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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 247/01)

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

OJ C 236, 13.9.2008

Past publications

OJ C 223, 30.8.2008

OJ C 209, 15.8.2008

OJ C 197, 2.8.2008

OJ C 183, 19.7.2008

OJ C 171, 5.7.2008

OJ C 158, 21.6.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Thüringer Oberlandesgericht (Germany) lodged on 19 May 2008 — Wasser- und Abwasserzweckverband Gotha und Landkreisgemeinden (WAZV Gotha) v Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH

(Case C-206/08)

(2008/C 247/02)

Language of the case: German

Referring court

Thüringer Oberlandesgericht

Parties to the main proceedings

Appellant: Wasser- und Abwasserzweckverband Gotha und Landkreisgemeinden (WAZV Gotha)

Respondent: Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH

Questions referred

1. Is a contract for the supply of services (here, the supply of water and treatment of waste water), the content of which does not provide for the contracting authority to make a direct payment of consideration to the supplier but for the supplier to be afforded the right to collect consideration under private law from third parties, to be classified for that reason alone as a service concession within the meaning of Article 1(3)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]), as distinct from a service contract for pecuniary interest within the meaning of Article 1(2)(a) and (d) of Directive 2004/17?

2. If the first question is answered in the negative, does a contract of the kind described in the first question constitute a service concession if the risk connected with operating the service in question, because of the rules of public law governing it (compulsory connection and usage; prices calculated on a break-even basis), is significantly limited from the outset — that is to say, even if the contracting authority were to provide the service itself — but the supplier assumes that limited risk in full or at least to a predominant extent?

3. If the second question is also answered in the negative, is Article 1(3)(b) of Directive 2004/17 to be interpreted as meaning that the degree of risk connected with operating the service, particularly the marketing risk, must in qualitative terms be comparable to that which normally exists under conditions in a free market with more than one competing tenderer?

([1]) OJ 2004 L 134, p. 1.

Reference for a preliminary ruling from the Budaörsi Városi Bíróság (Hungary) lodged on 2 June 2008 — Pannon GSM Zrt. v Erzsébet Sustikné Győrfi

(Case C-243/08)

(2008/C 247/03)

Language of the case: Hungarian

Referring court

Budaörsi Városi Bíróság

Parties to the main proceedings

Applicant: Pannon GSM Zrt.

Defendant: Erzsébet Sustikné Győrfi

Questions referred

1. Can Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) — pursuant to which Member States are to provide that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer — be construed as meaning that the non-binding nature *vis-à-vis* the consumer of an unfair term introduced by the seller or supplier does not have effect *ipso jure* but only where the consumer successfully contests the unfair term by lodging the relevant application?

2. Does the consumer protection provided by Directive 93/13/EEC require the national court of its own motion — irrespective of the type of proceedings in question and of whether or not they are contentious — to determine that the contract before it contains unfair terms, even where no application contesting the unfair nature of the term has been lodged, thereby carrying out, of its own motion, a review of the terms introduced by the seller or supplier in the context of exercising control over its own jurisdiction?

3. In the event that the second question is answered in the affirmative, what are the factors which the national court must take into account and evaluate in the context of exercising this control?

([1]) OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 18 June 2008 — Bundesfinanzdirektion West v HEKO Industrieerzeugnisse GmbH

(Case C-260/08)

(2008/C 247/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Bundesfinanzdirektion West

Respondent: HEKO Industrieerzeugnisse GmbH

Question referred

Is the only substantial processing or working of products coming under heading 7312 of the Combined Nomenclature which confers non-preferential origin in accordance with Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) that which has the effect that the product resulting from that processing or working is to be classified under a different heading of the Combined Nomenclature?

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

Reference for a preliminary ruling from the Hof van Cassatie van België lodged on 19 June 2008 — Belgische Staat v Direct Parcel Distribution Belgium NV

(Case C-264/08)

(2008/C 247/05)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Belgische Staat

Respondent: Direct Parcel Distribution Belgium NV

Questions referred

1. Is the entry in the accounts referred to in Article 221 of the Community Customs Code ([1]) the same as the entry in the accounts referred to in Article 217, which consists in the amount of duty being entered by the customs authorities in the accounting records or on any other equivalent medium?

2. If the first question is answered in the affirmative, how is the rule laid down in Article 217 of the Community Customs Code that the amount of duty is to be 'entered … in the accounting records or on any other equivalent medium' to be construed? Are certain technical or formal minimum requirements attached thereto, or does Article 217 leave the establishment of more detailed rules on the practice of entering the amount of duty in the accounts entirely to the Member States, without imposing any minimum requirements? Should that entry in the accounts be distinguished

from the entry of the amount of duty in the accounts for own resources as referred to in Article 6 of Regulation No 1150/2000 ([2]) of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources?

3. Should Article 221(1) of the Community Customs Code be understood to mean that a notification of the amount of duty by the customs authorities to the debtor in accordance with appropriate procedures can be regarded as the communication of the amount of duty by the customs authorities as referred to in Article 221(1) only if the amount of duty was entered in the accounts before being brought to the debtor's attention? In addition, what is meant by the words 'in accordance with appropriate procedures' used in Article 221(1)?

4. If the answer to the third question is affirmative, can an assumption be made to the advantage of the State that the amount of duty was entered in the accounts before being communicated to the debtor? Can the national court also proceed on the assumption that the declaration by the customs authorities that the amount of duty was entered in the accounts before being communicated to the debtor is true, or should those authorities submit written evidence of the entry of the amount of duty in the accounts to the national court as a matter of course?

5. Must the entry of the amount of duty in the accounts required by Article 221(1) of the Community Customs Code precede its communication to the debtor on pain of the annulment or expiry of the right to proceed to recovery or post-clearance recovery of the customs debt? In other words, should Article 221(1) be understood to mean that, if the amount of duty is brought to the attention of the debtor by the customs authorities in accordance with appropriate procedures, but without the amount of duty having been entered in the accounts by the customs authorities prior to that notification, the amount of duty cannot be recovered, unless the customs authorities again bring the amount of duty to the debtor's attention in accordance with appropriate procedures after the amount of duty has been entered in the accounts and in so far as that occurs within the limitation period laid down in Article 221 of the Community Customs Code?

6. If the fifth question is answered in the affirmative, what is the consequence of the payment by the debtor of the amount of duty communicated to him without its having been previously entered in the accounts? Should this be regarded as an undue payment which he may recover from the State?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 2000 L 130, p. 1.

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Klagenfurt (Austria) lodged on 20 June 2008 — SPÖ Landesorganisation Kärnten v Finanzamt Klagenfurt

(Case C-267/08)

(2008/C 247/06)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Klagenfurt

Parties to the main proceedings

Applicant: SPÖ Landesorganisation Kärnten

Defendant: Finanzamt Klagenfurt

Questions referred

1. Is Article 4(1) 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 ([1]) (the Sixth Directive) to be interpreted in such a way that 'external advertising' by the legally independent provincial organisation of a political party, taking the form of publicity, information provision, the staging of party events, the supply of advertising material to district organisations and the organisation and holding of an annual ball (the SPÖ Ball), is to be regarded as an economic activity if revenue is obtained from (partially) passing the expense of the 'external advertising' on to the likewise legally independent party structures (district organisations etc.) and from entrance fees from the holding of the ball?

2. In the assessment of whether there is 'economic activity' within the meaning of Article 4(1) and (2) of the Sixth Directive, is it prejudicial that the activities mentioned in Question 1 are also 'reflected' back to the provincial organisation and hence are beneficial to it too? It is in the nature of things that as a result of those activities the party as such and its political objectives and views are always also being publicised, if not in the forefront, nevertheless as an inevitable side effect.

3. Can there still be 'economic activity' in the above sense where the expenditure on 'external advertising' persistently exceeds many times over the revenue obtained from that activity by passing on the expense and the revenue obtained from holding the ball?

4. Is there an 'economic activity' even where the passing on of the expense does not take place according to readily ascertainable economic criteria (e.g. allocation of charges according to cause or benefit) and it is essentially left to the subordinate organisations to determine whether and to what extent they wish to contribute to the expenditure of the provincial organisations?

5. Is there an 'economic activity' even where advertising services are invoiced to the subordinate organisations in the form of a charge the amount of which is determined firstly by the number of members in the relevant local organisation and secondly by the number of members it sends to representative assemblies?

6. In determining whether there is economic activity, should subsidies from public funds which do not form part of the taxable consideration (such as, for example, the financing of parties under the Carinthian Parteienförderungsgesetz (Law on the financing of parties) be taken into consideration as it were as economic advantages?

7. If the 'external advertising', viewed in isolation, constitutes an economic activity within the meaning of Article 4(1) and (2) of the Sixth Directive, does the fact that publicity and election advertising is a central feature of the activity of political parties and a condition *sine qua non* for the implementing of political objectives and programmes preclude such activity from being classified as an 'economic activity'?

8. Are the activities performed by the appellant and described by it as 'external advertising' of such a nature as to be comparable with, or correspond in content to, activities carried out by commercial advertising agencies for the purposes of Annex D (number 10) of the Sixth Directive? If that question is answered affirmatively, can the extent of the activities be described as 'not insignificant' in the context of the revenue/expenditure structure prevailing at the material time for the purposes of the appeal?

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

Action brought on 2 July 2008 — Commission of the European Communities v Czech Republic

(Case C-294/08)

(2008/C 247/07)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and M. Šimerdová, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that,

  — by requiring, on registration of imported vehicles for which there is proof of type-approval with regard to roadworthiness by another Member State, that, at the time of that type-approval with regard to roadworthiness, a vehicle complies with the technical requirements in force at that time in the Czech Republic and

  — by requiring, in the event of non-fulfilment of those requirements, a test to verify whether the vehicle complies with the technical requirements in force for the given category of vehicles in the Czech Republic at the time of the vehicle's manufacture,

  the Czech Republic has failed to fulfil its obligations under Article 28 of the Treaty establishing the European Community;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

Under Czech Law, the conditions for the registration of second-hand vehicles imported into the Czech Republic from other Member States where they were previously registered, are laid down by Law No 56/2001 Coll. ([1]). Article 35(1) and (2) of Law No 56/2001 Coll. lays down conditions for the registration of individually imported second-hand vehicles for which there is proof of type-approval with regard to roadworthiness by another Member State.

The Czech authorities approve the roadworthiness of such a vehicle provided that the vehicle, its systems, structural parts or independent technical units fulfilled, at the time of type-approval with regard to roadworthiness in another EU Member State, the technical requirements in force at that time in the Czech Republic and laid down in the implementing legislation (Article 35(1) of Law No 56/2001 Coll.).

If, at the time of type-approval with regard to roadworthiness in another Member State, the vehicle, its systems, structural parts or independent technical units did not fulfil the conditions in force at that time in the Czech Republic and laid down in the implementing legislation, the appropriate authority is to decide on approval of roadworthiness for the vehicle on the basis of the technical report issued by the testing centre. The testing centre is to issue a technical certificate if the vehicle fulfils the technical conditions in force for the given category of vehicle in the Czech Republic at the time of the vehicle's manufacture (Article 35(2) of Law No 56/2001 Coll.).

It follows from Article 35(1) and (2) of Law No 56/2001 that the roadworthiness of all second-hand vehicles, for which another Member State has issued a certificate of type-approval with regard to roadworthiness, is always re-examined in the light of Czech law. That approach is, in the Commission's view, in breach of the principle of the freedom of moment of goods, according to which goods placed on the market in accordance with the legislation of one Member State must be admitted to the markets of all other Member States. The Czech legislation does not in any way take account of the results of the roadworthiness test carried out on the vehicles in question in another Member State, thereby constituting an infringement of Article 3(2) of Council Directive 96/96/EC.

In view of the foregoing, the Commission is of the view that the Czech legislation constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 28 EC. That measure is incapable of procuring the protection of the health and life of humans and the environment or road safety and is thus not justified by Article 30 of the EC Treaty or by the case-law of the European Court of Justice.

(1) Law No 56/2001 Coll. on conditions for operating vehicles on roads and on changes in Law No 168/1999 Coll. on liability insurance for damage caused by operating a vehicle and on changes in various related laws ('Law on liability insurance for operating a vehicle'), as amended by Law No 307/1999 Coll.

Reference for a preliminary ruling from the Finanzgericht München (Germany) lodged on 8 July 2008 — Zino Davidoff SA v Bundesfinanzdirektion Südost

(Case C-302/08)

(2008/C 247/08)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Zino Davidoff SA

Defendant: Bundesfinanzdirektion Südost

Question referred

In the light of the accession of the European Community to the Madrid Protocol, is Article 5(4) of Council Regulation (EC) No 1383/2003 of 22 July 2003, concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (1), to be interpreted as meaning that, despite the use of the term 'Community trade mark', marks with international registrations within the meaning of Article 146 *et seq.* of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003, are also covered?

(1) OJ 2003 L 196, p. 7.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Deutschland) lodged on 8 July 2008 — Metin Bozkurt v Land Baden-Württemberg

(Case C-303/08)

(2008/C 247/09)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Metin Bozkurt

Defendant: Land Baden-Württemberg

Other party: Der Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Is the right of residence and employment acquired as a member of the family pursuant to the second indent of the first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council by the spouse of a Turkish worker who is duly registered as belonging to the labour force of a Member State retained even after a divorce?

   If the reply to the first question is in the affirmative:

2. Is it an abuse of rights to plead the right of residence derived from his former wife under the second indent of the first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council where the Turkish national raped and injured his former wife after acquiring the legal status and the offence was punished with two years' imprisonment?

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 9 July 2008 — Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v Plus Warenhandelsgesellschaft mbH

(Case C-304/08)

(2008/C 247/10)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Defendant: Plus Warenhandelsgesellschaft mbH

Question referred

Is Article 5(2) of 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 Directive 2005/29/EC ([1]) on unfair commercial practices to be interpreted as meaning that that provision precludes a national provision which states that a commercial practice whereby the participation of consumers in a prize competition or lottery is made conditional on the purchase of goods or the supply of services is in principle unlawful, irrespective of whether, in any particular case, the advertising in question affects consumers' interests?

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

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 4 July 2008 — CoNISMa (Consorzio Nazionale Interuniversitario per le Scienze del Mare) v Regione Marche

(Case C-305/08)

(2008/C 247/11)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: CoNISMa (Consorzio Nazionale Interuniversitario per le Scienze del Mare)

Defendant: Regione Marche

Questions referred

1. Must the provisions of Directive 2004/18/EC ([1]) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts that are referred to in section 1 above be interpreted as precluding a consortium made up solely of Italian universities and state bodies, as described in section 8 above, from taking part in a tendering procedure for the award of a service contract such as that for the acquisition of geophysical data and marine samples?

2. Are the provisions of Italian law contained in Article 3(22) and (19) and Article 34 of the Public Contracts Code, enacted by Legislative Decree No 163/2006, which provide, respectively: that 'the term "economic operator" shall include a contractor, supplier, service provider or a group or consortium of these' and 'the terms "contractor", "supplier" and "service provider" shall mean any natural or legal person, or body without legal personality, including a European Economic Interest Group (EEIG) formed pursuant to Legislative Decree No 240 of 23 July 1991, which "offers on the market", respectively, the execution of works or a work, the supply of products or the provision of services', contrary to Directive 2004/18/EC if interpreted as restricting participation in tendering procedures to professional providers of such services and excluding entities whose primary objects are not-for-profit, such as research?

([1]) OJ L 2004 134, p. 114.

Action brought on 11 July 2008 — Commission of the European Communities v Republic of Poland

(Case C-309/08)

(2008/C 247/12)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: A. Nijenhuis and K. Mojzesowicz, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to ensure the proper implementation in national law of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ([1]), in particular Article 3(2) and (3) concerning the requirements that national regulatory authorities be independent and that they exercise their powers impartially and transparently, the Republic of Poland has failed to fulfil its obligations under that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

Poland has failed to ensure an effective separation of regulatory functions from activities linked to the exercise of rights of property or control.

The Polish State has extensive shareholdings in numerous telecommunications undertakings. At the same time, the national regulatory authority in Poland is appointed by the Prime Minister, who is entitled freely to dismiss it at any time without providing reasons and on whom the Minister for Finance and the Minister for Infrastructures are also fully dependent.

The absence of provisions defining the duration of the term of the national regulatory authority and the lack of an exhaustive list of conditions allowing for its dismissal results in its being dependent to a significant extent on the Prime Minister and fails to guarantee that those market participants in which the State holds shares will be treated in the same way as other market participants.

([1]) OJ L 108, 24.4.2002, p. 33-50.

Reference for a preliminary ruling from Court of Appeal (Civil Division) (England and Wales) lodged on 11 July 2008 — London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department

(Case C-310/08)

(2008/C 247/13)

Language of the case: English

Referring court

Court of Appeal (Civil Division) (England and Wales)

Parties to the main proceedings

Applicant: London Borough of Harrow

Defendants: Nimco Hassan Ibrahim, Secretary of State for the Home Department

Questions referred

In circumstances where (i) a non-EU national spouse and her EU national children accompanied an EU national who came to the United Kingdom (ii) the EU national was in the United Kingdom as a worker (iii) the EU national then ceased to be a worker and subsequently left the United Kingdom (iv) the EU national, the non-EU national spouse and children are not self-sufficient and are dependent upon social assistance in the United Kingdom (v) the children commenced primary education in the United Kingdom shortly after their arrival there while the EU national was a worker:

(1) do the spouse and children only enjoy a right of residence in the United Kingdom if they satisfy the conditions set out in Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 ([1])?;

OR

(2) (i) do they enjoy a right to reside derived from Article 12 of Regulation (EEC) No 1612/68 of 15 October 1968 ([2]), as interpreted by the Court of Justice, without being required to satisfy the conditions set out in Directive 2004/38 of the European Parliament and of the Council of 29 April 2004;

and

(ii) if so, must they have access to sufficient resources so as not to become a burden on the social assistance system of the host Member State during their proposed period of residence and have comprehensive sickness insurance cover in the host Member State?;

(3) if the answer to question 1 is yes, is the position different in circumstances such as the present case where the children commenced primary education and the EU-national worker ceased working prior to the date by which Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 was to be implemented by the Member States?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, p. 77).

([2]) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, p. 2).

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny (Republic of Poland) lodged on 14 July 2008 — Krzysztof Filipiak v Dyrektor Izby Skarbowej w Poznaniu

(Case C-314/08)

(2008/C 247/14)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny

Parties to the main proceedings

Claimant: Krzysztof Filipiak

Defendant: Dyrektor Izby Skarbowej w Poznaniu

Questions referred

1. Must Article 43(1) and (2) EC be construed as precluding the provisions of Polish national law in Article 26(1)(2) of the ustawa o podatku dochodowym od osób fizychznych (Law on income tax payable by natural persons) of 26 July 1991 …, under which the right to a reduction of the basis of assessment for income tax by the amount of compulsory social insurance contributions is restricted to contributions paid on the basis of provisions of national law, and in Article 27b(1) of the Law of 26 July 1991 on income tax payable by natural persons, under which the right to a reduction of income tax by the amount of compulsory health insurance contributions is restricted to contributions paid on the basis of provisions of national law, in the case where a Polish national, subject to unlimited liability to tax in Poland on income taxed there, also pays in another Member State compulsory social and health insurance contributions in respect of an economic activity carried on in that other State, and those contributions have not been deducted from income or from tax there?
2. Must the principle of the primacy of Community law and Article 10 and Article 43(1) and (2) EC be construed as taking precedence over the national provisions in Article 91(2) and (3) and Article 190(1) and (3) of the Constitution of the Republic of Poland (Dz. U. (Journal of Laws) 1997 No 14, heading 176, as amended) in so far as the entry into force of a judgment of the Constitutional Court has been deferred on the basis of those provisions?

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 17 July 2008 — Olympique Lyonnais v Olivier Bernard, Newcastle United FC

(Case C-325/08)

(2008/C 247/15)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Olympique Lyonnais

Defendants: Olivier Bernard, Newcastle United FC

Questions referred

1. Does the principle of the freedom of movement for workers laid down in [Article 39 EC] preclude a provision of national law pursuant to which an *espoir* player who at the end of his training period signs a professional player's contract with a club of another Member State of the European Union may be ordered to pay damages?
2. If so, does the need to encourage the recruitment and training of young professional players constitute a legitimate objective or an overriding reason in the general interest capable of justifying such a restriction?

Action brought on 29 July 2008 — Commission of the European Communities v Republic of Lithuania

(Case C-350/08)

(2008/C 247/16)

Language of the case: Lithuanian

Parties

Applicant: Commission of the European Communities (represented by: A. Steiblytė and M. Šimerdová, acting as Agents)

Defendant: Republic of Lithuania

Form of order sought

— declare that, by retaining in force the national authorisation for the marketing of the medicinal product 'Grasalva', the Republic of Lithuania has failed to meet its obligations under Article 6(1) of and Section 4 of Part II of Annex I to Directive 2001/83/EC ([1]), as amended by Directive 2003/63/EC ([2]), under Article 3(1) of Regulation (EEC) No 2309/93 ([3]) and under Article 3(1) of Regulation (EC) No 726/2004 ([4]);

— order the Republic of Lithuania to pay the costs.

Pleas in law and main arguments

(i) The Republic of Lithuania is required, under Article 6(1) of Directive 2001/83/EC, to examine whether marketing authorisations issued prior to accession comply with the requirements of the Community legislation on pharmaceutical products in force at the time of accession and, as from 1 May 2004, to ensure that only medicinal products the authorisations for which comply with those requirements are placed on the market.

(ii) The medicinal product 'Grasalva' is not mentioned in Appendix A to Annex IX to the 2003 Act of Accession and for that reason the provisions relating to the transitional period cannot be applied to it and, as from 1 May 2004, this medicinal product could be marketed only if it complied with all of the Community-law requirements in force for similar biological medicinal products with regard

to quality, safety and efficacy, in particular those laid down in Section 4 of Part II of Annex I to Directive 2001/83/EC, as amended by Directive 2003/63/EC.

(iii) The competent institutions of the Republic of Lithuania have themselves established that the documents relating to the medicinal product 'Grasalva' do not contain any information concerning pre-clinical or clinical trials provided in accordance with Section 4 of Part II of Annex I to Directive 2001/83/EC, as amended by Directive 2003/63/EC, concerning compliance by the medicinal product 'Grasalva' with the safety and efficacy requirements applied to similar biological medicinal products.

(iv) The national marketing authorisation for the medicinal product 'Grasalva' fails to meet the requirements of Section 4 of Part II of Annex I to Directive 2001/83/EC, as amended by Directive 2003/63/EC, with the result that, as from the date of accession, that medicinal product could be placed on the market only if marketing authorisation for it had been granted centrally pursuant to Article 3(1) of Regulation (EEC) No 2309/93 (applied up to 20 November 2005) or Article 3(1) of Regulation (EC) No 726/2004 (applicable from 21 November 2005).

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

([2]) Commission Directive 2003/63/EC of 25 June 2003 amending Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use (OJ 2003 L 159, p. 46).

([3]) Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214, p. 1).

([4]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

Action brought on 30 July 2008 — Commission of the European Communities v Republic of Austria

(Case C-356/08)

(2008/C 247/17)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and A. Böhlke, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by imposing an obligation on every medical doctor becoming established in Oberösterreich (*Land* of Upper Austria) to open a bank account with the Oberösterreichische Landesbank to which fees for benefits in kind are to be transferred by the health insurance funds, the Republic of Austria has failed to comply with its obligations under Articles 43 EC, 49 EC and 56 EC;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The mandatory opening of an account, to which, moreover, all fees for benefits in kind from health insurance funds must be transferred, is disproportionate to the need to ensure the proper calculation and levying of the contributions payable to the medical councils by medical doctors established in Oberösterreich. The disputed rules for that reason amount to unjustified restrictions of three fundamental freedoms guaranteed by the Treaty, namely the freedom of establishment of medical doctors established in other Member States and that of banks, their freedom to provide services and the free movement of capital.

Action brought on 4 August 2008 — Commission of the European Communities v Hellenic Republic

(Case C-357/08)

(2008/C 247/18)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2005/14/EC ([1]) of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2005/14/EC into domestic law expired on 11 June 2007.

([1]) OJ L 149, 11.6.2005, p. 14.

Action brought on 8 August 2008 — Commission of the European Communities v Hellenic Republic

(Case C-368/08)

(2008/C 247/19)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and I. Dimitriou)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC ([1]) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, and in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under Article 19(1) of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2004/35/EC into domestic law expired on 30 April 2007.

([1]) OJ L 143, 30.4.2004, p. 56.

Order of the President of the Court of 30 May 2008 (reference for a preliminary ruling from the Landesgericht Klagenfurt — Austria) — A-Punkt Schmuckhandels GmbH v Claudia Schmidt

(Case C-315/07) ([1])

(2008/C 247/20)

Language of the case: German

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

([1]) OJ C 269, 10.11.2007.

Order of the President of the Court of 3 June 2008 (reference for a preliminary ruling from the Landgericht Berlin — Germany) — M.C.O. Congres v Suxess GmbH

(Case C-476/07) ([1])

(2008/C 247/21)

Language of the case: German

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

([1]) OJ C 22, 26.1.2008.

COURT OF FIRST INSTANCE

Order of the President of the Court of First Instance of 18 June 2008 — Dow AgroSciences and Others v Commission

(Case T-475/07 R)

(Application for interim relief — Directive 91/414/EEC — Application for suspension of operation of a measure — Admissibility — No urgency)

(2008/C 247/22)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, Hertfordshire, United Kingdom); Dow AgroSciences LLC (Indianapolis, Indiana, United States); Dow AgroSciences (Mougins, France); Dow AgroSciences Export (Mougins); Dow AgroSciences BV (Hoek, Netherlands); Dow AgroSciences Hungary kft (Budapest, Hungary); Dow AgroSciences Italia Srl (Milan, Italy); Dow AgroSciences Polska sp. z o.o. (Warsaw, Poland); Dow AgroSciences Iberica, SA (Madrid, Spain); Dow AgroSciences s.r.o. (Prague, Czech Republic); Dow AgroSciences Danmark A/S (Kongens Lyngby, Denmark); Dow AgroSciences GmbH (Munich, Germany); Dintec Agroquímica — Produtos Químicos, Lda (Funchal, Madeira, Portugal); Finchimica SpA (Brescia, Italy); (represented by: C. Mereu and K. Van Maldegem, lawyers)

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

Re:

Application for suspension of the operation of Commission Decision 2007/629/EC of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2007 L 255, p. 42), until delivery of the judgment in the main proceedings.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 15 July 2008 — Antwerpse Bouwwerken v Commission

(Case T-195/08 R)

(Application for interim measures — Public procurement — Community tendering procedure — Rejection of tender — Application for suspension of operation and interim measures — Admissibility — Interest in bringing proceedings — Loss of an opportunity — Absence of serious and irreparable damage — No urgency)

(2008/C 247/23)

Language of the case: Dutch

Parties

Applicant: Antwerpse Bouwwerken NV (Antwerp, Belgium) (represented by: J. Verbist and D. de Keuster, lawyers)

Defendant: Commission of the European Communities (represented by: E. Manhaeve, Agent, assisted by M. Gelders)

Re:

Application for interim measures in the context of the tendering procedure launched by the Commission for the construction of a building.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the Court of First Instance of 15 July 2008 — CLL Centres de Langues v Commission

(Case T-202/08 R)

(Application for interim measures — Public procurement — Community tendering procedure — Rejection of application to participate — Application for suspension of operation and interim measures — No prima facie case — Loss of opportunity — No serious and irreparable damage — No urgency)

(2008/C 247/24)

Language of the case: French

Parties

Applicant: Centre de langues à Louvain-la-Neuve et -en-Woluwe (CLL Centres de Langues) (Louvain-la-neuve, Belgium) (represented by: F. Tulkens and V. Ost, lawyers)

Defendant: Commission of the European Communities (represented by: N. Bambara and E. Manhaeve, agents and by P. Wytinck, lawyer)

Re:

Application for interim measures, essentially to permit the Centre de langues à Louvain-la-Neuve et -en-Woluwe (CLL Centres de Langues) to participate in the tendering procedure ADMIN/D1/PR/2008/004 regarding the contract 'Language training for staff at the European Union (EU) institutions, bodies and agencies in Brussels' and to suspend the Commission's decision to exclude it until the Court has ruled on the action for annulment of that decision.

Operative part of the order

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

2. *Costs are reserved.*

Appeal brought on 9 July 2008 by Petrus Kerstens against the judgment of the Civil Service Tribunal delivered on 8 May 2008 in Case F-119/06, Kerstens v Commission

(Case T-266/08 P)

(2008/C 247/25)

Language of the case: French

Parties

Appellant: Petrus Kerstens (Overijse, Belgium) (represented by C. Mourato, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Annul the contested judgment;

— refer the case back to the European Union Civil Service Tribunal;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this appeal the appellant seeks the annulment of the judgment of the Civil Service Tribunal (the Tribunal) of 8 May 2008 in Case F-119/06 *Kerstens* v *Commission* dismissing the appellant's action seeking (i) annulment of the decision of 8 December 2005 of the Board of the Office for Administration and Payment of Individual Entitlements altering the organisation chart of that office, inasmuch as that decision had the effect of reassigning the appellant, then Head of the 'Resources' unit, to a research position and (ii) damages in compensation for the damage allegedly suffered.

In support of his action, a ground of appeal relied on by the appellant is that the Tribunal distorted the clear sense of the facts and the evidence and committed an error of law in applying Article 7 of the Staff Regulations and the regulations on disciplinary measures and misuse of powers in that the Tribunal concluded that there was no infringement of Article 7 on the basis of inaccurate findings of fact.

The appellant further claims that the Tribunal did not provide an adequate statement of reasons in the contested judgment in respect of the assessment made by the Office for Administration and Payment of Individual Entitlements of the interests of the service and in respect of the creation of an additional research department in the light of the Office's chronic shortage of staff.

Thirdly, the appellant considers that his rights of defence were infringed, inasmuch as the reasoning of the Tribunal on several points was based on the appellant's career development report for the period from 1 January to 31 December 2006, lodged for the first time by the Commission at the hearing, and the appellant had no opportunity to express his point of view in relation to that reasoning.

Action brought on 9 July 2008 — Région Nord-Pas-de-Calais v Commission

(Case T-267/08)

(2008/C 247/26)

Language of the case: French

Parties

Applicant: Région Nord-Pas-de-Calais (represented by: M. Cliquennois and F. Cavedon, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision C (2008) 1089 final of the Commission of the European Communities of 2 April 2008, concerning State Aid No C 38/2007 (ex NN 45/2007) implemented by France in favour of Arbel Fauvet Rail SA;

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

Pleas in law and main arguments

The applicant seeks the annulment of the decision C(2008) 1089 final of the Commission of the European Communities of 2 April 2008 by which the Commission declared incompatible with the common market the State aid granted by the applicant and the Communauté d'agglomération du Douaisis in favour of Arbel Fauvet Rail SA in the form of advances repayable at an annual rate of interest of 4,08 % corresponding to the Community reference rate applicable when the loan was granted. The Commission considered that, taking into account its financial standing, Arbel Fauvet Rail SA would not have been able to obtain funds on such favourable terms in the financial market.

The applicant claims first that the Commission committed a manifest error of assessment and disregarded its obligation to state reasons, inasmuch as it considered that the source of the funds was, in part, the Communauté d'agglomération du Douaisis and did not take account of the specific legal features of the Communauté d'agglomération which is a public institution of intercommunity cooperation endowed with administrative and budgetary autonomy in relation to the towns and communities which are members of it. The applicant considers that the aid granted is consequently not attributable to the State.

The applicant further claims that the Commission committed errors of assessment (i) by describing Arbel Fauvet Rail SA as a firm in difficulty and (ii) by considering that Arbel Fauvet Rail SA could not have obtained the operative rate of interest in normal market conditions.

The applicant claims in addition that the Commission did not conduct its examination of the case with the required diligence, inasmuch as it did not specify either the amount of the aid to be recovered, nor the value of the aid and it did not provide any evidence capable of justifying an increased interest rate to be applied to the repayable advances because of a situation of particular risk in relation to Arbel Fauvet Rail SA.

Lastly, the applicant relies on an infringement of the principle that both parties should have the right to be heard, since the applicant's views were not heard during the administrative procedure.

Action brought on 11 July 2008 — Land Burgenland v Commission

(Case T-268/08)

(2008/C 247/27)

Language of the case: German

Parties

Applicant: Land Burgenland (represented by: U. Soltész and C. Herbst, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Pursuant to Article 231(1) EC, annul Commission Decision C(2008) 1625 final of 30 April 2008 (No C 56/2006, ex NN 77/2006 — Privatisation of the Bank Burgenland) in its entirety;

— Pursuant to Article 87(1) of the Rules of Procedure of the Court, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2008) 1625 final of 30 April 2008 in which the Commission decided that the State aid which Austria granted in contravention of Article 88(3) EC to the Versicherungsgesellschaft Grazer Wechselseitige Versicherung AG and the GW Beteiligungserwerbs- und -verwaltungs-GmbH in the context of the privatisation of the HYPO Bank Burgenland AG is incompatible with the common market.

The applicant makes the following pleas in law in support of its action:

— erroneous application of Article 87(1) EC by the Commission when it fixed the market price, as a tender procedure is not mandatory;

— erroneous application of Article 87(1) EC by the Commission as a result of the infringement of existing Commission practice;

— erroneous application of Article 87(1) EC by the Commission since a private seller would also have had to predict that the Austrian Financial Market Authority would reject the bidder which made the highest bid;

— erroneous application of Article 87(1) EC by the Commission since the applicant should have been allowed to take into account the legal guarantee ('Ausfallhaftung') for certain liabilities of the privatised bank in its decision to award aid;

— erroneous application of the private vendor principle by the Commission when assessing the influence of the legal guarantee on the decision to sell;

— erroneous application of Article 87(1) EC by the Commission as a result of mistaken application of the burden of proof or of the obligation to submit evidence in a tender procedure;

— erroneous application of Article 87(1) EC by the Commission since the tender by the bidder with the highest offer cannot operate as the basis for the determination of the market price;

— incorrect assessment of the economic value of the share issues of the privatised bank by the Commission; and

— erroneous application of Article 87(1) EC by the Commission in the context of the determination of a State aid component.

Action brought on 8 July 2008 — Germany v Commission

(Case T-270/08)

(2008/C 247/28)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, assisted by C. von Donat, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2008) 1615 final of 29 April 2008 reducing the contribution under the European Regional Development Fund (ERDF) granted pursuant to Commission Decision C(94) 1973 of 5 August 1994 for the Operational Programme Berlin (East) Objective 1 (1994-1999) in the Federal Republic of Germany;

— Order the Commission to bear the costs.

Pleas in law and main arguments

By the contested decision the Commission reduced the financial contribution from the ERDF for the Operational Programme for the Objective 1 region of the Land of Berlin in the Federal Republic of Germany (1994-1999).

In the reasoning for its action the applicant claims first that the Commission erroneously evaluated the factual situation. The applicant alleges in particular that the Commission misjudged the results of particular verifications and unjustifiably found systematic errors in management and control arrangements.

Second, the applicant argues that there is no legal basis for the application of flat-rate or extrapolated financial corrections to the Operational Programme in the Programming Period 1994-1999 as there were no rules available in respect of that period similar to those laid down in Article 39 of Regulation (EC) No 1260/99 ([1]). Furthermore, nor can a sufficiently precise legal basis be found in the provisions of Article 24 of Regulation (EEC) No 4253/88 ([2]), the internal guidelines of the Commission of 15 October 1997 on net financial corrections within the framework of Article 24 of Regulation No 4253/88 or the principles of sound financial management provided for in Article 274 EC. According to the applicant it is also not possible to find a corresponding administrative practice which has existed over many years and is generally accepted.

The applicant claims moreover that the contested decision infringes Article 24(2) of Regulation No 4253/88 as no irregularities in the sense of that provision have occurred. It also claims in that context that even if the conditions for a reduction in accordance with Article 24(2) of Regulation No 4253/88 are met, the Commission should have used the discretion available to it and weighed up whether the reduction was proportionate.

In the alternative, the applicant argues that the flat-rate corrections are disproportionate and that the Commission carried out the extrapolation on an inadequate factual basis.

Furthermore, the applicant claims that the defendant infringed its obligation to provide sufficient reasons for the contested decision.

Finally, the applicant asserts that the Commission infringed the principle of partnership since, notwithstanding numerous checks by its financial controllers during the 1994-1999 Programming Period, at no point were financial consequences contemplated on account of systemic weaknesses.

([1]) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

([2]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 17 July 2008 — Communauté d'agglomération du Douaisis v Commission

(Case T-279/08)

(2008/C 247/29)

Language of the case: French

Parties

Applicant: Communauté d'agglomération du Douaisis (represented by: M.-Y Benjamin, lawyer)

Defendant: Commission of the European Communities.

Form of order sought

— Annul the decision No C 38/2007 of the Commission of 2 April 2008.

Pleas in law and main arguments

The applicant seeks the annulment of the decision C(2008) 1089 final of the Commission of the European Communities of 2 April 2008 by which the Commission declared incompatible with the common market the State aid granted by the applicant and the Région Nord-Pas-de-Calais in favour of Arbel Fauvet Rail SA in the form of advances repayable at an annual rate of interest of 4,08 % corresponding to the Community reference rate applicable when the loan was granted. The Commission considered that, taking into account its financial standing, Arbel Fauvet Rail SA would not have been able to obtain funds on such favourable terms in the financial market.

The pleas in law and main arguments relied on by the applicant are similar to those relied on in Case T-267/08 *Région Nord-Pas-de-Calais* v *Commission*.

Action brought on 15 July 2008 — Austria v Commission

(Case T-281/08)

(2008/C 247/30)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: C. Pesendorfer)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C(2008) 1625 Final of 30 April 2008 on State aid No C 56/2006 (ex NN 77/2006) of Austria for the privatisation of Bank Burgenland;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2008) 1625 Final of 30 April 2008 in which the Commission decided that the State aid implemented by Austria in breach of Article 88(3) EC for the insurance company Grazer Wechselseitige Versicherung AG and to GW Beteiligungserwerbs- und -verwaltungs-GmbH in connection with the privatisation of HYPO Bank Burgenland AG is incompatible with the common market.

With regard to the grounds of the application, reference is made to the summary of pleas in law relating to Case T-268/08 *Land Burgenland* v *Commission*.

Action brought on 17 July 2008 — Grazer Wechselseitige Versicherung v Commission

(Case T-282/08)

(2008/C 247/31)

Language of the case: German

Parties

Applicant: Grazer Wechselseitige Versicherung AG (Graz, Austria) (represented by: H. Wollmann, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Pursuant to Article 231(1) EC, annul Commission Decision C(2008) 1625 final of 30 April 2008 (No C 56/2006, ex NN 77/2006 — Privatisation of the Bank Burgenland) in its entirety;

— Pursuant to Article 87(2) of the Rules of Procedure of the Court, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2008) 1625 final of 30 April 2008 in which the Commission decided that the State aid which Austria granted in contravention of Article 88(3) EC to the Versicherungsgesellschaft Grazer Wechselseitige Versicherung AG and the GW Beteiligungserwerbs- und -verwaltungsGmbH in the context of the privatisation of the HYPO Bank Burgenland AG is incompatible with the common market.

In support of its action the applicant claims first that the Commission misapplied Article 87(1) EC in a number of respects. In particular it argues in that regard that there are several indications that the market value of the privatised bank at the time of the sale was significantly lower than the purchase price offered by the applicant, meaning that it was not given preferential treatment when the sale took place.

Moreover, it is claimed that the defendant misapplied the private vendor test. In that regard the applicant asserts that the Commission's argument that it was impermissible in the context of the decision to award aid to take into account the legal guarantee ('Ausfallhaftung') by the Land of Burgenland for certain liabilities of the privatised bank is wrong. Furthermore, the applicant claims in that context that the Commission proceeds not from the model of a genuine private sector investor but from the fiction of a seller prepared to assume a 100 % risk.

In addition, the applicant argues that the Commission has not proved that the applicant's offer was nominally worse than the offer of the competing bidder after all the necessary adjustments were carried out.

In the alternative, the applicant argues that the Commission failed, in assuming there to be a State aid, to examine its compatibility with the common market in the light of Article 87(3)(c) EC.

Finally, the applicant claims that the reasoning of the contested decision is deficient in a number of respects.

Action brought on 21 July 2008 — Securvita v OHIM (Natur-Aktien-Index)

(Case T-285/08)

(2008/C 247/32)

Language in which the application was lodged: German

Parties

Applicant: Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH (Hamburg, Germany) (represented by: M. van Eendenburg, Rechtsanwalt)

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

Form of order sought

— Vary the decision of the Fourth Board of Appeal of 26 May 2008 in Case R 525/2007-4 to the effect that it be ordered that the word mark 'Natur-Aktien-Index' be registered as a Community trade mark at the Office for Harmonisation in the Internal Market.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Natur-Aktien-Index' for goods and services in Classes 16, 36 and 42 (application No 4 861 175).

Decision of the Examiner: rejection of the application.

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

Pleas in law: infringement of Article 7(1)(b) of Regulation (EC) No 40/94 [1], since the mark applied for is not devoid of any distinctive character.

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

Action brought on 21 July 2008 — Fidelio KG v OHIM

(Case T-286/08)

(2008/C 247/33)

Language in which the application was lodged: German

Parties

Applicant: Fidelio KG (Linz, Austria) (represented by M. Gail, acting as Agent)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 May 2008 (case R 632/2007-4);

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay its own costs as well as those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Hallux' for goods in Classes 10, 18 and 25 (Application No 5 245 147).

Decision of the Examiner: Partial refusal of the application.

Decision of the Board of Appeal: Appeal partially upheld.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 [1], as the registered marks concerning the goods 'orthopaedic article' and 'footwear' do not present any absolute grounds for refusal.

[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 25 July 2008 — Cadila Healthcare v OHIM — Laboratorios Inibsa (ZYDUS)

(Case T-287/08)

(2008/C 247/34)

Language in which the application was lodged: English

Parties

Applicant: Cadila Healthcare Ltd (Ahmedabad, India) (represented by: S. Bailey, A. Juaristi and F. Potin, lawyers)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Inibsa, SA (Llissa de Vall, 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 5 May 2008 in case R 1322/2007-2; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'ZYDUS' for goods in classes 3, 5 and 10 — application No 3 277 662

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: Spanish trade mark registration No 2 360 938 of the mark 'CIBUS' for goods in class 5; Spanish trade mark registration No 2 360 939 of the mark 'CIBUS' for goods in class 3

Decision of the Opposition Division: Uphold the opposition with respect to all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal erred in its decision that the Opposition Division stated the reasons for its decision and, thus, that Article 73 of Council Regulation 40/94 was not breached; the Board of Appeal erred in its decision that there was a likelihood of confusion between the earlier trade marks and the trade mark applied for, in breach of general principles of trade marks law and, in particular, Article 8(1)(b) of Council Regulation 40/94.

Action brought on 25 July 2008 — Cadila Healthcare v OHIM — Novartis (ZYDUS)

(Case T-288/08)

(2008/C 247/35)

Language in which the application was lodged: English

Parties

Applicant: Cadila Healthcare Ltd (Ahmedabad, India) (represented by: S. Bailey, A. Juaristi and F. Potin, lawyers)

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

Other party to the proceedings before the Board of Appeal: Novartis AG (Basel, Switzerland)

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 7 May 2008 in case R 1092/2007-2; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'ZYDUS' for goods in classes 3, 5 and 10 — application No 3 277 662

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 2 356 964 of the mark 'ZIMBUS' for goods in class 5

Decision of the Opposition Division: Uphold the opposition with respect to part of the contested goods

Decision of the Board of Appeal: Partial dismissal of the appeal

Pleas in law: The Board of Appeal erred in its decision that there was a likelihood of confusion between the earlier trade mark and the trade mark applied for, in breach of general principles of trade mark law and, in particular, Article 8(1)(b) of Council Regulation 40/94.

Action brought on 29 July 2008 — Deutsche BKK v OHIM

(Case T-289/08)

(2008/C 247/36)

Language in which the application was lodged: German

Parties

Applicant: Deutsche BKK (Wolfsburg, Germany) (represented by H.P. Schrammek, C. Drzymalla and S. Risthaus, acting as Agents)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 May 2008 in Case R 318/2008-4, notified on 2 June 2008;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Deutsche BKK' for services in Classes 36, 41 and 44 (application No 4 724 894).

Decision of the Examiner: Refusal of the application.

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

Pleas in law:

— Infringement of Article 73 of Regulation (EC) No 40/94 ([1]) due to the rejection of documents without the possibility for prior comments;

— Infringement of the first sentence of Article 4(1) of Regulation No 40/94 due to the Office's improper investigation of the facts;

— Infringement of Article 7(1)(b) and (c) of Regulation No 40/94 due to denial of protection for the mark 'Deutsche BKK' because of absolute grounds for refusal of protection for the mark;

— Infringement of Article 7(3) of Regulation No 40/94 due to refusal to recognise distinctive character in consequence of use.

([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 23 July 2008 — CPS Color Group v OHIM — Fema Farben und Putze (TEMACOLOR)

(Case T-295/08)

(2008/C 247/37)

Language in which the application was lodged: English

Parties

Applicant: CPS Color Group Oy (Vantaa, Finland) (represented by: P. Hagman, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fema Farben und Putze GmbH (Ettlingen, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 May 2008 in case R 808/2007-1; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'TEMACOLOR' for goods in class 2

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: German trade mark registration No 2 104 061 of the word mark 'FEMA-Color' for goods in class 2; international trade mark registration No 691 406 of the word mark 'FEMA-Color' for goods in class 2

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal erred in law in determining that the conflicting trade marks are confusingly similar, in breach of Article 8(1)(b) of Council Regulation 40/94.

Action brought on 28 July 2008 — Berliner Institut für Vergleichende Sozialforschung v Commission of the European Communities

(Case T-296/08)

(2008/C 247/38)

Language of the case: German

Parties

Applicant: Berliner Institut für Vergleichende Sozialforschung eV (Berlin, Germany) (represented by: U. Claus, lawyer, acting as Agent)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission Decision of 23 May 2008 definitively granting a payment under the 'Integration indicators and generation change' programme on the basis of the financing arrangement JLS/2004/INTI/077, insofar as applicant's application for a final payment of EUR 59 592,77, exceeding the authorised amount, was rejected;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant and the Commission signed a contract in May 2005 concerning the promotion of a project in the context of the INTI programme. By letter dated 23 May 2008, the defendant granted the applicant a lower final payment than that for which the latter had applied. The present action is directed against the rejection of its application for payment of the costs exceeding the authorised sum.

The applicant asserts in support of its action that the Commission's view that a change of project participants after the conclusion of the financing arrangement is only possible if an appropriate alteration agreement is concluded is unfounded. This is due to the fact that a provision to that effect is not included in the financing arrangement. Further, the Commission refused to recognise costs on various grounds, which are incompatible with the financing arrangement and with previous institutional practice.

Action brought on 29 July 2008 — Mepos Electronics v OHIM (MEPOS)

(Case T-297/08)

(2008/C 247/39)

Language in which the application was lodged: English

Parties

Applicant: Mepos Electronics Ltd (Kaohsiung, Taiwan) (represented by M. Wirtz, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 May 2008 in case R 437/2008-2;

— Grant the request for *restitutio in integrum*; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'MEPOS' for goods in class 9 — application No 5 770 383

Decision of the examiner: Refusal of the applicant's trade mark

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 36, 77(a) and 79 of Council Regulation No 40/94, as well as Article 6 of European Convention on Human Rights and Article 6(2) of Treaty on European Union as the Board of Appeal erred in concluding that the examiner has followed a lawful proceeding in the application process; infringement of Article 78 of Council Regulation No 40/94 as the Board of Appeal erred by not granting the request for *restitutio in integrum* for failure to comply with the time-limit to file an appeal.

Action brought on 31 July 2008 — Aldi v OHIM — Catalana de Telecomunicacions Societat Operadora de Xarxes (ALDI)

(Case T-298/08)

(2008/C 247/40)

Language in which the application was lodged: German

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, 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: Catalana de Telecomunicacions Societat Operadora de Xarxes, SA (Barcelona, Spain)

Form of order sought

— Annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 May 2008 (Case No R 1301/2007-1);

— Order the defendant to pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: the word mark 'ALDI' for goods and services in Classes 35, 38, and 39 (application No 3 360 914).

Proprietor of the mark or sign cited in the opposition proceedings: Catalana de Telecomunicacions Societat Operadora de Xarxes, SA.

Mark or sign cited in opposition: the Spanish word mark 'ALPI' for services in Class 38 (Mark No 2 262 920), the Spanish word mark 'ALPI' for services in Class 39 (Mark No 2 262 921) and the international word mark 'ALPI' for services in Classes 37, 38, 39 and 42 (Mark No 789 344), opposition being filed to registration for services in Class 38.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Plea in law: Infringement of Article 1(b) of Regulation (EC) No 40/94 [1] since there is no likelihood of confusion between the conflicting marks.

[1] Council Regulation No 40/94 0f 20 December 1991 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 1 August 2008 — Hoo Hing v OHIM — Tresplain Investments (Golden Elephant Brand)

(Case T-300/08)

(2008/C 247/41)

Language in which the application was lodged: English

Parties

Applicant: Hoo Hing Holdings Ltd (Romford, United Kingdom) (represented by: M. Edenborough, Barrister)

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

Other party to the proceedings before the Board of Appeal: Tresplain Investments Ltd (Hong Kong, China)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 May 2008 in case R 889/2007-1, in respect of the finding that Article 51(1)(a) of Council Regulation No 40/94 ground of objection was inadmissible;

— Alternatively, alter the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 such that Article 51(1)(a) of Council Regulation No 40/94 ground of objection is held to be admissible and well founded;

— Alter the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 such that Article 51(1)(b) of Council Regulation No 40/94 ground of objection is held to be admissible and well founded;

— Provided that the decision of the First Board of Appeal of the OHIM of 7 May 2008 in case R 889/2007-1 is altered as requested, alter further the same decision so that Community trade mark No 241 810 is declared invalid on either or both of these additional grounds as appropriate; and

— Order OHIM or the other party to the proceedings before the Board of Appeal, to pay the costs. Alternatively, order OHIM and the other party to the proceedings before the Board of Appeal to pay the costs jointly and severally.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'Golden Elephant Brand' for goods in class 30 — Community trade mark registration No 241 810

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 unregistered figurative mark 'GOLDEN ELEPHANT', which had been in use in the United Kingdom

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

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

Pleas in law: The Board of Appeal erred when it held that the allegation based upon Article 51(1)(a) of Council Regulation No 40/94 was inadmissible, as well as when it failed to find that the objection to registration based upon Article 51(1)(b) of Council Regulation No 40/94 was admissible and well founded.

Action brought on 6 August 2008 — Laura Ashley v OHIM — Tiziana Bucci (LAURA ASHLEY)

(Case T-301/08)

(2008/C 247/42)

Language in which the application was lodged: English

Parties

Applicant: Laura Ashley Ltd (London, United Kingdom) (represented by: J. Guise, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Tiziana Bucci (Viareggio, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 May 2008 in case R 1237/2007-1 and reject the opposition; 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 'LAURA ASHLEY' for various goods in classes 3, 18, 24 and 25

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: International trade mark registration No 311 675 of the figurative mark 'Ashley's' for goods in class 25; Italian trade mark registration No 517 151 of the figurative mark 'Ashley's' for goods in class 3, 18, 24 and 25; international trade mark registration No 646 926 of the figurative mark 'Ashley's il primo Cashmere Italiano' for goods in class 25

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(5) of Council Regulation No 40/94 as the Board of Appeal failed to establish whether the applicant was using the Community trade mark applied for without due cause.

Appeal brought on 1 August 2008 by Kurt-Wolfgang Braun-Neumann against the judgment of the Civil Service Tribunal delivered on 23 May 2008 in Case F-79/07, Braun-Neumann v Parliament

(Case T-306/08 P)

(2008/C 247/43)

Language of the case: German

Parties

Appellant: Kurt-Wolfgang Braun-Neumann (Lohr am Main, Germany) (represented by: P. Ames, Rechtsanwalt)

Other party to the proceedings: European Parliament

Form of order sought by the appellant

— Set aside the order of the European Union Civil Service Tribunal of 23 May 2008 in Case F-79/07;

— rule on the merits and uphold the appellant's original application and therefore order the Parliament to pay him with retroactive effect from 1 August 2004 the other half of the survivor's pension in right of Mrs Mandt in the monthly sum of EUR 1 670,84 plus interest at the rate applied by the European Central Bank on the marginal lending facility, increased by 3 %;

— in the alternative, refer the case back to the Civil Service Tribunal of the European Union for judgment.

Pleas in law and main arguments

The appeal is directed against the Civil Service Tribunal's order of 23 May 2008 in Case F-79/07 *Braun-Neumann* v *Parliament*, dismissing as inadmissible the action brought by the appellant.

The appellant submits in support of his appeal that the Civil Service Tribunal erred in law in its interpretation of Article 90(2) of the Staff Regulations of Officials of the European Communities, since its interpretation infringes general principles of Community law. In the appellant's view, the Tribunal's interpretation of a letter as an act adversely affecting it is incorrect. Further, the principle of legal certainty can be satisfied only if the absence of information about available legal remedies is regarded as prejudicial to the determination of when the period for lodging the complaint commenced, since otherwise the litigant's rights would be undermined. Lastly, the Tribunal's interpretation should be regarded as disproportionate in view of the consequences for the appellant.

Action brought on 8 August 2008 — BSH Bosch und Siemens Hausgeräte v OHIM (executive edition)

(Case T-310/08)

(2008/C 247/44)

Language in which the application was lodged: German

Parties

Applicant: BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany) (represented by: S. Biagosch, Rechtsanwalt)

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

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 June 2008 in Case R-845/2007-1;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'executive edition' for goods in Classes 7, 9 and 11 (application No 4 908 182).

Decision of the Examiner: rejection of the application.

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

Pleas in law: infringement of Article 7(1)(b) of Regulation (EC) No 40/94 [1], as the mark applied for has the requisite minimum level of distinctiveness.

[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 15 August 2008 — Melli Bank v Council

(Case T-332/08)

(2008/C 247/45)

Language of the case: English

Parties

Applicant: Melli Bank plc (London, United Kingdom) (represented by: R. Gordon QC, M. Hoskins, Barrister, and T. Din, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Paragraph 4, section 8, of the annex to Council Decision 2008/475/EC concerning restrictive measures against Iran is declared void in so far as it relates to Melli Bank plc.

— If the Court finds that Article 7(2)(d) of the regulation is mandatory in effect, Article 7(2)(d) of Council Regulation 423/2007/EC concerning restrictive measures against Iran is declared to be inapplicable.

— The Council should pay the applicant's costs of these proceedings.

Pleas in law and main arguments

In the present case the applicant seeks the partial annulment of Council Decision 2008/475/EC of 23 June 2008 [1] implementing Article 7(2) of Council Regulation (EC) No 423/2007 concerning restrictive measures against Iran in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision. The applicant contested the same decision in Case T-246/08, *Melli Bank* v *Council* [2].

In support of its application in the present case, the applicant submits that the Council has infringed its obligation to state reasons, as it did not give any individual and specific reasons for the listing of the applicant. The applicant alleges that it has been listed, not because it has itself been involved in providing support to Iran's nuclear activities, but solely because it is a subsidiary of a parent company which is believed to have been involved in such activities.

The applicant further submits that, if Article 7(2)(d) of Council Regulation (EC) No 423/2007 [3] is to be interpreted as imposing an obligation on the Council to list every subsidiary owned or controlled by a parent company which has itself been included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen, this provision should be declared inapplicable as it contravenes the principle of proportionality.

The applicant considers that a mandatory listing of the subsidiary is unnecessary and inappropriate to achieve the purposes of the regulation, as the listing of the parent company prevents a subsidiary based in the European Union from taking instructions from its parent company which would directly or indirectly circumvent the effect of the listing of the parent company.

Finally, the applicant claims that Article 7(2)(d) of the said Council regulation should be interpreted so as to give the Council a discretionary power to list a subsidiary of a listed parent company and not so as to impose an obligation on the Council in this sense.

[1] OJ 2008 L 163, p. 29.
[2] OJ 2008 C 197, p. 34.
[3] Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

Order of the Court of First Instance of 14 July 2008 — Hotel Cipriani v Commission

(Case T-254/00 R)

(2008/C 247/46)

Language of the case: Italian

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

Order of the Court of First Instance (Seventh Chamber) of 10 July 2008 — Cornwell v Commission

(Case T-102/04) [1]

(2008/C 247/47)

Language of the case: French

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

[1] OJ C 106, 30.4.2004.

Order of the Court of First Instance (First Chamber) of 26 June 2008 — Expasa v OHMI — Gallardo Blanco (H)

(Case T-172/06) ([1])

(2008/C 247/48)

Language of the case: Spanish

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

([1]) OJ C 190, 12.8.2006.

Order of the Court of First Instance of 9 July 2008 — SIMSA v Commission

(Case T-480/07) ([1])

(2008/C 247/49)

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 64, 8.3.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 24 July 2008 — Sevenier v Commission

(Case F-62/08)

(2008/C 247/50)

Language of the case: French

Parties

Applicant: Roberto Sevenier (Paris, France) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the Commission's decision rejecting the applicant's request, first, to withdraw his tender of resignation and, second, for his case to be submitted to the medical committee and, consequently, an application for reinstatement of the applicant at the European Commission with reconstitution of his career from the date of his tender of resignation.

Form of order sought

— Annul the Commission decision of 24 September 2007 inasmuch as it rejects the applicant's request, first, to withdraw his tender of resignation of 19 October 1983 and, second, for his case to be submitted to the medical committee;

— Consequently, reinstate the applicant at the European Commission with reconstitution of his career from 19 October 1983;

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

Action brought on 18 July 2008 — Christoph and Others v Commission

(Case F-63/08)

(2008/C 247/51)

Language of the case: French

Parties

Applicant: Eugen Christoph (Liggiano, Italy) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decisions fixing the applicants' conditions of employment inasmuch as the length of their contract or of the renewal thereof is limited to a fixed term.

Form of order sought

— Annul the Commission decisions fixing the applicants' conditions of employment as members of the temporary staff within the meaning of the Conditions of Employment of Other Servants of the European Communities and, more specifically, inasmuch as they limited the length of their contract;

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

Action brought on 29 July 2008 — Nijs v Court of Auditors

(Case F-64/08)

(2008/C 247/52)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger and A. Hertzog, lawyers)

Defendant: Court of Auditors of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of the Court of Auditors designating the reporting officer and the countersigning officer and a claim for damage for loss suffered following the adoption of that decision.

Form of order sought

— Annul the decision of the Secretary-General of the Court of Auditors to designate the director of translation as the applicant's reporting officer and, himself, to be his countersigning officer;

— Order the Court of Auditors to pay damages for the non-material loss which the applicant suffered up to EUR 25 000;

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

Action brought on 25 July 2008 — De Smedt and Others v Parliament

(Case F-66/08)

(2008/C 247/53)

Language of the case: French

Parties

Applicant: Emile De Smedt (Brussels, Belgium) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the individual decisions of the appointing authority refusing to grant the applicants the allowances for shiftwork referred to in Article 56a of the Staff Regulations pursuant to Council Regulation No 1873/2006 of 11 December 2006 amending Regulation No 300/76 determining the categories of officials entitled to allowances for shift work, and the rates and conditions thereof, and those allowances referred to in Article 56b of the Staff Regulations pursuant to Council Regulation No 1945/2006 of 11 December 2006 amending Regulation No 495/77 determining the categories of officials entitled to, and the conditions for and rates of, allowances for regular standby duty.

Form of order sought

— Annul the individual decisions of the appointing authority refusing to grant the applicants the allowances for shiftwork referred to in Article 56a of the Staff Regulations pursuant to Council Regulation No 1873/2006 of 11 December 2006 amending Regulation No 300/76 determining the categories of officials entitled to allowances for shift work, and the rates and conditions thereof;

— Annul the individual decisions of the appointing authority refusing to grant the applicants the allowances referred to in Article 56b of the Staff Regulations pursuant to Council Regulation No 1945/2006 of 11 December 2006 amending Regulation No 495/77 determining the categories of officials entitled to, and the conditions for and rates of, allowances for regular standby duty;

— Order the European Parliament to pay the costs.

Action brought on 6 August 2008 — Ziliene v Parliament

(Case F-70/08)

(2008/C 247/54)

Language of the case: French

Parties

Applicant: Veronika Ziliene (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

First, annulment of the decision of the appointing authority of 17 July 2007 not to grant the applicant the daily allowance referred to in Article 10 of Annex VII of the Staff Regulations and, second, order the defendant to pay the daily allowances from the date the applicant took up his duties as an official, plus interest along with EUR 1 damages for the non-material loss suffered.

Form of order sought

— Annul the decision of the appointing authority of 17 July 2007 not to grant the applicant the daily allowance referred to in Article 10 of Annex VII of the Staff Regulations;

— Order the defendant to pay the daily allowances from the date the applicant took up his duties as an official, plus interest at the rate set by the European Central Bank for main refinancing operations applicable during the periods concerned plus two percentage points, until payment in full;

— Order the defendant to pay the applicant EUR 1 damages for the non-material loss suffered;

— Order the European Parliament to pay the costs.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.