Deutschland

Questions referred

1. Does the first subparagraph of Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([1]) allow a Member State to refuse to agree to the Commission's draft list of sites of Community importance, in relation to one or more sites, on grounds other than nature conservation grounds?

2. If Question 1 is answered in the affirmative: Do those grounds include the interests of municipalities and associations of municipalities, in particular their plans, planning intentions and other interests with regard to the further development of their area?

3. If Questions 1 and 2 are answered in the affirmative: Do the third recital in the preamble to Directive 92/43/EEC, Article 2(3) of the directive or other provisions of Community law even require that such grounds be taken into account by the Member States and the Commission when giving agreement and establishing the list of sites of Community importance?

4. If Question 3 is answered in the affirmative: Would it be possible — under Community law — for a municipality which is affected by the inclusion of a particular site in the list to claim in legal proceedings after final adoption of the list that the list infringes Community law, because its interests were not, or not sufficiently, taken into account?

5. Must ongoing maintenance works in the navigable channels of estuaries, which were definitively authorised under national law before the expiry of the time-limit for transposition of Directive 92/43/EEC, undergo an assessment of their implications pursuant to Article 6(3) or (4) of the directive where they are continued after inclusion of the site in the list of sites of Community importance?

([1]) OJ 1992 L 206, p. 7.

Action brought on 29 May 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-232/08)

(2008/C 209/37)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: T. van Rijn and K. Banks, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by allowing fishing vessels to have a higher engine power than permitted under Article 29(2) of Regulation (EC) No 850/98 ([1]), has failed to fulfil its obligations under Article 23 of Regulation (EC) No 2371 ([2]) and Article 2(1) of Regulation (EEC) No 2847/93 ([3]);

— order Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission considers that the Netherlands Government has failed to fulfil its obligations, as it has consciously allows infringements of the rule regarding the maximum engine power with which fishing may be carried out in the 'plaice box'.

First, it is apparent from the information provided by the Netherlands Government that it permits Netherlands 'Eurokotters' participating in the private arrangement to satisfy the maximum permitted engine power of 300 hp only with effect from 1 May 2009. Second, it is apparent from this information that when monitoring compliance with this rule a margin of tolerance of 12,5 % is applied systematically and therefore penalties are not imposed on infringements of the maximum permitted engine power within that margin.

([1]) Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1).

([2]) Council Regulation of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59).

([3]) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1).

Reference for a preliminary ruling from the Nejvyšší správní soud (České republiky) lodged on 30 May 2008 — Milan Kyrian v Celní úřad Tábor

(Case C-233/08)

(2008/C 209/38)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Milan Kyrian

Defendant: Celní úřad Tábor

Questions referred

1. Must Article 12(3) of Council Directive of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures be interpreted as meaning that, where measures for enforcement of a claim are contested before the court of a Member State in which the requested authority has its seat, that court is entitled, in accordance with the legislation of that Member State, to review whether the instrument permitting enforcement (enforcement order) is enforceable and has been properly served on the debtor ([1])?
2. Does it follow from general legal principles of Community law, in particular from the principles of a right to a fair trial, sound administration and the rule of law, that service of the instrument permitting enforcement (enforcement order) on the debtor in a language other than one he understands, which, moreover, is not an official language of the State in which it is served on the debtor, constitutes a defect which makes it possible to refuse to enforce on the basis of such an instrument permitting enforcement (enforcement order)?

([1]) OJ L 73, s. 18.

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 June 2008 — Google France, Google Inc. v Louis Vuitton Malletier

(Case C-236/08)

(2008/C 209/39)

Language of the case: French

Referring court

Cour de Cassation (Commercial, Financial and Economic Division)

Parties to the main proceedings

Appellants: Google France, Google Inc.

Respondent: Louis Vuitton Malletier

Questions referred

1. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]) and Article 9(1)(a) and (b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ([2]) be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering infringing goods is using those trade marks in a manner which their proprietor is entitled to prevent?
2. In the event that the trade marks have a reputation, may the proprietor oppose such use under Article 5(2) of the directive and Article 9(1)(c) of the regulation?
3. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or the regulation, may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 ([3]), so that that provider cannot incur liability until it has been notified by the trade mark proprietor of the unlawful use of the sign by the advertiser?

([1]) OJ 1989 L 40, p. 1.
([2]) OJ 1994 L 11, p. 1.
([3]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 June 2008 — Google France v Viaticum, Luteciel

(Case C-237/08)

(2008/C 209/40)

Language of the case: French

Referring court

Cour de Cassation (Commercial, Financial and Economic Division)

Parties to the main proceedings

Appellant: Google France

Respondent: Viaticum, Luteciel

Questions referred

1. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]) be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering goods identical or similar to those covered by the trade mark registration is using those trade marks in a manner which their proprietor is entitled to prevent?

2. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or [Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark] ([2]), may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 ([3]), so that that provider cannot incur liability before it has been informed by the trade mark proprietor of the unlawful use of the sign by the advertiser?

([1]) OJ 1989 L 40, p. 1.
([2]) OJ 1994 L 11, p. 1.
([3]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 June 2008 — Google France v CNRRH, Pierre-Alexis Thonet, Bruno Raboin, Tiger, a franchisee of 'Unicis'

(Case C-238/08)

(2008/C 209/41)

Language of the case: French

Referring court

Cour de Cassation (Commercial, Financial and Economic Division)

Parties to the main proceedings

Appellant: Google France

Respondents: CNRRH, Pierre-Alexis Thonet, Bruno Raboin, Tiger, a franchisee of 'Unicis'

Questions referred

1. Does the reservation by an economic operator, by means of an agreement on paid Internet referencing, of a keyword triggering, in the case of a request using that word, the display of a link proposing connection to a site operated by that operator in order to offer for sale goods or services, and which reproduces or imitates a trade mark registered by a third party in order to designate identical or similar goods, without the authorisation of the proprietor of that trade mark, constitute in itself an infringement of the exclusive right guaranteed to the latter by Article 5 of First Council Directive 89/104/EEC of 21 December 1988 ([1])?

2. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering goods identical or similar to those covered by the trade mark registration is using those trade marks in a manner which their proprietor is entitled to prevent?

3. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or [Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark] ([2]), may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 ([3]), so that that provider cannot incur liability before it has been informed by the trade mark proprietor of the unlawful use of the sign by the advertiser?

([1]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).
([2]) OJ 1994 L 11, p. 1.
([3]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Action brought on 4 June 2008 — Commission of the European Communities v Italian Republic

(Case C-244/08)

(2008/C 209/42)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and M. Afonso, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, with regard to the refund of VAT to a taxable person established in another Member State or in a non-member country, even where that person has a fixed establishment, the Italian Republic has failed to fulfil its obligations under Article 1 of Eighth Council Directive 79/1072/EEC ([1]) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, and Article 1 of Thirteenth Council Directive 86/560/EEC ([2]) of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, in so far as it obliges a taxable person whose registered office is in a Member State or in a non-member country but who has a fixed establishment which, during the period concerned, supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in those directives, rather than by means of deduction, where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission requests the Court of Justice to declare that it is incompatible with Community law for an Italian measure to oblige a person who is subject to VAT whose registered office is in a Member State or in a non-member country but who also has a fixed establishment in Italy which, during the period concerned, has supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in Directive 79/1072/EEC (the Eighth VAT Directive) and Directive 86/560/EEC (the Thirteenth VAT Directive) rather than by means of the normal deduction mechanism provided for as a general rule in Directive 77/388/EEC ([3]) (the Sixth VAT Directive), where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established abroad.

Such a measure, which makes it excessively cumbersome for the taxpayers concerned to comply with their tax obligations, is, in the Commission's view, contrary to the provisions and fundamental principles of the above-mentioned VAT directives, which provide that a foreign taxpayer who has a fixed establishment in Italy and who engages in commercial transactions in Italy from

that establishment, must be able to use the normal deduction mechanism provided for in the Sixth Directive, even if some commercial transactions are effected directly from the place in which that person is principally established.

(1) OJ 1979 L 331, p. 11.
(2) OJ 1986 L 326, p. 40.
(3) OJ 1977 L 145, p. 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.

Action brought on 3 June 2008 — Commission of the European Communities v Republic of Finland

(Case C-246/08)

(2008/C 209/43)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by P. Aalto and D. Triantafyllou, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to charge value added tax on legal advice services provided in return for part payment in accordance with the legal aid provisions by State legal aid offices (by public legal advisers acting as their employees), while the corresponding services provided by private advisers are subject to value added tax, the Republic of Finland has failed to fulfil its obligations under Articles 2(1) and 4(1), (2) and (5) of the Sixth VAT Directive 77/388/EEC (1);

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

In Finland a recipient of legal aid may choose a public legal adviser or a private adviser to represent him in legal proceedings. In that situation the services provided by a public legal adviser in return for part payment are not subject to value added tax, whereas value added tax is charged on the services provided by a private adviser in return for part payment. The Commission considers that this is a case of different value added tax treatment of the same services, with effects on the Community's own resources.

The Commission argues that the services provided by State legal aid offices in legal proceedings do not fall within the scope of the first subparagraph of Article 4(5) of the Sixth VAT Directive. Those services are clearly free from value added tax where they are provided without charge. If, on the other hand, the recipient of legal aid pays a fee for the service, services provided by a State legal aid office cannot be regarded as free from value added tax.

The second subparagraph of Article 4(5) of the VAT Directive provides that bodies governed by public law are to be regarded as taxable persons in respect of the activities in which they engage as public authorities if treating them differently would lead to significant distortions of competition. Even if the State legal aid offices were regarded as acting as public authorities in this respect, the Commission considers that excluding them from liability to tax in the above cases would lead to significant distortions of competition. For that reason they should be regarded as taxable persons with respect to value added tax.

(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).

Action brought on 9 June 2008 — Commission of the European Communities v Hellenic Republic

(Case C-248/08)

(2008/C 209/44)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Tserepa-Lacombe and A. Markoulli)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that the Hellenic Republic has failed to fulfil its obligations under Article 4(2)(a) and (c), Article 5(2)(c), Article 6(2)(b) and Articles 10, 11, 12, 13, 14, 15, 17, 18 and 26 of Regulation (EC) No 1774/2002 (1) of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

By this action the Commission asks the Court to find that the Hellenic Republic has failed to fulfil its obligations under Article 4(2)(a) and (c), Article 5(2)(c), Article 6(2)(b) and Articles 10, 11, 12, 13, 14, 15, 17, 18 and 26 of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ('the animal by-products regulation'). It should be noted that this action concerns two sets of infringement proceedings (Infringements 2001/5217 and 2006/2221) which arose from breach of the Hellenic Republic's obligations under specific articles of that regulation.

In particular the regulation states that once animal waste is collected, transported and identified without undue delay, it must, inter alia, be disposed of as waste, having been processed in the ways provided for in the Regulation in accordance with the category to which the waste belongs (Articles 4(2)(c), 5(2)(c) and 6(2)(b)). Procedures are also laid down for the disposal of specified risk material by incineration (Article 4(2)(a)). Further, the animal by-products regulation lays down the conditions governing the approval of waste processing plants, intermediate, storage, incineration and co-incineration plants, Category 1 and Category 2 processing plants, Category 2 and Category 3 oleochemical plants, biogas plants and composting plants (Articles 10-15). Similarly, the animal by-products regulation lays down the conditions governing the approval by the competent authorities of Category 3 material processing plants and the approval of petfood plants and technical plants (Articles 17-18). In addition, in accordance with the regulation, the competent authority must carry out at regular intervals inspections and supervision to ascertain that the regulation's provisions are being observed, on the basis of various criteria which are laid down, and to take the appropriate action in the case of non-compliance (Article 26).

On the basis of a large number of reports drawn up by the Commission's Food and Veterinary Office (FVO), the Commission points out that neither at the end of the time-limits laid down in the reasoned opinion and in the supplementary reasoned opinion nor after those dates had the Hellenic Republic taken all the requisite measures to correct the infringements with which it was charged and consequently to comply with its obligations under the above-mentioned articles of the by-products regulation.

Since 2004 the FVO has carried out a number of fact-finding trips in Greece to ascertain what defects there are in the application of the by-products regulation. Despite ascertaining that there had been some progress following the advice of the FVO and the adoption of specific legislation in October 2006 which aimed to introduce the requisite administrative measures to apply the provisions of the by-products regulation, in particular as regards the approval of waste processing plants, the FVO inspectors repeatedly found, on-the-spot and until April 2007, when the last fact-finding trip took place, that the Greek authorities had not taken the requisite action to comply with the obligations incumbent on them under the above-mentioned articles of the by-products regulation.

It should also be pointed out that the non-implementation, or inadequate implementation, of the above-mentioned articles is due, to a large extent, to the ineffective coordination of the competent authorities at the level of the prefectural administration. Furthermore, as is clear from the response of the Greek authorities to the findings set out in the FVO's reports, the level of the controls carried out by the competent authorities and of the penalties imposed by the national legislation do not effectively ensure the effective application of the by-products regulation.

([1]) OJ L 273 of 10.10.2002, p. 1.

Action brought on 10 June 2008 — Commission of the European Communities v Italian Republic

(Case C-249/08)

(2008/C 209/45)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: K. Banks and C. Cattabriga, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that:

  — by failing to provide appropriate measures for the control, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of drift-nets, and

— by failing to comply sufficiently with its obligation to ensure that appropriate measures are taken against those responsible for infringements of the Community legislation on the retention on board and use of drift nets, in particular by imposing dissuasive penalties on those persons,

the Italian Republic has failed to fulfil its obligations under Article 1(1) of Council Regulation (EEC) No 2241/87 ([1]) of 23 July 1987 establishing certain control measures for fishing activities and Article 2(1) and Article 31(1) and (2) of Council Regulation (EEC) No 2847/93 ([2]) of 12 October 1993 establishing a control system applicable to the common fisheries policy;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

1. Since it was introduced in 1992, the prohibition on retaining on board and using drift-nets of a length greater than 2.5 Km and, since 2001, drift-nets of any length, has been systematically infringed on a massive scale by the Italian fishing fleet.

2. According to the Commission, the extent and seriousness of the situation are directly attributable to the inefficiencies in the Italian system for monitoring compliance with that prohibition and the inadequacy of the penalties imposed under Italian legislation for infringement of that prohibition.

3. In that connection, the Commission observes that the supervision of the use of drift-nets is conducted by numerous organisations which are competing with each other and in such a way that other tasks entrusted to them take precedence over that supervision, which is, moreover, not adequately coordinated. The lack of human resources, time and the necessary means prevents effective control being carried out.

4. Adequate strategic programming and planning for the control of the use of drift-nets is also lacking. The Commission observes that the controls should be carefully programmed on the basis of specific risk factors and a comprehensive, integrated and rational strategy. There should also be a greater focus on certain periods of the year and on specific regions and control posts. At present, however, no such action is being taken by the Italian authorities.

5. The authorities responsible for surveillance of the use of drift-nets do not have access to information on the location of fishing vessels gathered by the satellite vessel monitoring system (VMS) provided for in Article 3 of Regulation No 2847/93. It is apparent from an investigation carried out by the Commission that a significant number of fishing vessels are still not equipped with the satellite-tracking devices necessary for the proper functioning of the VMS. As regards the collection of data, the computerisation of logbooks, landing declarations and sales notes required under Regulation No 2847/93 and, *a fortiori*, the cross-analysis of those data with the information collected by the VMS, are far from being fully implemented.

6. If the surveillance of the use of drift-nets carried out by the Italian authorities appears to be wholly unsatisfactory, then no more efficient is their prevention of infringements of Community provisions on the retention and use of such nets.

7. In that connection, the Commission observes, first of all, that, contrary to Article 9a of Regulation No 3094/86 ([3]) and the measures which subsequently repeated and expanded the content of that provision, the Italian legislation in force governing penalties prohibits, essentially, only the use or attempted use of drift-nets but not their simple retention on board.

8. Secondly, when it is found that an infringement of the prohibition on the use of drift-nets has actually occurred, it is not duly reported by the local surveillance authorities to the competent authorities, principally due to existing social pressures, and it is not in any event effectively pursued and penalised. The number and range of penalties imposed is, in fact, derisory.

9. The Commission therefore considers that it has been amply demonstrated that the system of controls and penalties put in place in Italy to ensure compliance with the Community provisions on drift-nets is wholly inadequate for the purposes of securing compliance with the obligations imposed on the Member States by Article 1(1) of Regulation No 2241/87 and Article 2(1) and Article 31(1) and (2) of Regulation No 2847/93.

([1]) OJ 1987 L 207, p. 1.
([2]) OJ 1993 L 261, p. 1.
([3]) Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy) lodged on 16 June 2008 — Futura Immobiliare Srl Hotel Futura and Others v Comune di Casoria

(Case C-254/08)

(2008/C 209/46)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Campania

Parties to the main proceedings

Applicant: Futura Immobiliare Srl Hotel Futura and Others

Defendant: Comune di Casoria

Question referred

The question arising is whether the national provisions contained in Article 58 et seq of Legislative Decree No 507 of 1993 and the transitional provisions maintaining them in force, by virtue of Article 11 of Presidential Decree No 158 of 1999, as subsequently amended, and Article 1(184) of Law No 296 of 2006, so ensuring the continuation of a system, fiscal in nature, designed to cover the costs of the waste disposal service and postponing the introduction of a tariff regime in which the cost of the service is borne by the persons producing and delivering the waste, are compatible with the abovementioned Article 15 of the Community Directive 75/442/EEC ([1]) which replaces Directive 91/156/EEC ([2]) and the principle of 'the polluter pays' referred to.

([1]) OJ L 194, p. 39.
([2]) OJ L 78, p. 32.

Action brought on 17 June 2008 — Commission of the European Communities v Italian Republic

(Case C-257/08)

(2008/C 209/47)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell and L. Prete, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC ([1]) of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC or, in any event, by failing to communicate such provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive:

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The deadline for implementing the directive expired on 1 April 2007.

([1]) OJ 2006 L 102, p. 35.

Action brought on 17 June 2008 — Commission of the European Communities v Hellenic Republic

(Case C-259/08)

(2008/C 209/48)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to take the requisite measures to transpose fully and/or correctly the requirements resulting from Article 3(1) and (2), Article 4(1), Article 5 and Article 8(1) of Council Directive 79/409/EEC ([1]) of 2 April 1979 on the conservation of wild birds, the Hellenic Republic has failed to fulfil its obligations under those provisions;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The Commission has examined the compatibility of the measures taken by the Hellenic Republic to transpose Directive 79/409/EEC. That check showed that certain provisions of the directive have not been fully and/or correctly transposed.

2. In particular the Commission considers that the Hellenic Republic has not transposed Article 3(1) of Directive 79/409/EEC, because it has not taken all the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

3. The Commission also considers that Article 3(2) of Directive 79/409/EEC has not been fully and/or correctly transposed, since the transposing measure does not permit review of the lawfulness of the designation of an area as a special protection area (SPA), does not contain any provision for the protection of habitats outside the SPAs but in their vicinity and also makes no provision as regards re-establishment of destroyed biotopes and the creation of biotopes, despite their being important objectives of the directive.

4. The Commission maintains in addition that Article 4(1) of Directive 79/409/EEC has not been transposed correctly because no formal procedure for designating areas as SPAs has been provided for, there is no express reference and link between the species in Annex I and the requirement to designate SPAs and there is no reference to the requirement to take into account trends and variations in population levels of protected species.

5. The Commission then finds that Article 5 of Directive 79/409/EEC has not been transposed fully and correctly because the Greek legislation contains no general requirement of species protection as laid down by the directive but is oriented towards hunting. Furthermore, the prohibition of deliberate killing of protected species and deliberate taking of their eggs has not been transposed.

6. Lastly, the Commission considers that Article 8(1) of Directive 79/4409/EEC has not been transposed correctly, because in the Greek legislation there is no general prohibition of the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species.

7. The Commission accordingly considers that the Hellenic Republic has not transposed fully and/or correctly the requirements resulting from Articles 3(1) and (2), 4(1), 5 and 8(1) of Directive 79/409/EEC on the conservation of wild birds.

([1]) OJ L 103 of 25.4.1979, p. 1.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Murcia (Spain) lodged on 19 June 2008 — María Julia Zurita García v Delegado del Gobierno en la Región de Murcia

(Case C-261/08)

(2008/C 209/49)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Murcia

Parties to the main proceedings

Applicant: María Julia Zurita García

Defendant: Delegado del Gobierno en la Región de Murcia

Question referred

Should Article 62(1) and (2)(a) of the Treaty Establishing the European Community and Articles 5, 11 and 13 of Regulation (EC) No 562/2006 ([1]) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) be interpreted as precluding national legislation, and the case-law which interprets it, which permits the substitution of the expulsion of any 'third country national' who does not have documentation authorising him to enter and remain in the territory of the European Union by the imposition of a fine?

([1]) OJ L 105, p. 1.

Reference for a preliminary ruling from the Østre Landsret (Eastern Regional Court) (Denmark) lodged on 19 June 2008 — CopyGene A/S v Skatteministeriet

(Case C-262/08)

(2008/C 209/50)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: CopyGene A/S

Defendant: Skatteministeriet

Questions referred

1. Is the term activity 'closely related' to hospital care in Article 13A(1)(b) of the Sixth Directive ([1]) to be interpreted as implying a temporal requirement so that the hospital care to which the service is closely related must exist or be specifically performed, commenced or envisaged, or is it sufficient that the service will potentially be closely related to possible, but as yet non-existent or undetermined future hospital care, so that the services supplied by a stem cell bank, consisting in the collection, transportation, analysis and storage of umbilical cord blood from newborns for autologous use, are covered by it?

   In that connection, is it relevant that the services described cannot be performed at a later time than the time of delivery?

2. Is Article 13A(1)(b) of the Sixth Directive to be interpreted as covering general preventative services where the services are supplied before the hospital or medical care takes place and before the hospital or medical care is required in both temporal and health terms?

3. Is the term 'other duly recognised establishments of a similar nature' in Article 13A(1)(b) of the Sixth Directive to be interpreted as covering private stem cell banks where the services — which are performed and supplied by professional health personnel in the form of nurses, midwives and bioanalysts — consists in the collection, transportation, analysis and storage of umbilical cord blood from newborns with a view to autologous use in connection with possible future hospital care where the stem cell banks concerned do not receive support from the public heath insurance scheme and where the expenditure on the services provided by these stem cell banks is not covered by the public health insurance scheme?

   In that connection, is it relevant whether or not a private stem cell bank has obtained authorisation from a Member State's competent health authorities to handle tissue and cells — in the form of processing, preserving and storing stem cells from umbilical cord blood for autologous use — pursuant to national legislation which implements Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells ([2])?

4. Is the answer to Questions 1 to 3 affected by whether the above services are supplied with a view to possible allogeneic use or provided by a private stem cell bank which has obtained authorisation from a Member State's competent health authorities to handle tissue and cells — in the form of processing, preserving and storing stem cells from umbilical cord blood for autologous use — pursuant to national legislation which implements Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells?

([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).
([2]) OJ 2004 L 102, p. 48.

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 19 June 2008 — Djurgården-Lilla Värtans Miljöskyddsförening v Stockholms kommun genom dess marknämnd

(Case C-263/08)

(2008/C 209/51)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Djurgården-Lilla Värtans Miljöskyddsförening

Defendant: Stockholms kommun genom dess marknämnd

Questions referred

1. Is point 10 of Annex II to Directive 85/337 ([1]) to be interpreted as meaning that it encompasses water-related works which involve the drawing off from a tunnel for power cables of groundwater leaking into it and infiltration (supply) of water into the ground or hill to compensate for any reduction in the groundwater, and the construction and maintenance of installations for the drawing off and infiltration?

2. If the answer to Question 1 is affirmative: Does the provision in Article 10a of Directive 85/337 — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is also a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?

3. If the answers to Questions 1 and 2 are affirmative: Are Articles 1(2), 6(4) and 10a of Directive 85/337 to be interpreted as meaning that different national requirements can be laid down with regard to the public concerned referred to in Articles 6(4) and 10a, with the result that small, locally established environmental protection associations have a right to

participate in the decision-making procedures referred to in Article 6(4) in respect of projects which may have significant effects on the environment in the area where the association is active but do not have a right of appeal such as is referred to in Article 10a?

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

Action brought on 19 June 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-266/08)

(2008/C 209/52)

Language of the case: Spanish

Parties

Applicant: Commission (represented by: M. Condou-Durande and E. Adsera Ribera, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain, by not adopting the laws, regulations and administrative provisions necessary to transpose Council Directive 2004/81/EC (1) 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 and, in any event, by not communicating those provisions to the Commission, has failed to fulfil its obligations under Article 17 of that directive;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The time limit for transposition of Directive 2004/81/EC expired on 5 August 2006.

(1) OJ 2004 L 261, p. 19.

Action brought on 24 June 2008 — Commission of the European Communities v Republic of Hungary

(Case C-270/08)

(2008/C 209/53)

Language of the case: Hungarian

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and V. Bottka, acting as Agents)

Defendant: Republic of Hungary

Form of order sought

— Declare that the Republic of Hungary has failed to fulfil its obligations under Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (1), by failing to adopt the laws, regulations and administrative provisions necessary to comply with that directive and, in any event, by failing to communicate them to the Commission;

— order the Republic of Hungary to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive into national law expired on 12 June 2007.

(1) OJ 2005 L 149, p. 22.

Action brought on 24 June 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-272/08)

(2008/C 209/54)

Language of the case: Spanish

Parties

Applicant: Commission (represented by: M. Condou-Durande and E. Adsera Ribera, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain, by not adopting the laws, regulations and administrative provisions necessary to transpose 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 and, in any event, by not communicating those provisions to the Commission, has failed to fulfil its obligations under Article 38 of that directive.

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The time limit for transposition of the directive expired on 10 October 2006.

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

Action brought on 25 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-273/08)

(2008/C 209/55)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and A. Alcover San Pedro, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to communicate to the Commission of the European Communities its programmes for the reduction of national emissions of sulphur dioxide (SO_2), nitrogen oxides (NO_X), volatile organic compounds (VOC) and ammonia (NH_3), its national emission inventories of SO_2, NO_X, VOC and NH_3, and its annual projections for SO_2, NO_X, VOC and NH_3 for 2010, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 6(1), (2) and (3), Article 7(1) and (2) and Article 8(1) and (2) of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants ([1]);

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

Pleas in law and main arguments

The Commission submits that the Grand Duchy of Luxembourg has failed to communicate, within the time-limits prescribed in Directive 2001/81/EC, three types of document concerning the establishment of national emission ceilings for sulphur dioxide (SO_2), nitrogen oxides (NO_X), volatile organic compounds (VOC) and ammonia (NH_3).

First, the defendant failed to fulfil its obligation, set out in Article 6(1), (2) and (3) of the directive, to draw up programmes for the progressive reduction of national emissions of the aforementioned pollutants.

Secondly and thirdly, the defendant did not comply, in respect of the same pollutants, with the provisions of Article 7(1) and (2) concerning the preparation and annual updating of the national emission inventories and emission projections for 2010.

Finally, it failed to fulfil its obligation to communicate these three types of document to the Commission within the time-limits prescribed in Article 8(1) and (2) of the directive.

([1]) OJ 2001 L 309, p. 22.

Action brought on 27 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-282/08)

(2008/C 209/56)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ([1]) or, in any event, by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under this directive;

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

Pleas in law and main arguments

The time-limit for transposition of Directive 2005/29/EC expired on 12 June 2007. However, at the date the present action was brought, the defendant had still not taken the necessary measures to transpose the directive or, in any event, it had not informed the Commission thereof.

([1]) OJ 2005 L 149, p. 22.

Reference for a preliminary ruling from the Svea Hovrätt — Miljööverdomstolen (Sweden) lodged on 30 June 2008 — Kemikalieinspektionen v Nordiska Dental AB

(Case C-288/08)

(2008/C 209/57)

Language of the case: Swedish

Referring court

Svea Hovrätt — Miljööverdomstolen

Parties to the main proceedings

Applicant: Kemikalieinspektionen

Defendant: Nordiska Dental AB

Questions referred

1 (a) Are the provisions of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices ([1]) to be interpreted as constituting obstacles to the application of a national prohibition on commercial exports from the country in question of amalgam containing mercury for dental use which is based on considerations of environmental and health protection?

(b) Does the fact that the product concerned bears the CE marking have any bearing on that interpretation?

2. If the answer to the first question is negative, are Paragraphs 8 and 11 of Swedish Ordinance (1998:944) on, inter alia, prohibition in certain cases in connection with the trade in, and importation and exportation of chemical products, which are based on the considerations stated above, compatible with Articles 29 EC and 30 EC in the case where those provisions are applied to amalgam containing mercury for dental use which bears the CE marking?

([1]) OJ L 169, p. 1.

Order of the President of the Fourth Chamber of the Court of 11 April 2008 (reference for a preliminary ruling from the Østre Landsret — Denmark) — Eivind F. Kramme v SAS Scandinavian Airlines Danmark A/S

(Case C-396/06) ([1])

(2008/C 209/58)

Language of the case: Denmark

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

([1]) OJ C 294, 2.12.2006.

Order of the President of the First Chamber of the Court of 10 June 2008 — Commission of the European Communities v Republic of Poland

(Case C-416/06) ([1])

(2008/C 209/59)

Language of the case: Polish

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

([1]) OJ C 326, 30.12.2006.

Order of the President of the Sixth Chamber of the Court of 23 April 2008 — Commission of the European Communities v Czech Republic

(Case C-116/07) ([1])

(2008/C 209/60)

Language of the case: Czech

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

([1]) OJ C 95, 28.4.2007.

Order of the President of the Court of 23 May 2008 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — SAVA e C. Srl, SIEME Srl, GRADED SpA v Mostra d'Oltremare SpA, Cofathec Servizi SpA and Others

(Case C-194/07) ([1])

(2008/C 209/61)

Language of the case: Italian

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 13 May 2008 — Commission of the European Communities v Hellenic Republic

(Case C-470/07) ([1])

(2008/C 209/62)

Language of the case: Greek

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

([1]) OJ C 315, 22.12.2007.

Order of the President of the Court of 5 June 2008 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-511/07) ([1])

(2008/C 209/63)

Language of the case: French

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

([1]) OJ C 22, 26.1.2008.

Order of the President of the Court of 22 April 2008 — Portela & Companhia SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Juan Torrens Cuadrado, Josep Gilbert Sanz

(Case C-108/08 P) ([1])

(2008/C 209/64)

Language of the case: Portuguese

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

([1]) OJ C 158, 21.6.2008.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 9 July 2008 — Alitalia v Commission

(Case T-301/01) ([1])

(State aid — Recapitalisation of Alitalia by the Italian authorities — Decision declaring the aid compatible with the common market — Decision taken following a judgment of the Court of First Instance annulling an earlier decision — Admissibility — Infringement of Article 233 EC — Infringement of Articles 87 EC and 88 EC — Conditions for authorising the aid — Obligation to state the reasons on which the decision is based)

(2008/C 209/65)

Language of the case: Italian

Parties

Applicant: Alitalia — Linee Aeree Italiane Spa (Rome, Italy) (represented by: M. Siragusa, G. M. Roberti, G. Scassellati Sforzolini, F. Moretti and F. Sciaudone, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, acting as Agent, and A. Abate and G. Conte, lawyers)

Re:

Application for the annulment of Commission Decision 2001/723/EC of 18 July 2001 concerning the recapitalisation of the company Alitalia (OJ 2001 L 271, p. 28).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alitalia — Linee aeree italiane Spa to pay the costs.*

([1]) OJ C 44, 16.2.2002.

Judgment of the Court of First Instance of 1 July 2008 — Deutsche Post v Commission

(Case T-266/02) ([1])

(State aid — Measures implemented by the German authorities for Deutsche Post AG — Decision declaring the aid incompatible with the common market and ordering its recovery — Service of general economic interest — Compensation for additional costs generated by a policy of selling below cost in the door-to-door parcel delivery sector — No advantage)

(2008/C 209/66)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund and T. Lübbig, lawyers)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz and J. Flett, Agents)

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

Intervener in support of the defendant: Bundesverband Internationaler Express- und Kurierdienste eV (BIEK) (Frankfurt am Main, Germany) (represented by: F. Mitzkus, T. Wambach and R. Wojtek, lawyers); and UPS Europe NV/SA (Brussels, Belgium) (represented by: initially by T. Ottervanger and A. Bijleveld, and subsequently by T. Ottervanger, lawyers)

Re:

Action for annulment of Commission Decision 2002/753/EC of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG (OJ 2002 L 247, p. 27).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2002/753/EC of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG;*

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

3. *Orders the Federal Republic of Germany, the Bundesverband Internationaler Express- und Kurierdienste eV (BIEK) and UPS Europe NV/SA to bear their own costs.*

(1) OJ C 274, 9.11.2002.

Judgment of the Court of First Instance of 8 July 2008 — Saint-Gobain Gyproc Belgium v Commission

(Case T-50/03) (1)

(Competition — Cartels — Plasterboard market — Decision finding an infringement of Article 81 EC — Fine — Gravity and duration of the infringement — Attenuating circumstances)

(2008/C 209/67)

Language of the case: French

Parties

Applicant: Saint-Gobain Gyproc Belgium NV, previously BPB Belgium NV, previously Gyproc Benelux NV (Beveren-Kallo, Belgium) (represented by: J.-F. Bellis, P. L'Ecluse and M. Favart, lawyers)

Defendant: Commission of the European Communities (represented initially by F. Castillo de la Torre and C. Ingen-Housz and subsequently by F. Castillo de la Torre and F. Arbault, acting as Agents)

Re:

Action under Articles 229 EC and 230 EC for the reduction of the fine imposed on Gyproc by Commission Decision 2005/471/EC of 27 November 2002 relating to a proceeding under Article 81 [EC] against BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard) (OJ 2005 L 166, p. 8)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Saint-Gobain Gyproc Belgium NV to pay the costs.*

(1) OJ C 101, 26.4.2003.

Judgment of the Court of First Instance of 8 July 2008 — Knauf Gips v Commission

(Case T-52/03) (1)

(Competition — Cartels — Plasterboard market — Decision finding an infringement of Article 81 EC — Access to the file — Single and continuous infringement — Liability — Fine — Guidelines on the method of setting fines — Cooperation during the administrative procedure)

(2008/C 209/68)

Language of the case: German

Parties

Applicant: Knauf Gips KG, formerly Gebrüder Knauf Westdeutsche Gipswerke KG (Iphofen, Germany) (represented initially by M. Klusmann and F. Wiemer, and subsequently by M. Klusmann, lawyers)

Defendant: Commission of the European Communities (represented initially by F. Castillo de la Torre and S. Rating, and subsequently by F. Castillo de la Torre and R. Sauer, Agents)

Re:

Application for annulment of Commission Decision 2005/471/EC of 27 November 2002 relating to a proceeding under Article 81 [EC] against BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard) (OJ 2005 L 166, p. 8), or, in the alternative, reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Knauf Gips KG to pay the costs.*

(1) OJ C 124, 24.5.2003.

Judgment of the Court of First Instance (Third Chamber) of 8 July 2008 — BPB v Commission

(Case T-53/03) ([1])

(Competition — Cartels — Plasterboard market — Decision finding an infringement of Article 81 EC — Single and continuous infringement — Repeated infringement — Fine — Guidelines on the method of setting fines — Leniency Notice)

(2008/C 209/69)

Language of the case: English

Parties

Applicant: BPB plc (Slough, United Kingdom) (represented by: T. Sharpe QC, and A. Nourry, Solicitor)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre, Agent, J. Flynn QC, and C. Kilroy, Barrister)

Re:

Application for annulment in part of Commission Decision 2005/471/EC of 27 November 2002 relating to a proceeding under Article 81 [EC] against BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard) (OJ 2005 L 166, p. 8), or, in the alternative, annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on BPB plc by Article 3 of Commission Decision 2005/471/EC of 27 November 2002 relating to a proceeding under Article 81 [EC] against BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard) at EUR 118,8 million;*

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

3. *Orders the Commission to pay one tenth of its own costs and one tenth of the costs incurred by BPB;*

4. *Orders BPB to pay nine tenths of its own costs and nine tenths of the costs incurred by the Commission.*

([1]) OJ C 101, 26.4.2003.

Judgment of the Court of First Instance of 8 July 2008 — Lafarge v Commission

(Case T-54/03) ([1])

(Competition — Agreements, decisions and concerted practices — Plasterboard market — Decision finding an infringement of Article 81 EC — Liability — Deterrence — Repeat infringement — Fine — Guidelines on the method of setting fines)

(2008/C 209/70)

Language of the case: French

Parties

Applicant: Lafarge SA (Paris, France) (represented by: H. Lesguillons, J.-C. Bermond, N. Jalabert-Doury, A. Winckler, F. Brunet and I. Simic initially, then by N. Jalabert-Doury, A. Winckler and F. Brunet, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre and C. Ingen-Housz initially, then by F. Castillo de la Torre and F. Arbault, Agents)

Intervener in support of the defendant: Council of the European Union (represented by: S. Marquardt and E. Karlsson, Agents)

Re:

Application for annulment of Commission Decision 2005/471/EC of 27 November 2002 relating to proceedings under Article 81 [EC] against BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV (Case No COMP/E-1/37.152 — Plasterboard) (OJ 2005 L 166, p. 8), or, in the alternative, an application for the annulment of or a reduction in the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Lafarge SA to bear its own costs and to pay those incurred by the Commission;*

3. *Orders the Council to bear its own costs.*

([1]) OJ C 101, 26.4.2003.

Judgment of the Court of First Instance (Third Chamber) of 1 July 2008 — Região autónoma dos Açores v Council

(Case T-37/04) ([1])

(Action for annulment — Regulation (EC) No 1954/2003 — Fisheries — Management of the fishing effort — Community fishing areas and resources — Action brought by a regional body — Persons individually concerned — Inadmissibility)

(2008/C 209/71)

Language of the case: English

Parties

Applicant: Região autónoma dos Açores (Portugal) (represented initially by: M. Renouf, S. Crosby, C. Bryant, Solicitors, and H. Mercer, Barrister, and subsequently by M. Renouf, C. Bryant and H. Mercer)

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

Interveners in support of the applicants: Seas at Risk VZW, formerly Stichting Seas at Risk Federation (Brussels, Belgium); WWF — World Wide Fund for Nature, (Gland, Switzerland); and Stichting Greenpeace Council (Amsterdam, Netherlands) (represented by: R. Buxton, Solicitor, and D. Owen, Barrister).

Interveners in support of the defendants: Commission of the European Communities (represented by: T. van Rijn and B. Doherty, acting as Agents) and Kingdom of Spain, (represented by: N. Díaz Abad, abogado del Estado)

Re:

Action seeking artial annulment of Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EEC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ 2003 L 289, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible.*

2. *Orders Região autónoma dos Açores to bear its own costs and pay those of the Council, including those incurred in the interim proceedings.*

3. *Orders the Kingdom of Spain and the Commission to bear their own costs, including those incurred in the interim proceedings.*

4. *Orders Seas at Risk VZW and WWF — World Wide Fund for Nature to bear their own costs, including those incurred in the interim proceedings.*

5. *Orders Stichting Greenpeace Council to bear its own costs as incurred in the present proceedings.*

6. *Orders Porto de Abrigo — Organização de Produtores da Pesca CRL and GÊ-Questa — Associação de Defesa do Ambiente to bear their own costs as incurred in the interim proceedings.*

([1]) OJ C 94, 17.4.2004.

Judgment of the Court of First Instance of 8 July 2008 — AC-Treuhand v Commission

(Case T-99/04) ([1])

(Competition — Agreements, decisions and concerted practices — Organic peroxides — Fines — Article 81 EC — Rights of the defence — Right to a fair hearing — Meaning of perpetrator of an infringement — Principle of nullum crimen, nulla poena sine lege — Principle of legal certainty — Legitimate expectations)

(2008/C 209/72)

Language of the case: German

Parties

Applicant: AC-Treuhand AG (Zurich, Switzerland) (represented by: M. Karl, C. Steinle and J. Drolshammer, lawyers)

Defendant: Commission of the European Communities (represented by: A. Bouquet, Agent, and A. Böhlke, lawyer)

Re:

Annulment of Commission decision 2005/349/EC of 10 December 2003 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-2/37.857 — Organic peroxides) (OJ 2005 L 110, p. 44)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders AC-Treuhand AG to pay the costs.*

([1]) OJ C 118, 30.4.2004.

Judgment of the Court of First Instance of 1 July 2008 — Compagnie maritime belge v Commission

(Case T-276/04) ([1])

(Competition — Abuse of collective dominant position — Shipping conference — Decision imposing a fine on the basis of an earlier decision annulled in part by the Court of Justice — Regulation (EEC) No 2988/74 — Reasonable time-limit — Rights of the defence — Legal certainty — Force of res judicata)

(2008/C 209/73)

Language of the case: French

Parties

Applicant: Compagnie maritime belge SA (Antwerp, Belgium) (represented by: D. Waelbroeck, lawyer)

Defendant: Commission of the European Communities (represented initially by É. Gippini Fournier, P. Hellström and F. Amato, then by É. Gippini Fournier, Agents)

Re:

Action for annulment of Commission Decision 2005/480/EC of 30 April 2004 relating to a proceeding under Article 82 EC (Cases COMP/D2/32.448 and 32.450) (summarised in OJ 2005 L 171, p. 28), imposing a fine on the applicant for alleged abuses of a collective dominant position engaged in by the Cewal conference and, in the alternative, the reduction of that fine.

Operative part of the judgment

The Court hereby:

1. *Dismisses the action;*

2. *Orders Compagnie maritime belge SA to pay two-thirds of its own costs and two-thirds of the costs incurred by the Commission, and orders the Commission to pay one-third of its own costs and one-third of the costs incurred by Compagnie maritime belge.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance (Third Chamber) of 9 July 2008 — Trubowest Handel GmbH and Makarov v Council and Commission

(Case T-429/04) ([1])

(Non-contractual liability — Anti-dumping duties — Anti-dumping Regulation (EC) No 2320/97 — Lawyers' fees incurred in domestic proceedings — Inadmissibility — Material and non-material damage — Causal link)

(2008/C 209/74)

Language of the case: English

Parties

Applicants: Trubowest Handel GmbH (Cologne, Germany) and Viktor Makarov, (Cologne), (represented by: K. Adamantopoulos and E. Petritsi, lawyers)

Defendants: Council of the European Union (represented by: J.-P. Hix, Agent, and G. Berrisch, lawyer) and Commission of the European Communities (represented by N. Khan and T. Scharf, Agents)

Re:

Application for compensation under Article 288 EC, in respect of the damage allegedly suffered by the applicants by reason of the adoption of Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Trubowest Handel GmbH and Victor Makarov to pay, in addition to their own costs, the costs incurred by the Council and the Commission.*

([1]) OJ C 31, 5.2.2005.

Judgment of the Court of First Instance of 8 July 2008 — Franchet and Byk v Commission

(Case T-48/05) ([1])

(Non-contractual liability — Civil service — Investigations by OLAF — 'Eurostat' case — Communication to national judicial authorities of information relating to facts liable to lead to criminal proceedings — Lack of advance information for the officials concerned and the supervisory committee of OLAF — Leaks in the press — Disclosure by OLAF and the Commission — Breach of the principle of presumption of innocence — Non-material damage — Causal link)

(2008/C 209/75)

Language of the case: French

Parties

Applicants: Yves Franchet (Nice, France) and Daniel Byk (Luxembourg, Luxembourg) (represented by: G. Vandersanden and L. Levi, avocats)

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

Re:

APPLICATION for compensation for material and non-material damage allegedly suffered as a result of alleged wrongful acts on the part of the Commission and OLAF in the course of investigations relating to the 'Eurostat' case.

Operative part of the judgment

The Court:

1. *Orders the Commission to pay Yves Franchet and Daniel Byk the sum of EUR 56 000;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 93, 16.4.2005.

Judgment of the Court of First Instance of 8 July 2008 — Huvis v Council

(Case T-221/05) ([1])

(Dumping — Imports of polyester staple fibres from Korea — Regulation terminating an interim review — Application of a different methodology to that used in the initial investigation — Requirement of a change in circumstances — Adjustment claimed for credit costs — Credit periods — Burden of proof — Principle of sound administration — Article 2(10)(b) and (g) and Article 11(9) of Regulation (EC) No 384/96)

(2008/C 209/76)

Language of the case: English

Parties

Applicant: Huvis Corp. (Gangnam-gu, Seoul, South Korea,) (represented by: J.-F. Bellis, F. Di Gianni and R. Antonini, lawyers)

Defendant: Council of the European Union (represented by: J.- P. Hix, Agent, and G. Berrisch, lawyer)

Intervener in support of the defendant: Commission of the European Communities (represented by: E. Righini and K. Talabér Ricz, acting as Agents)

Re:

Application, first, for the annulment of Article 2 of Council Regulation (EC) No 428/2005 of 10 March 2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan (OJ 2005 L 71, p. 1) and, second, for a declaration under Article 241 EC that the provisions of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) are inapplicable to the extent to which they support the disputed conclusions contained in Regulation No 428/2005

Operative part of the judgment

The Court:

1. *Annuls Article 2 of Council Regulation (EC) No 428/2005 of 10 March 2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan, to the extent to which the anti-dumping duty imposed on exports into the European Community of goods produced and exported by Huvis Corp. exceeds that which would be applicable if the 'input' method, used in the initial investigation, had been used to calculate the adjustment to the normal value for import charges and indirect taxes;*

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

3. *Orders the Council to bear its own costs and to pay 70 % of the costs incurred by Huvis Corp.;*

4. *Orders the Commission to bear its own costs.*

([1]) OJ C 193, 6.8.2005.

Judgment of the Court of First Instance of 9 July 2008 — Marcuccio v Commission

(Joint Cases T-296/05 and T-408/05) ([1])

(Social security — Applications to have medical expenses paid at 100 % — Implied and express rejections of the applications)

(2008/C 209/77)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: A. Distante initially, then G. Cipressa and L. Garofalo, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis Kayser and J. Currall, Agents, and A. Dal Ferro, lawyer)

Re:

Inter alia, an application for annulment of two implied decisions of the office responsible for settling claims of the Joint Sickness Insurance Scheme of the European Communities refusing to pay 100 % of certain medical expenses incurred by the applicant and an application that the Commission be ordered to pay certain medical expenses for the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the applications;*

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

([1]) OJ C 257, 15.10.2005.

Judgment of the Court of First Instance of 9 July 2008 — Coffee Store v OHIM (THE COFFEE STORE)

(Case T-323/05) ([1])

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

(2008/C 209/78)

Language of the case: German

Parties

Applicant: The Coffee Store GmbH (Mannheim, Germany) (represented by: M. Buddeberg, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially T. Eichenberg, and subsequently by G. Schneider, acting as Agents)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 15 June 2005 (Case R 855/2004-2) concerning an application for the registration of the word sign THE COFFEE STORE as a Community trade mark

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders The Coffee Store GmbH to pay the costs.*

(1) OJ C 281, 12.11.2005.

Judgment of the Court of First Instance of 1 July 2008 — Apple Computer v OHIM — TKS-Teknosoft (QUARTZ)

(Case T-328/05) (1)

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

(2008/C 209/79)

Language of the case: English

Parties

Applicant: Apple Computer, Inc. (Cupertino, California (United-States) (represented by: P. Rawlinson, S. Jones, J. Rutter and T.M. D'Souza Culora, solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: TKS-Teknosoft SA (Trélex, Switzerland) (represented by: C. Moreau, T. van Innis and K. Manhaeve, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 27 April 2005 (Case R 416/2004-4) relating to opposition proceedings between TKS-Teknosoft SA and Apple Computer, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action*

2. *Orders Apple Computer Inc. to pay the costs.*

(1) OJ C 281, 18.11.2005.

Judgment of the Court of First Instance of 9 July 2008 — Audi v OHIM (Vorsprung durch Technik)

(Case T-70/06) (1)

(Community trade mark — Application for Community word mark Vorsprung durch Technik — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 — Partial refusal to register the mark by the examiner — Right to a fair hearing)

(2008/C 209/80)

Language of the case: German

Parties

Applicant: Audi AG (Ingolstadt, Germany) (represented by: S.O. Gillert and F. Schiwek, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 December 2005 (Case R 237/2005-2) dismissing in part the appeal against the examiner's decision refusing registration of the word mark Vorsprung durch Technik for goods and services in Classes 9, 12, 14, 25, 28, 37 to 40 and 42

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Audi AG to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

(1) OJ C 96, 22.4.2006.

Judgment of the Court of First Instance of 8 July 2008 — Sviluppo Italia Basilicata v Commission

(Case T-176/06) ([1])

(European Regional Development Fund (FEDER) — Reduction in financial assistance — Application for annulment — Venture capital fund — Deadline for the completion of investment projects — Procedure — Principles of protection of legitimate expectations and legal certainty — Principle of proportionality — Statement of reasons — Action for damages)

(2008/C 209/81)

Language of the case: Italian

Parties

Applicant: Sviluppo Italia Basilicata SpA (Potenza, Italy) (represented by: F. Sciaudone, D. Fioretti, S. Frazzani and R. Sciaudone, lawyers)

Defendant: Commission of the European Communities (represented by: L. Flynn and M. Velardo, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Annulment of Commission Decision C(2006) 1706 of 20 April 2006 reducing the financial assistance from the European Regional Development Fund in favour of an overall allocation for the purpose of implementing measures to support small and medium-sized enterprises operating in the Basilicata Region of Italy, granted under the Community support framework for Community structural assistance in the regions of Italy covered by Objective 1, and application for damages for the harm caused by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Italia Basilicata SpA to pay the costs.*

([1]) OJ C 190, 12.8.2006.

Judgment of the Court of First Instance of 1 July 2008 — Commission v D

(Case T-262/06 P) ([1])

(Appeal — Civil service — Officials — Annulment at first instance of the Commission's decision — Occupational disease — Refusal to recognise the occupational origin of the disease or of the worsening of the disease from which the applicant is suffering — Admissibility of the appeal — Admissibility of the plea in law examined at first instance — Force of res judicata)

(2008/C 209/82)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: J. Currall, Agent)

Other party to the proceedings: D (represented by: J. Van Rossum, S. Orlandi, J.-N. Louis, A. Coolen and É. Marchal, lawyers)

Intervener in support of the applicant: Axa Belgium (represented initially by C. Goossens, P. Meessen and S. Wilmet, then by C. Goossens and P. Meessen, lawyers)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) in Case F-18/05 *D* v *Commission* (not yet published in the ECR), and seeking to have that judgment set aside.

Operative part of the judgment

The Court hereby:

1. *Sets aside the judgment of the European Union Civil Service Tribunal in Case F-18/05 D v Commission;*

2. *Refers the case back to the Civil Service Tribunal;*

3. *Reserves the costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 9 July 2008 — Hartmann v OHIM (E)

(Case T-302/06) ([1])

(Community trade mark — Application for the Community word mark 'E' — Absolute ground for refusal — Lack of distinctive character — Error of law — Lack of real assessment — Article 7(1)(b) of Regulation (EC) No 40/94)

(2008/C 209/83)

Language of the case: German

Parties

Applicant: Paul Hartmann AG (Heidenheim, Germany) (represented by: K. Gründig-Schnelle, lawyer)

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

Re:

Action against the decision of the Fourth Board of Appeal of OHIM of 5 September 2006 (Case R 805/2006-4) concerning an application for registration of the word mark 'E' as a Community trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 September 2006 (Case R 805/2006-4).*

2. *Orders OHIM to pay its own costs as well as those of Paul Hartmann AG.*

([1]) OJ C 310, 16.12.2006

Judgment of the Court of First Instance of 9 July 2008 — Reber v OHIM — Chocoladefabriken Lindt & Sprüngli (Mozart)

(Case T-304/06) ([1])

(Community trade mark — Invalidity proceedings — Community word mark Mozart — Subject-matter of the dispute — Absolute ground for refusal — Descriptive character — Obligation to state the reasons on which a decision is based — Legitimate expectations — Equal treatment — Principle of legality — Article 7(1)(c), Article 51(1)(a), Article 73, first sentence, and Article 74(1), first phrase, of Regulation (EC) No 40/94)

(2008/C 209/84)

Language of the case: German

Parties

Applicant: Paul Reber GmbH & Co. KG (Bad Reichenhall, Germany) (represented by: O. Spuhler, lawyer)

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: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by: R. Lange and G. Hild, lawyers)

Re:

Action brought against the decision of the second Board of Appeal of OHIM of 8 September 2006 (Case R 97/2005-2) relating to entry of Chocoladefabriken Lindt & Sprüngli AG and Paul Reber GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Paul Reber GmbH & Co. KG to pay its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

3. *Orders Chocoladefabriken Lindt & Sprungli AG to bear its own costs.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court of First Instance of 2 July 2008 — Stradivarius España v OHIM — Ricci (Stradivari 1715)

(Case T-340/06) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Stradivari 1715 — Earlier Community figurative Stradivarius trade marks — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 209/85)

Language of the case: Italian

Parties

Applicant: Stradivarius España (Arteixo, Spain) (represented by: G. Marín Raigal and P. López Ronda, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and A. Sempio, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Cristina Ricci (Reggello, Italy) (represented by: P. Roncaglia, G. Lazzaretti, M. Boretto and E. Gavuzzi, lawyers)

Re:

Action brought against the decision of the Board of Appeal of OHIM of 7 September 2006 (Case R 1024/2005-1) concerning opposition proceedings between Stradivarius España, SA and Cristina Ricci.

Operative part of the judgment

The Court hereby:

1. *Dismisses the action;*

2. *Orders Stradivarius España, SA to pay the costs.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court of First Instance of 8 July 2008 — Commission v Economidis

(Case T-56/07 P) ([1])

(Appeals — Staff cases — Officials — Annulment at first instance of the Commission's decision to appoint a head of unit — Rejection of the applicant's candidature — Appointment of another candidate — Determination of the level of the post to be filled in the vacancy notice — Principle of separation of the grade and the function — Appeal well-founded — Dispute capable of being decided — Dismissal of the action)

(2008/C 209/86)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents)

Other party to the proceedings: Ioannis Economidis (Woluwé-Saint-Etienne, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Interveners in support of the appellant: European Parliament (represented by: C. Burgos and A. Lukošiūtė, Agents); Council of the European Union (represented by: M. Simm and I. Sulce, Agents); and Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier and B. Schäfer, Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 14 December 2006 in Case F-122/05 *Economidis* v *Commission*, not yet published in the ECR-SC, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union of 14 December 2006 in Case F-122/05 Economidis v Commission, not yet published in the ECR-SC;*

2. *Dismisses the action brought by Mr Ioannis Economidis before the Civil Service Tribunal in Case F-122/05;*

3. *Orders Mr Economidis and the Commission to bear their own costs both in relation to the proceedings before the Civil Service Tribunal and before this Court;*

4. *Orders the European Parliament, the Council of the European Union and the Court of Auditors of the European Communities to bear their own costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 9 July 2008 — BYK v OHIM (Substance for Success)

(Case T-58/07) ([1])

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

(2008/C 209/87)

Language of the case: German

Parties

Applicant: BYK-Chemie GmbH (Wesel, Germany) (represented by: J. Kroher and E. Hettenkofer, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 9 January 2007 (Case R 816/2006-4) concerning an application for registration of the word sign Substance for Success as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BYK-Chemie GmbH to pay the costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 8 July 2008 — Lancôme v OHIM — CMS Hasche Sigle (COLOR EDITION)

(Case T-160/07) ([1])

(Community trade mark — Invalidity proceedings — Community word mark COLOR EDITION — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 — Legal interest in bringing proceedings — Article 55 of Regulation No 40/94)

(2008/C 209/88)

Language of the case: French

Parties

Applicant: Lancôme parfums et beauté & Cie SNC (Paris, France) (represented by: E. Baud, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: CMS Hasche Sigle (Cologne, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 26 February 2007 (Case R 231/2006-2) concerning invalidity proceedings between CMS Hasche Sigle and Lancôme parfums et beauté & Cie SNC

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Lancôme parfums et beauté & Cie SNC to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

([1]) OJ C 140, 23.6.2007.

Judgment of the Court of First Instance of 2 July 2008 — Ashoka v OHIM (DREAM IT, DO IT!)

(Case T-186/07) ([1])

(Community trade mark — Application for Community word mark DREAM IT, DO IT! — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2008/C 209/89)

Language of the case: English

Parties

Applicant: Ashoka, (Arlington, Virginia, United States of America), represented by: A. Link and A. Jaeger-Lenz, 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 15 March 2007 (Case R 635/2006-1) concerning the registration of the word mark DREAM IT, DO IT! as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ashoka to pay the costs.*

([1]) OJ C 170, 21.7.2007.

Judgment of the Court of First Instance of 1 July 2008 — AWWW v Eurofound

(Case T-211/07) ([1])

(Public procurement — Community tendering procedure — Rejection of tender — Selection criteria — Award criteria — Obligation to state reasons)

(2008/C 209/90)

Language of the case: English

Parties

Applicant: AWWW GmbH ArbeitsWelt-Working World (Göttingen, Germany) (represented by: B. Schreier, V. Wellens, lawyers, and G. Dennis, solicitor)

Defendant: European Foundation for the Improvement of Living and Working Conditions (Eurofound) (represented by: C. Callanan, solicitor)

Re:

Action for annulment of the decision of the Eurofound of 17 April 2007 rejecting the applicant's tender in a community public procurement procedure for the provision of services of information and analysis on quality of work and employment, industrial relations and restructuring covering the European level

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders AWWW GmbH ArbeitsWelt-Working World to pay the costs, including those incurred in the application for interim measures.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court of First Instance of 4 July 2008 — Entrance Services v Parliament

(Case T-333/07) ([1])

(Public services contracts — Community call for tenders procedure — Repair and maintenance of automatic equipment, joinery and similar equipment in European Parliament buildings in Brussels — Rejection of a tender — Serious error in professional matters — Article 93 of Regulation (EC, Euratom) No 1605/2002)

(2008/C 209/91)

Language of the case: French

Parties

Applicant: Entrance Services (Vilvorde, Belgium) (represented by: A. Delvaux and V. Bertrand, lawyers)

Defendant: European Parliament (represented by: M. Ecker and P. López-Carceller, acting as Agents)

Re:

Annulment of the decision of the Parliament rejecting the tender submitted by the applicant and awarding the contract to another tenderer in the call for tenders procedure concerning the repair and maintenance of automatic equipment, joinery and similar equipment in European Parliament buildings in Brussels.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Parliament rejecting the applicant's tender and awarding the contract to another tenderer in the call for tenders procedure concerning the repair and maintenance of automatic equipment, joinery and similar equipment in European Parliament buildings in Brussels.*

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

([1]) OJ C 269, 10.11.2007.

Order of the President of the Court of First Instance of 8 July 2008 — Fondazione Opera S. Maria della Carità and Others v Commission

(Joined Cases T-234/00 R, T-235/00 R and T-283/00 R)

(Application for interim measures — Application for suspension of operation — Admissibility)

(2008/C 209/92)

Language of the case: Italian

Parties

Applicants: Fondazione Opera S. Maria della Carità (Venice, Italy); Codess Sociale Cooperativa sociale Soc. Coop. and Others. (Venice, Italy) (represented by: F.G. Gaiulli and I. Gianniotti, lawyers); and Metropolitan Srl e Comitato 'Venezia Vuole Vivere' (Venice, Italy) (represented by: A Bianchini. lawyer)

Defendant: Commission of the European Communities (represented by: E. Righini and V. Di Bucci, agents)

Re:

Application for suspension of operation of Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws 30/1997 and 206/1995 (OJ L 150, p. 50).

Operative part of the order

1. *The cases T-234/00 R, T-235/00 R and T-283/00 R, while themselves all remaining joined, are separated from the other cases referred to in the order of the President of the Court of First Instance of 2 July 2008.*

2. *The applications for interim measures are rejected.*

3. *The costs are reserved.*

Order of the Court of First Instance of 20 June 2008 — Leclercq v Commission

(Case T-299/06) ([1])

(Action for annulment — Applicant's failure to act — No need to adjudicate)

(2008/C 209/93)

Language of the case: French

Parties

Applicant: Sylvie Leclercq (Brussels, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and P. Costa de Oliveira, acting as Agents)

Intervener in support of the applicant: Republic of Finland (represented by: J. Heliskoski, Agent)

Re:

Annulment of the decision of the Commission of 27 July 2006 refusing, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43) to grant the applicant access to certain documents

Operative part of the order

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

2. *Ms Sylvie Leclercq is ordered to bear her own costs and to pay those of the Commission. The Republic of Finland shall bear its own costs.*

([1]) OJ C 326, 3.12.2006.

Order of the Court of First Instance of 17 June 2008 — FMC Chemical and Arysta Lifesciences v EFSA

(Case T-311/06) ([1])

(Action for annulment — Action for damages — Directive 91/414/EEC — Plant protection products — Opinion of the European Food Safety Authority — Non-actionable measure — Preparatory measure — Inadmissibility)

(2008/C 209/94)

Language of the case: English

Parties

Applicants: FMC Chemical SPRL (Brussels, Belgium) and Arysta Lifesciences SAS (Noguères, France) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented initially by: A. Cuvillier and D. Detken, subsequently by A. Cuvillier and S. Gabbi, Agents)

Intervener in support of the applicant: European Crop Protection Association (ECPA), (Brussels, Belgium) (represented by D. Waelbroeck and N. Rampal, lawyers)

Intervener in support of the defendant: Commission of the European Communities (represented by B. Doherty, Agent)

Re:

APPLICATION for (i) annulment of the opinion of EFSA of 28 July 2006 on the assessment of the active substance carbofuran under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the marked (OJ 1991 L 230, p. 1), and (ii) compensation for the damage sustained

Operative part of the order

1. *The action is dismissed.*

2. *FMC Chemical SPRL, Arysta Lifesciences SAS, the European Food Safety Authority (EFSA), the European Crop Protection Association (ECPA) and the Commission shall each bear their own costs.*

([1]) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 17 June 2008 — FMC Chemical v EFSA

(Case T-312/06) ([1])

(Action for annulment — Action for damages — Directive 91/414/EEC — Plant protection products — Opinion of the European Food Safety Authority — Non-actionable measure — Preparatory measure — Inadmissibility)

(2008/C 209/95)

Language of the case: English

Parties

Applicant: FMC Chemical SPRL (Brussels, Belgium) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented initially by: A. Cuvillier and D. Detken, and subsequently by A. Cuvillier and S. Gabbi, Agents)

Intervener in support of the applicant: European Crop Protection Association (ECPA), (Brussels, Belgium) (represented by D. Waelbroeck and N. Rampal, lawyers)

Intervener in support of the defendant: Commission of the European Communities, (represented by B. Doherty, Agent)

Re:

APPLICATION for (i) annulment of the opinion of EFSA of 28 July 2006 on the assessment of the active substance carbosulfan under 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), and (ii) compensation for the damage sustained.

Operative part of the order

1. *The action is dismissed.*

2. *FMC Chemical SPRL, the European Food Safety Authority (EFSA), the European Crop Protection Association (ECPA) and the Commission shall each bear their own costs.*

([1]) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 17 June 2008 — Dow AgroSciences v EFSA

(Case T-397/06) [1]

(Action for annulment — Action for damages — Directive 91/414/EEC — Plant protection products — Opinion of the European Food Safety Authority — Non-actionable measure — Preparatory measure — Inadmissibility)

(2008/C 209/96)

Language of the case: English

Parties

Applicant: Dow AgroSciences Ltd (Hitchin, Hertfordshire, United Kingdom) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented initially by: A. Cuvillier and D. Detken, and subsequently by A. Cuvillier and S. Gabbi, Agents)

Intervener in support of the Defendant: Commission of the European Communities (represented by: L. Parpala and B. Doherty, Agents)

Re:

APPLICATION for (i) annulment of the opinion of EFSA of 28 July 2006 on the assessment of the active substance haloxyfop-R under 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), and (ii) compensation for the damage sustained.

Operative part of the order

1. *The action is dismissed.*

2. *Dow AgroSciences Ltd, the European Food Safety Authority (EFSA) and the Commission shall each bear their own costs.*

[1] OJ C 42 of 24.2.2007.

Order of the President of the Court of First Instance of 26 June 2008 — VDH Projektentwicklung and Edeka Rhein-Ruhr v Commission

(Case T-185/08 R)

(Interim measures — Inadmissibility)

(2008/C 209/97)

Language of the case: German

Parties

Applicants: VDH Projektentwicklung GmbH (Erkelenz, Germany) and Edeka Handelsgesellschaft Rhein-Ruhr mbH (Moers, Germany) (represented by: C. Antweiler, lawyer)

Defendant: Commission of the European Communities (represented by: R. Sauer, D. Kukovec and O. Weber, Agents)

Re:

Application for interim measures under Article 243 EC in relation to an action for failure to act against the Commission.

Operative part of the order

The President of the Court:

1. *Dismisses the application for interim measures as inadmissible;*

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

Appeal brought on 2 May 2008 by Erika Krcova against the judgment of the Civil Service Tribunal delivered on 18 October 2007 in Case F-112/06, Krcova v Court of Justice

(Case T-498/07 P)

(2008/C 209/98)

Language of the case: French

Parties

Appellant: Erika Krcova (Trnava, Slovakia) (represented by J. Rooy, lawyer)

Other party to the proceedings: Court of Justice of the European Communities

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 18 October 2007 in Case F-112/06 *Krcova* v *Court of Justice*, not yet published in the ECR,

— Annul the decision of the Court of Justice of the European Communities of 17 October 2005 by which the appellant was dismissed following her probationary period and, in so far as necessary, the decision of 16 September 2005 to extend her probationary period by two months, and the report on the probationary period of 12 September 2005 recommending her dismissal,

— Order the defendant to pay the costs incurred before the Civil Service Tribunal and before the Court of First Instance.

Pleas in law and main arguments

By the present appeal, the appellant seeks annulment of the judgment of the Civil Service Tribunal (CST) of 18 October 2007 in Case F-112/06 *Krcova* v *Court of Justice* dismissing the action by which the appellant sought annulment of the decision of the Court of Justice dismissing the appellant at the end of her probationary period.

The appellant claims that the CST ruled *ultra petita* and incorrectly interpreted Article 34 of the Staff Regulations of the European Communities.

Action brought on 12 May 2008 — Rui Manuel Alves dos Santos v Commission

(Case T-184/08)

(2008/C 209/99)

Language of the case: Portuguese

Parties

Applicant: Rui Manuel Alves dos Santos (Rominha, Alvaiázere, Portugal) (represented by A. Marques Fernandes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the European Commission's decision, adopted in connection with Case 89 0488 P1, notified to the applicant on 3 March 2008, deciding that the applicant must be required to repay the sum of EUR 25 485,00, equivalent to PTE 5 109 287.

Pleas in law and main arguments

The training programme was carried out in full.

The auditors used criteria far removed from reality and for reasons quite foreign to the applicant they treated costs as ineligible.

All the expenditure ought to have been regarded as eligible and taken into consideration in the final account.

After the lapse of twenty years, repayment of any amount is flagrant injustice and runs counter to the fundamental principles of proportionality and of certainty for citizens before the law and the institutions.

Action brought on 23 May 2008 — Polson and Others v Commission

(Case T-197/08)

(2008/C 209/100)

Language of the case: English

Parties

Applicants: Magnus Polson (Lerwick, United Kingdom), Garry Sandison (Lerwick, United Kingdom), Andrew Anderson (Whalsay, United Kingdom), Ian Johnston (Lerwick, United Kingdom) (represented by: R. Murray, Solicitor, R. Thompson, QC)

Defendant: Commission of the European Communities

Form of order sought

— annul Articles 1(2), 3, 4 and 5 of Commission Decision State Aid No C 39/06 (ex NN 94/2005) of 13 November 2007 concerning the First Time Shareholders Scheme implemented in the United Kingdom;

— order the Commission to pay costs of the proceedings.

Pleas in law and main arguments

In the present case, the applicants seek partial annulment of Commission Decision 2008/166/EC, State Aid No C 39/06 (ex NN 94/2005) of 13 November 2007 concerning the First Time Shareholders Scheme implemented by the United Kingdom ([1]). In the contested decision the Commission found that the aid was incompatible with the common market as far as it concerned aid granted for the first time acquisition of a share in a second-hand fishing vessel and required the United Kingdom to recover the aid granted. The applicants are the beneficiaries of the aid to be recovered.

The applicants seek annulment of the contested decision on the following grounds:

— The Commission erred in law in finding that all payments made for first time acquisition of a share in a second-hand fishing vessel were incompatible with the common market and had to be repaid; the applicants claim that the awarded grants fall within the scope of Commission Regulation 875/2007 ([2]) and should be therefore considered *de minimis* aids compatible with the common market; they claim that Articles 1(2) and Articles 3 to 5 of the contested decision unlawfully extend to beneficiaries of aid who complied in substance with the relevant Community guidelines;

— The Commission erred in law in finding that the recovery of these payments would be compatible with Article 14(1) of Council Regulation (EC) No 659/1999 ([3]) as well as with the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

([1]) OJ 2008 L 55, p. 27.
([2]) Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004, OJ 2007 L 193, p. 6.
([3]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 9 June 2008 — Habanos v OHIM — Tabacos de Centroamérica

(Case T-207/08)

(2008/C 209/101)

Language in which the application was lodged: Spanish

Parties

Applicant: Corporación Habanos, SA (Ciudad de la Habana, Cuba) (represented by: V. Gil Vega and A. Luiz López, 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: Tabacos de Centroamérica, SL (Pozuelo de Alarcón, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the OHIM of 31 March 2008, and declare that there is a similarity, and a likelihood of confusion, between the composite mark KIOWA and the earlier composite marks COHIBA, which designate identical profits, and a intent, on the part of the applicant for registration, of undue profit from/detriment to the distinctive character and or the reputation of the earlier COHIBA marks cited, and thus refuse registration of the Community mark No 3.963.931 KIOWA (composite); or, in the alternative, annul the decision of the OHIM referred to, and order that the file be sent back to the Second Board of Appeal of the OHIM so that the claims and evidence relating to Article 8(5) of Regulation 40/94 be analysed and examined, and

— order OHIM to pay the costs of all instances, including the fees of the applicant's representatives.

Pleas in law and main arguments

Applicant for a Community trade mark: Tabacos de Centroamérica, SL

Community trade mark concerned: Figurative mark 'KIOWA' in respect of goods in Class 34 (application No 3.963.931)

Proprietor of the mark or sign cited in the opposition proceedings: Corporación Habanos, SA, which operates under the business name of Habanos, SA.

Mark or sign cited in opposition: Figurative mark 'COHIBA' (Community mark No. 3.323.292), word mark 'COHIBA' (Spanish mark No 1.271.173) and the figurative mark 'COHIBA' (Spanish mark No 2.052.344) in respect of products in Class 34.

Decision of the Opposition Division: Dismissal of the opposition.

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

Pleas in law: In particular, a high level of similarity between the opposing marks, resulting in a risk of confusion.

Action brought on 11 June 2008 — Bundesverband Deutscher Milchviehhalter and Others v Council

(Case T-217/08)

(2008/C 209/102)

Language of the case: German

Parties

Applicants: Bundesverband Deutscher Milchviehhalter eV (Bonn Germany), Romuald Schaber (Petersthal, Germany), Stefan Mann (Eberdorfergrund, Germany) and Walter Peters (Körchow, Germany) (represented by: W. Renner and O. Schniewind, lawyers)

Defendant: Council of the European Union

Form of order sought

— declare that Council Regulation (EC) No 248/2008 of 17 March 2008 amending Regulation (EC) No 1234/2007 as regards the national quotas for milk (OJ 2008 L 76, p. 6) is invalid;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant brings an action against Regulation (EC) No 248/2008 ([1]) by which the national quotas for milk laid down in Annex IX to Regulation (EC) No 1234/2007 ([2]) until 1 August 2008 to facilitate greater milk production in the Community and to meet the new requirements of the market in milk were increased by 2 %.

In support of its action the applicant claims, first, that the increase in the national quotas for milk is a misuse of discretionary powers since it pursues grounds other than those indicated in the recitals.

In addition the regulation being challenged infringes the EC Treaty, as Article 37(2) EC is applied erroneously as a provision authorising disregard of the objectives set out in Article 33(1)(a) and (b) EC, the environmental protection requirements within the meaning of Article 6 EC has been unlawfully disregarded and the duty of conservation and safeguarding of cultural heritage in the Community under Article 151 EC has been infringed.

Furthermore, there is an infringement of the applicant's freedom to choose a profession and to own property and of the principle of non-discrimination.

([1]) Council Regulation (EC) No 248/2008 of 17 March 2008 amending Regulation (EC) No 1234/2007 as regards the national quotas for milk (OJ 2008 L 76, p. 6).

([2]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

Action brought on 18 June 2008 — Szomborg v Commission

(Case T-228/08)

(2008/C 209/103)

Language of the case: Polish

Parties

Applicant: Grzegorz Szomborg (Jastarnia, Poland) (represented by R. Nowosielski, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declare that the Commission failed to act, in breach of its obligations under Article 27 of Council Regulation (EC) No 2187/2005 of 21 December 2005 ([1]), in that it did not publish a scientific assessment of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans and did not present its findings to the European Parliament and the Council;

— order the Commission to bear its costs;

— order the applicant's costs to be reimbursed.

Pleas in law and main arguments

In accordance with Article 27 of Council Regulation No 2187/2005 the Commission was obliged to ensure by 1 January 2008 that a scientific assessment was conducted of the effects of using in particular gillnets, trammel nets and entangling nets on cetaceans and its findings presented to the European Parliament and the Council. In connection with the failure to present such a report within the prescribed period, the applicant called on the Commission to act, by letter of 25 February 2008. In reply to the applicant's call to act, the Commission asserted that such a scientific assessment had not yet been presented as a result of the lack of cooperation by other parties.

Considering that in those circumstances the Commission's failure to comply with its obligation under Article 27 of Council Regulation No 2187/2005 is beyond dispute, the applicant brought the present action for failure to act under Article 232 EC.

([1]) Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98 (OJ 2005 L 349, p. 1).

Action brought on 17 June 2008 — Luxembourg v Commission

(Case T-232/08)

(2008/C 209/104)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: F. Probst, acting as Agent and M. Theisen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul decision C(2008) 1283 of the Commission of the European Communities of 8 April 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as is excludes from Community financing for the financial years 2004-2005 the expenditure of paying agencies in the amount of EUR 949 971,51 on the ground that it does not comply with Community rules;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision 2008/321/EC of 8 April 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) ([1]) in so far as is excludes certain expenditure incurred by Luxembourg for the years 2004-2005.

As regards the planning of on-the-spot checks of recipients, the applicant submits that the Commission wrongly complained that it had carried out the majority of the checks in the same period of the year instead of spreading them over the whole year and without taking into account the optimal period for checking certain commitments.

In addition, the applicant claims that the on-the-spot checks carried out effectively related to the entirety of the recipient's commitments and obligations from the beginning of the commitment period, contrary to what the Commission claimed in the pre-litigation stage before the conciliation body.

Concerning the documentation of the on-the-spot checks, the applicant takes the view that the mere fact that the control reports are not sufficiently detailed, as claimed by the Commission in the pre-litigation stage, does not mean ipso facto that the controls were not carried out and does not prove that there is an actual financial risk such as to give rise to the application of a flat rate correction.

Finally, the applicant submits that the non-application of sanctions where there is an over-declaration by the beneficiaries could not constitute the basis for a flat rate correction of 5 %, since the actual level of irregular expenditure can be determined exactly. Moreover, according to the applicant the amount of irregular expenditure is extremely low in relation to the total amount paid by the Community.

([1]) Notified under document number C(2008) 1283, OJ 2008 L 109, p. 35.

Action brought on 10 June 2008 — EuroChem MCC v Council

(Case T-234/08)

(2008/C 209/105)

Language of the case: English

Parties

Applicant: EuroChem Mineral and Chemical Company OAO (EuroChem MCC) (Moscow, Russia) (represented by: P. Vander Schueren and B. Evtimov, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 238/2008 of 10 March 2008 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia, insofar as it imposes an anti-dumping duty on the applicant, its manufacturing subsidiaries and related companies, indicated in paragraph 10 of the contested regulation;

— Order the competent institutions, in light of the gravity of breaches of Community law found, to discontinue the imposition of the anti-dumping duty with respect to the applicant and its manufacturing subsidiaries and related companies, until the Community institutions have adopted the measures necessary to comply with the Court's judgment;

— Order the Council to pay the costs of and occasioned by these proceedings.

Pleas in law and main arguments

The applicant, a Russian producer and exporter of solutions of urea and ammonium nitrate, seeks the annulment, pursuant to Article 230 EC, of Council Regulation (EC) No 38/2008 ([1]) ('the contested regulation').

In support of its application, the applicant puts forward one main ground for annulment, subdivided in three limbs. The applicant submits that the Community institutions wrongly established the normal value for the applicant, leading to its artificial increase; carried out a wrong comparison with the export price and hence reached an erroneous finding of dumping, thereby breaching Articles 1 and 2 of the Basic Regulation ([2]), while committing a series of manifest errors of assessment and violating fundamental principles of Community law. These breaches directly led, according to the applicant, to the unwarranted termination of the interim review without amendment of the anti-dumping measure with respect to the applicant.

More specifically, the applicant claims, on the basis of its first plea, that the Community institutions erred in law and violated Article 2(3) and (5) of the Basic Regulation, by disregarding a major part of the applicant's costs of production as being unreliable and/or by *de facto* applying a non-market economy methodology for establishing the major part of the applicant's normal value.

On the basis of its second plea, the applicant claims that the Commission, once having decided to proceed with the gas adjustment, violated Article 2(5), second sentence, of the Basic Regulation and/or made a manifest error of appreciation. Moreover, the applicant argues that the Commission showed lack of reasoning by implementing the gas adjustment on the basis of the intra-community price of gas at Waidhaus Germany and by failing to deduct from the amount of adjustment the 30 % Russian export duty on Russian gas.

On the basis of its third plea, the applicant contends that the Community institutions violated Article 2(10) of the Basic Regulation and made a manifest error of assessment of the facts by deducting from the applicant's export price the first independent customer selling, general and administrative expenses and commission in respect of related companies, which are general parts of the applicant's single economic entity and integrated sales department.

([1]) Council Regulation (EC) No 238/2008 of 10 March 2008 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Russia (OJ 2008 L 75, p. 14).

([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 9 June 2008 — Acron and Dorogobuzh v Council

(Case T-235/08)

(2008/C 209/106)

Language of the case: English

Parties

Applicants: Acron OAO (Veliky Novgorod, Russia) and Dorogobuzh OAO (Verkhnedneprovsky, Russia) (represented by: P. Vander Schueren and B. Evtimov, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 236/2008 of 10 March 2008 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia, insofar as it imposes an anti-dumping duty on the applicants and their related companies, as defined in paragraph 11 of the contested regulation;

— Order the competent institutions, in light of the gravity of breaches of Community law found, to discontinue the imposition of the anti-dumping duty with respect to the applicants and their related companies, until the Community institutions have adopted the measures necessary to comply with the Court's judgment;

— Order the Council to pay the costs of and occasioned by these proceedings.

Pleas in law and main arguments

The applicants, Russian producers and exporters of ammonium nitrate, seek the annulment, pursuant to Article 230 EC, of Council Regulation (EC) No 236/2008 ('the contested regulation') ([1]).

In support of their application, the applicants put forward a single ground for annulment, divided into two pleas. The applicants submit that the Community institutions wrongly established the normal value for the applicants, leading to its artificial increase; hence reached an erroneous finding of dumping, thereby breaching Articles 1 and 2 of the Basic Regulation ([2]), committing a series of manifest errors of assessment and violating fundamental principles of Community law. These breaches directly led, according to the applicants, to the unwarranted termination of the partial interim review without amendment of the anti-dumping measure with respect to the applicants.

More specifically, the applicants claim, on the basis of their first plea, that the Community institutions erred in law and violated Article 2(3) and (5) of the Basic Regulation, by disregarding a major part of the applicants' costs of production as being unreliable and/or by *de facto* applying a non-market economy methodology for establishing the major part of the applicants normal value.

Furthermore, the applicants submit that once having decided to proceed with the gas adjustment, the Commission violated Article 2(5), second sentence and/or made manifest error of appreciation and showed a lack of reasoning, by implementing the gas adjustment on the basis of the intra-Community price of gas at Waidhaus Germany and failing to deduct from the amount of adjustment the 30 % Russian export duty on Russian gas.

The applicants submit that had the dumping margin been determined correctly, in accordance with the Basic Regulation and fundamental principles of Community law, the Community institutions would have found absence of or *de minimis* dumping, and the anti-dumping measures could have been repealed or significantly amended with respect to the applicants and their related companies.

(1) Council Regulation (EC) No 236/2008 of 10 March 2008 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 2008 L 75, p. 1).

(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 13 June 2008 — Comtec Translations v Commission

(Case T-239/08)

(2008/C 209/107)

Language of the case: English

Parties

Applicant: Comtec Translations Ltd (Leamington Spa, United Kingdom) (represented by: L. R. Scott and E. Bentley, Solicitors)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision letter and remit the applicant's bid for reconsideration;

— Order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By the present action the applicant seeks the annulment of the Commission's Decision of 16 April 2008 rejecting its tender submitted in the framework of the tender procedure for the conclusion of framework contracts for the translation of documents relating to the policies and administration of the European Union from all EU official languages into English (call for tender No FL-GEN07-EN) (1). The reason given for not retaining the applicant's tender was insufficient technical or professional capacity and lack of, or insufficient proven professional experience.

In support of its action the applicant puts forward a single plea in law. It claims that the administrative procedure has been conducted irregularly and that its procedural rights have not been observed. The applicant submits that it has successfully provided translation into English within the Commission for several years in the framework of contracts previously signed and regularly renewed for which it has received satisfactory rankings regarding the quality of the services. The applicant claims that the evaluation committee's decision took no or no proper account of the successful performance of the applicant in submitting translation assignments to the Commission for 12 years neither it took into consideration the documents evidencing the technical and professional qualifications of the applicant's staff, quality managers and sub-contractors.

(1) Contract notice published : OJ 2007/S 180 — 219517.

Action brought on 16 June 2008 — Procter & Gamble v OHIM — Laboratorios Alcala Farma (oli)

(Case T-240/08)

(2008/C 209/108)

Language in which the application was lodged: English

Parties

Applicant: The Procter & Gamble Company (Cincinnati, United States) (represented by: N. Beckett and T. Scourfield, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Alcala Farma SL (Alcala de Henares, Spain).

Form of order sought

— Annul the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 April 2008 in case R 1481/2007-2 and of the Opposition Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 July 2007 in opposition proceedings No B 893 216;

— allow the applicant's opposition to the registration as a Community trade mark of the application dated 4 October 2004 for the figurative mark 'oli' for goods in classes 3 and 5;

— order OHIM to refuse registration of the said application dated 4 October 2004: and

— order the other parties hereto 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 'oli' for goods in classes 3 and 5 — application No 4 059 176

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

Mark or sign cited: The Community trade marks 'OLAY' for goods in classes 3 and 5

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of article 8(1)(b) of Council Regulation No 40/94 as the trade marks concerned are similar and the use of the trade mark applied for is likely to cause confusion.

Action brought on 20 June 2008 — CBI and Abisp v Commission

(Case T-241/08)

(2008/C 209/109)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul the confirmatory decision of the Commission;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

The pleas in law and main arguments relied on by the applicants are identical to those submitted in Case T-128/08 *CBI and Abisp* v *Commission* ([1]).

([1]) OJ 2008 C 142, p. 30.

Action brought on 23 June 2008 — Ravensburger v OHIM — Educa Borras (EDUCA Memory game)

(Case T-243/08)

(2008/C 209/110)

Language in which the application was lodged: English

Parties

Applicant: Ravensburger AG (Ravensburg, Germany) (represented by: G. Würtenberger, lawyer, and R. Kunze, lawyer and Solicitor)

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

Other party to the proceedings before the Board of Appeal: Educa Borras SA (Sant Quirze del Valles, 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 8 April 2008 in case R 597/2007-2; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'EDUCA Memory game' for goods in class 28 — Community trade mark registration No 495 036

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

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

Trade mark right of the party requesting the declaration of invalidity: The international word trade mark 'MEMORY' registration No R 393 512; the Benelux word trade mark 'MEMORY' registration No 38 328; the German word trade mark 'MEMORY' registration No 964 625

Decision of the Cancellation Division: Invalidity of the Community trade mark concerned

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division

Pleas in law: (i) infringement of Article 8(1) of Council Regulation No 40/94 as the Board of Appeal erred in concluding that the potentially colliding element in the Community trade mark concerned is of purely descriptive nature and thus cannot cause a risk of confusion with the applicant's earlier trade marks; (ii) infringement of Article 8(5) of Council Regulation No 40/94 as the Board of Appeal erred in requiring that applicant prove a risk of confusion; (iii) infringement of Article 74 of Council Regulation No 40/94 as the Board of Appeal did not properly take into account the labelling practice of the relevant market; (iv) infringement of Article 75 of Council Regulation No 40/94 as the Board of Appeal failed to convene a hearing, as requested by the applicant.

Action brought on 20 June 2008 — C-Content v Office for Official Publications of the European Communities

(Case T-247/08)

(2008/C 209/111)

Language of the case: English

Parties

Applicant: C-Content BV ('s Hertogenbosch, the Netherlands) (represented by: M. Meulenbelt, advocaat)

Defendant: Office for Official Publications of the European Communities

Form of order sought

— Declare that the Office for Official Publications of the European Communities (Publications Office) infringed Community law in relation to tenders and contracts set out in the present application;

— Order the Publications Office to compensate the costs and damages incurred by the applicant, as set out in the present application;

— Order the Publications Office to pay the applicant's costs.

Pleas in law and main arguments

In the present case, the applicant is bringing an action for non-contractual liability arising from the damages it claims to have incurred as a result of the alleged irregularities committed by the Office for Official Publications of the European Communities (Publications Office) within certain tender procedures related to electronic publication services.

The applicant puts forward a number of grounds for liability for every contested tender procedure.

The applicant claims the Publications Office infringed the principle of good administration and duty diligence as well as the principles of equal treatment, transparency and legitimate expectations:

1. In tender No 2034 for the production and duplication of CD-ROMs containing the L and C series of the Official journal: by awarding the tender to a competitor of the applicant, in spite of the applicant having submitted the economically most advantageous bid; by amending the key specifications and lowering tender requirements during the tender procedure or after the successful tenderer had been selected without informing other competitors; by refusing to carry out a proper review of the tender results when objections concerning the outcome of the tender were brought to the Publications Office's attention; by failing to organise a new tender instead of continuing contract No 2034 on the basis of significantly lowered standards.

2. In tender No 6019 for the provision of services in relation to electronic publications, in particular the Supplement (S) of the Official Journal, after the accession of 10 new member States: by cancelling the tender on the basis of Article 101 of Regulation 1605/2002 ([1]) for reason of disclosure of confidential information; the applicant submits that the said disclosure could not have influenced the tender results as the information was already in the public knowledge and the bids had already been submitted by then. Moreover, the applicant claims that there was no proper motivation given by the Publications Office. It finally submits that the cancellation caused significant damage to the applicant which had submitted the most advantageous of the two remaining bids within the cancelled tender.

3. In tender No 1695 for the provision of services in relation to electronic publications, in particular the Supplement (S) of the Official Journal: by using the extension of Contract No 1695 to amend it. The applicant claims that there was no legal basis for the Publications Office to proceed or to authorise the extension of the Contract and, in consequence, to amend it by changing the subcontractor. The applicant submits that the Publications Office failed to seriously negotiate or investigate the possibility of maintaining the applicant as the existing main subcontractor during the remaining period.

The applicant claims that as a direct result of the abovementioned infringements, it lost its position as the Publications Office's software provider and incurred significant costs, damages and loss of profits and it considers the Publications Office to be liable to compensate them.

([1]) 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).

Action brought on 24 June 2008 — Coin v OHIM — Dynamiki Zoi (FITCOIN)

(Case T-249/08)

(2008/C 209/112)

Language in which the application was lodged: English

Parties

Applicant: Coin SpA (Mestre, Venezia, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Dynamiki Zoi Anonymi Etairia (Peristeri, Greece)

Form of order sought

— Alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 April 2008 in case R 1429/2007-1;

— Reject Community trade mark No 3 725 298 'FITCOIN'; and

— Order the other parties to pay the costs, including those of the OHIM opposition and appeal proceedings.

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 word mark 'FITCOIN' for goods and services in classes 16, 25, 28, 35, 36 and 41 — application No 3 725 298

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

Mark or sign cited: The Italian trade mark 'coin' registration No 160 126 for goods in class 25; the Italian trade mark 'coin' registration No 253 233 for goods and services in classes 16, 25, 28, 35, 36 and 41; the Italian trade mark 'coin' registration No 240 305 for goods and services in classes 16, 25, 28, 35, 36 and 41; the Italian trade mark 'coin' registration No 169 548 for goods and services in classes 16, 25, 28, 35, 36 and 41, extended to Benelux, France, Hungary, Austria and Portugal; the Italian trade mark 'coin' registration No 240 286 for goods and services in class 25, extended to Benelux, France, Hungary and Austria; Community trade mark 'coin' registration No 109 827 for goods and services in classes 16, 25, 28, 35; international trade mark 'coin' registration No R 381 015 for goods and services in classes 16, 25, 28, 35, 36 and 41, extended to Benelux, Germany, Spain, France, Hungary, Austria, Portugal and Slovenia.

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 of Council Regulation No 40/94 as the trade marks concerned are visually and phonetically similar and the goods and services covered by the trade marks concerned are identical; infringement of Article 8 of Council Regulation No 40/94 as the use of the trade mark applied for is likely to cause confusion.

Action brought on 18 June 2008 — Batchelor v Commission

(Case T-250/08)

(2008/C 209/113)

Language of the case: English

Parties

Applicant: Edward William Batchelor (Brussels, Belgium) (represented by: F. Young, Solicitor, A. Barav, Barrister, and D. Reymond, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the implied negative decision deemed, pursuant to Article 8(3) of the Access Regulation, to have been made by the European Commission on 9 April 2008 and the express negative decision made by the Commission on 16 May 2008, relating to a request for access to documents presented pursuant to Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43);

— Order the Commission to pay its own costs and the costs incurred by the applicant in relation to these proceedings.

Pleas in law and main arguments

This application for annulment under Article 230 EC is directed against the Commission's implied decision of 9 April 2008 and its express decision of 16 May 2008, made pursuant to Regulation (EC) No 1049/2001 ([1]) ('the Access Regulation'), by which the Commission rejected the applicant's request for access to documents relating to the notification of measures taken under Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

The applicant claims that the contested decision violates Article 253 EC and Articles 7(1) and 8(1) of the Access Regulation and thus is vitiated by an infringement of an essential procedural requirement, namely, by failing to give sufficient reasons for denial of access to the documents requested. The applicant further submits that, in denying access to the documents requested, the contested decision violates Article 255 EC and Articles 1(a), 2(1) and (3), 4(1) to (6) of the Access Regulation. In particular, the applicant contends that the contested decision infringes the Access Regulation in holding that the exceptions under the second paragraph of Article 4(3) and of the first and third indents of Article 4(2) thereof applied and, finally, that the contested decision infringes Article 4(6) of the Access Regulation in failing to provide reasons for the refusal of partial access to the documents requested.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 26 June 2008 — Tipik v Commission

(Case T-252/08)

(2008/C 209/114)

Language of the case: French

Parties

Applicant: Tipik Communication Agency SA (Brussels, Belgium) (represented by: E. Gillet, L. Levi and C. Dubois, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission, the date of which is unknown, by which it was decided to reject the tender submitted by the applicant in the award procedure for the public service contract concerning, inter alia, the EUROPA Internet site (PO/2007-31/C2);

— Annul the decision of the Commission, the date of which is unknown, by which it was decided to award that public contract to the consortium led by the company *European Service Network*;

— Order the defendant to indemnify the applicant for the loss suffered by reason of the adoption of those irregular decisions, which amounts to EUR 5 063 773,29, together with late-payment interest to run from the date of the judgment to be delivered by the Court of First Instance until payment in full. The rate of late-payment interest to be applied is to be calculated on the basis of the rate fixed by the European Central Bank for main refinancing operations, applicable during the period concerned, increased by three points;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the decision of the Commission to reject its tender submitted in the context of the invitation to tender for the contract entitled 'Communication via EUROPA — the official website of the EU and other online and printed information and communication products managed by the Directorate-General Communication of the European Commission — editorial, graphical and technical and translation assistance in design, production and maintenance' (OJ 2007/S 193-234221), and the decision to award the contract to the consortium led by European Service Network. In addition, the applicant seeks compensation for the loss allegedly caused by the errors committed by the Commission.

In support of its action, the applicant submits, principally, that the Commission should have excluded the consortium led by European Service Network from the procedure for the award of the contract, since one of the members of that consortium had been declared to be in serious breach of its contractual obligations in respect of a contract intended for services of OPOCE similar to those which are the subject-matter of the contract at issue.

In the alternative, the applicant submits that the Commission has committed a manifest error of assessment when examining the tender submitted by the consortium led by European Service Network in that it awarded to it the same mark as the applicant for the quality criterion, although it could not be certain as to the capacity of that consortium to supply satisfactory technical solutions in that regard.

The applicant submits that those irregularities are such as to render the Commission liable since, on the one hand, it committed an error and, on the other, it seriously and manifestly disregarded the limits imposed on its discretion.

Action brought on 16 June 2008 — Eugenia Montero Padilla v OHIM — Padilla Requena (JOSE PADILLA)

(Case T-255/08)

(2008/C 209/115)

Language in which the application was lodged: Spanish

Parties

Applicant: Eugenia Montero Padilla (Madrid, Spain) (represented by: G. Aguillaume Gandasegui and P. Linde Puelles, 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: José María Padilla Requena

Form of order sought

Annul OHIM's decision of 1 March 2008 and order that the application for registration be refused in respect of Community trade mark 'JOSE PADILLA' for Classes 9a, 23a and 41a.

Pleas in law and main arguments

Applicant for a Community trade mark: Eugenia Montero Padilla

Community trade mark concerned: Word mark 'JOSE PADILLA' (registration application No 2.844.066) for goods and services in Classes 9, 25 and 41.

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

Mark or sign cited in opposition: Word mark 'JOSE PADILLA' (registration application No 2.844.066) for goods and services in Class 41.

Decision of the Opposition Division: Dismissal of the opposition

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

Pleas in law: Incorrect application of Articles 4 and 7(1)(a),(b),(c) and (f) Article 8(1) and (5) of Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 24 June 2008 — Wrigley v OHIM — Mejerigaarden (POLAR ICE)

(Case T-256/08)

(2008/C 209/116)

Language in which the application was lodged: English

Parties

Applicant: Wm. Wrigley Jr. Company (Chicago, United States) (represented by: M. Kinkeldey, S. Schäffler and A. Bognár, lawyers)

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

Other party to the proceedings before the Board of Appeal: Mejerigaarden Holding A/S (Thisted, Denmark)

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 15 April 2008 in case R 845/2006-2; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'POLAR ICE' for goods in classes 3, 5 and 30

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: Community trade mark registration No 1 273 564 of the figurative mark 'Polar is' for goods in class 30; Danish trade mark registration No VR 1971 03528 of the word mark 'POLAR IS' for goods in class 30; Danish trade mark registration No VR 1994 07979 of the word mark 'POLAR MAXI' for goods in class 30

Decision of the Opposition Division: Rejection of the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1) of Council Regulation No 40/94 as the conflicting trade marks show relevant visual, phonetic and conceptual dissimilarities to avoid any likelihood of confusion.

Order of the Court of First Instance of 4 July 2008 — Grammatikopoulos v OHIM — National Academy of Recording Arts and Sciences (GRAMMY)

(Case T-20/06) ([1])

(2008/C 209/117)

Language of the case: English

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

([1]) OJ C 131, 3.6.2006.

Order of the Court of First Instance of 2 July 2008 — UPS Europe and UPS Deutschland v Commission

(Case T-100/07) ([1])

(2008/C 209/118)

Language of the case: English

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

([1]) OJ C 129, 9.6.2007.

Order of the Court of First Instance (Fifth Chamber) of 19 June 2008 — Lodato Gennaro & C. v Commission

(Case T-417/07) ([1])

(2008/C 209/119)

Language of the case: Italian

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

([1]) OJ C 8, 12.1.2008.

Order of the Court of First Instance of 30 June 2008 — Ryanair v Commission

(Case T-433/07) ([1])

(2008/C 209/120)

Language of the case: English

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

([1]) OJ C 22, 26.1.2008.

Order of the Court of First Instance of 2 July 2008 — Vakakis v Commission

(Case T-41/08) ([1])

(2008/C 209/121)

Language of the case: English

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

([1]) OJ C 92, 12.4.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 24 April 2008 — Dalmasso v Commission

(Case F-61/05) ([1])

(Staff case — Contract staff — Recruitment — Grading in function group — Application for review of grade and remuneration set on recruitment — Former auxiliary staff member employed as contract staff member — Article 3a and Article 80(2) and (3) of the CEOS — Duties falling under different function groups — Equal treatment — Action unfounded)

(2008/C 209/122)

Language of the case: French

Parties

Applicant: Raffaelle Dalmasso (Schaerbeek, Belgium) (represented by: L.Vogel, lawyer)

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

Intervener in support of the defendant: Council of the European Union (represented by M. Arpio Santacruz and I. Sulce, agents)

Re:

Staff case — First, annulment of the Commission's decision rejecting the complaint submitted by the applicant, a former member of the auxiliary staff, against the decision fixing his grade and remuneration as a contract staff member and, secondly, an application for damages (formerly T-269/05)

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

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

([1]) OJ C 229 of 17.9.2005, p. 30 (case initially registered before the Court of First Instance of the European Communities as T-269/05 and transferred to the Civil Service Tribunal by order dated 15.12.2005).

Judgment of the Civil Service Tribunal (Full Court) of 24 June 2008 — Cerafogli and Paolo Poloni v ECB

(Case F-116/05) ([1])

(Staff Case — ECB Staff — Remuneration — Method of calculation of annual salary adjustment — Enforcement of a judgment of the Community judicature — Confirmatory act — Inadmissibility)

(2008/C 209/123)

Language of the case: French

Parties

Applicants: Maria Concetta Cerafogli and Paolo Poloni (Frankfurt am Main, Germany) (represented by: G. Vandersanden and L. Levi, lawyers)

Defendant: European Central Bank (ECB) (represented by: F. Malfrère and K. Sugar, Agents and H.-G. Kamann, lawyer)

Re:

First, annulment of the applicants' respective remuneration slips for the month of July 2001, as drawn up by the European Central Bank in May 2005, in enforcement of the judgment of the Court of First Instance of 20 November 2003 in Case T-63/02 *Cerafolgi and Poloni* v *ECB* and, second, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action as inadmissible;*

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

([1]) OJ C 48, 25.2.2005 (case initially lodged before the Court of First Instance of the European Communities as Case T-431/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 21 February 2008 — Semeraro v Commission

(Case F-19/06) ([1])

(Staff cases — Officials — Appraisal — Career development report — 2003 appraisal procedure — Article 43 of the Staff Regulations — Obligation to state reasons — Promotion — Attestation procedure)

(2008/C 209/124)

Language of the case: French

Parties

Applicant: Maria Magdalena Semeraro (Brussels, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: G. Berscheid and M. Velardo, Agents)

Re:

Application for annulment of the Appointing Authority's decision of 8 November 2005 rejecting the applicant's complaint against her Career Development Report for 2004

Operative part of the judgment

The Tribunal:

1. *Annuls Ms Serrano's career development report covering the period from 1 January to 31 December 2004;*

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

([1]) OJ C 108, 6.5.2006, p. 30.

Judgment of the Civil Service Tribunal (Second Chamber) of 6 March 2008 — Skareby v Commission

(Case F-46/06) ([1])

(Staff case — Officials — Appraisal — Career development report — 2004 appraisal procedure — Objectives — Obligation to state reasons — Manifest error of assessment)

(2008/C 209/125)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: V. Joris and M.Velardo, agents)

Re:

First, annulment of the applicant's career development report for 2004 and, secondly, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

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

([1]) OJ C 143 of 17.6.2006, p. 39.

Judgment of the Civil Service Tribunal (Second Chamber) of 3 April 2008 — Bakema v Commission

(Case F-68/06) ([1])

(Staff case — Contract staff — Classification in grade — Function group IV — Diploma — Professional experience)

(2008/C 209/126)

Language of the case: English

Parties

Applicant: Reint J. Bakema (Zuidlaren, Netherlands) (represented by: L. Rijpkema and A. Kootstra)

Defendant: Commission of the European Communities (represented by: J. Currall and M. Velardo, agents)

Re:

Annulment of the Commission's Decision refusing to reclassify the applicant from grade 14 to grade 16 in function group IV and to regard his 'kandidaatsdiploma' as attesting to completed university studies for the purposes of Article 82 of the CEOS and of Article 2 of the GPI concerning the procedures governing the engagement and employment of contract staff by the Commission

Operative part of the judgment

The Tribunal:

1. *Annuls the decision by which the Authority Authorised to Conclude Contracts of Engagement classified Mr Bakema in function group IV at grade 14, step 1, under the contract signed on 25 October 2005 recruiting him to the Commission of the European Communities as a member of the contract staff;*

2. *Dismisses the remainder of the application;*

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

([1]) OJ C 212 of 2.9.2006, p. 48

Judgment of the Civil Service Tribunal (Second Chamber) of 24 April 2008 — Longinidis v Cedefop

(Case F-74/06) ([1])

(Staff case — Members of the temporary staff — Reassignment — Appeals Committee — Composition and internal rules of procedure — Unfair behaviour — Dismissal — Statement of reasons — Manifest error of assessment — Misuse of powers)

(2008/C 209/127)

Language of the case: Greek

Parties

Applicant: Pavlos Longinidis (Panorama, Greece) (represented by: N. Korogiannakis and N. Keramidas, lawyers)

Defendant: European Centre for the Development of Vocational Training (Cedefop) (represented by: M. Fuchs, Agent, and P. Anestis, lawyer)

Re:

First, annulment of the decision of the Directorate of the European Centre for the Development of Vocational Training (Cedefop) of 30 November 2005 terminating the applicant's indefinite term contract along with a series of decisions concerning inter alia Cedefop's Appeals Committee and, second, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action as partly inadmissible and partly unfounded;*

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

([1]) OJ C 237, 30.9.2006, p. 15.

Judgment of the Civil Service Tribunal (Second Chamber) of 8 May 2008 — Kerstens v Commission

(Case F-119/06) ([1])

(Staff case — Officials — Admissibility — Organisational Chart — Act adversely affecting an official — Change of posting — Change of duties — Interests of the service — Equivalence of posts — Covert penalty — Misuse of powers)

(2008/C 209/128)

Language of the case: French

Parties

Applicant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

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

Re:

First, annulment of the decision of 8 December 2005 of the Board of the Office for Administration and Payment of Individual Entitlements (PMO) amending the PMO's organisation chart inasmuch as that decision had the effect of reassigning the applicant, at that time head of the 'Resources' Unit, to a research position and, second, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 294, 2.12.2006, p. 68.

Judgment of the Civil Service Tribunal (Second Chamber) of 22 May 2008 — Pascual-García v Commission

(Case F-145/06) [1]

(Staff case — Open competition — Conditions of eligibility — Required professional experience — Refusal to recruit a candidate on the reserve list — Discretion of selection board and appointing authority)

(2008/C 209/129)

Language of the case: French

Parties

Applicant: Cesar Pascual-García (Madrid, Spain) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and M. Velardo, agents)

Re:

Annulment of the decision of 7 April 2006 of the Director General of the Joint Research Centre of the Commission refusing to take the applicant's application into consideration for the post referred to in vacancy notice COM/2005/2969 — B/3/B*11 — IHCP — Ispra, and adding a comment in the reserve list of competition EPSO/B/23/04, informing the Commission's departments that the applicant does not meet the conditions of eligibility for that competition

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 7 April 2006 of the Director General of the Joint Research Centre (JRC) of the Commission of the European Communities refusing to take the application of Mr Pascual-García into consideration for vacancy notice COM/2005/2969, and adding a comment in the reserve list of the open competition EPSO/B/23/04, informing the departments that the applicant did not meet the conditions of eligibility for that competition;*

2. *orders the Commission of the European Communities to pay the costs.*

[1] OJ C 56 of 10.3.2007, p. 42

Judgment of the Civil Service Tribunal (Second Chamber) of 26 June 2008 — Joseph v Commission

(Case F-54/07) [1]

(Staff cases — Contract staff — Action out of time — Unforeseeable circumstances — Recruitment — Articles 3a, 3b and 85 of the CEOS — Duration of the contract — Commission Decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services — Article 12 of the GIP on the procedures governing the engagement and the use of contract staff at the Commission — Equal treatment)

(2008/C 209/130)

Language of the case: French

Parties

Applicant: Anne Joseph (Damascus, Syria) (represented by: N. Lhoëst and S. Fernandez, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and L. Lozano Palacios, Agents)

Re:

Application for annulment of the contract employing the applicant as a member of the contract staff, in so far as its duration is not fixed at 3 years but at 15 months, on the basis, first, of the Commission decision of 28 April 2004 relating to the maximum duration for the recourse to non-permanent staff in the Commission services and, secondly, on Article 12 of the General Implementing Provisions on the procedures governing the engagement and the use of the contract staff at the Commission.

Operative part of the judgment

The Tribunal:

1. *Dismisses the application;*

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

[1] OJ C 199, 25.8.2008, p. 50.

Order of the Civil Service Tribunal (Second Chamber) of 26 June 2008 — Nijs v Court of Auditors

(Case F-5/07) ([1])

(Staff case — Officials — Article 44(1)(c) of the Rules of Procedure of the Court of First Instance — Summary of the pleas in law in the action — Time-limit for complaints — Manifest inadmissibility)

(2008/C 209/131)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier, G. Corstens and J. Vermer, Agents)

Re:

Annulment of the decision of the appointing authority not to promote the applicant to Grade A*11 pursuant to the 2006 promotion year — Annulment of a series of decisions concerning the career of the applicant and of other officials of the Court of Auditors — Annulment of the result of the Court of Auditor's Staff Committee election of 2006 — Claim for damages

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and partly manifestly unfounded.*

2. *Mr Nijs is ordered to pay all the costs.*

([1]) OJ C 56, 10.3.2007, p. 44.

Order of the Civil Service Tribunal (Second Chamber) of 10 June 2008 — Baudelet-Leclaire v Commission

(Case F-40/07) ([1])

(Staff cases — Open competition — Failure to include candidate's name on the reserve list — Equal treatment)

(2008/C 209/132)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: J. Currall and M. Velardo)

Re:

Application for annulment of competition EPSO/AST/7/05 — Field 2 — Project/Contract management on the grounds of the alleged discrimination between internal candidates from the Community institutions and external candidates

Operative part of the order

1. *The action is dismissed as manifestly unfounded.*

2. *The parties are to bear their own costs.*

([1]) OJ C 129, 9.6.2007, p. 28

Order of the Civil Service Tribunal (Second Chamber) of 27 June 2008 — Nijs v Court of Auditors

(Case F-1/08) ([1])

(Staff Case — Officials — Article 35(1)(e) of the Rules of Procedure — Statement of pleas and arguments — Time-limit for complaints — Manifest inadmissibility)

(2008/C 209/133)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, Agents)

Re:

First, annulment of the decision of the Appeals Committee not to promote the applicant to Grade A*11 pursuant to the 2005 promotion year and, second, a claim for damages.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and partly manifestly unfounded.*

2. *Mr Nijs is ordered to pay all the costs.*

([1]) OJ C 64, 8.3.2008, p. 68.

Action brought on 19 May 2008 — Bartha v Commission

(Case F-50/08)

(2008/C 209/134)

Language of the case: Hungarian

Parties

Applicant: Gábor Bartha (Brussels, Belgium) (represented by: P. Homoki, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of EPSO not to include the applicant's name in the reserve list of successful candidates in competition EPSO/AD/56/06.

Form of order sought

— Annul the decision of the selection board of the European Personnel Selection Office (EPSO) of 19 November 2007 concerning the result of the competition 'EPSO/AD/56/06 Administrators (AD5) of Hungarian citizenship';

— Annul the decision of the EPSO selection board of 23 January 2008 rejecting the complaint concerning the result of the competition;

— Annul the decision of the EPSO selection board of 31 March 2008 confirming the rejection of the complaint concerning the result of the competition;

— Order the Defendant to make good the damage arising from the decisions whose annulment is sought;

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

Action brought on 5 June 2008 — De Nicola v EIB

(Case F-55/08)

(2008/C 209/135)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

An application, first, for annulment, in part, of the decision of the Appeals Committee concerning the assessment of the applicant for 2006 and, secondly, for a declaration that the applicant has been the victim of harassment and intimidation at the workplace ('mobbing') and an order that the defendant desist from such conduct and compensate the applicant for the damage suffered.

Form of order sought

— Annul the decision communicated by e-mail on 17 November 2007, a copy of which was sent on 19 December 2007, in so far as the Appeals Committee rejected the applicant's appeal against the assessment made by his superiors for 2006 in so far as it is based on the assumption that the applicant had abandoned his claims alleging irregularities in the assessment procedure for 2006 and, finally, in so far as it contends that the applicant accepted the criticisms made by his superiors;

— render the promotions decided upon on 13 July 2007 void in so far as the applicant was not considered for promotion from Grade E to Grade D;

— annul all related, consequent and prior measures, including the assessment of the applicant for 2006 in so far as it fails to propose that he be given the mark A or B+ and his promotion to Grade D and, if appropriate, declare that the restrictions (both quantitative and non-quantitative) imposed by the instructions given by the Directorate of Human Resources are unlawful and to be disapplied;

— declare that the applicant was the victim of mobbing;

— order the EIB to desist from the mobbing to which the applicant has been subjected and to compensate him for the personal, material and non-material injury suffered, both past and future;

— order the defendant to pay the costs.

Action brought on 9 June 2008 — De Britto Patricio-Dias v Commission

(Case F-56/08)

(2008/C 209/136)

Language of the case: French

Parties

Applicant: Jorge De Britto Patricio-Dias (Brussels, Belgium) (represented by: L. Massaux, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision to reject the applicant's request that his children be entitled to primary insurance cover.

Form of order sought

— Annul the appointing authority's decision No R/559/07 of 10 March 2008;

— Rule that his children are entitled to primary insurance cover;

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

Action brought on 19 June 2008 — Avogadri and Others v Commission

(Case F-58/08)

(2008/C 209/137)

Language of the case: French

Parties

Applicants: Chiara Avogadri and Others (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Application for annulment of the decisions fixing the applicants' conditions of employment as members of the contract staff or members of the temporary staff in so far as the duration of their contract or its extension is limited to a specific duration.

Form of order sought

The applicants claim the Tribunal should:

— Annul the decisions fixing the applicants' conditions of employment in so far as the duration of their contract or its extension is limited to a specific duration;

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

Order of the Civil Service Tribunal of 30 June 2008 — Feral v Comité des Régions

(Case F-59/07) ([1])

(2008/C 209/138)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register, following amicable settlement.

([1]) OJ C 199, 25.8.2007, p. 51.