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Information and Notices

Notice No | Contents | Page

EN

Price:
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(Continued overleaf)

EN

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(Continued overleaf)

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EN

(Continued overleaf)

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EN

(Continued overleaf)

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(Continued overleaf)

Note to the reader (see page 3 of the cover)

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 44/01)

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

OJ C 32, 7.2.2009

Past publications

OJ C 19, 24.1.2009

OJ C 6, 10.1.2009

OJ C 327, 20.12.2008

OJ C 313, 6.12.2008

OJ C 301, 22.11.2008

OJ C 285, 8.11.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 22 December 2008 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — The Wellcome Foundation Ltd v Paranova Pharmazeutika Handels GmbH

(Case C-276/05) [1]

(Trade marks — Pharmaceutical products — Repackaging — Parallel imports — Substantial change in appearance of the packaging — Obligation of prior notice)

(2009/C 44/02)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: The Wellcome Foundation Ltd

Defendant: Paranova Pharmazeutika Handels GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 7 of Directive 89/104/EEC: First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Repackaging of a pharmaceutical product imported in parallel — Substantial change in the appearance of the packaging — Extent of the obligation of prior notification

Operative part of the judgment

1. *Article 7(2) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, is to be interpreted as meaning that, where it is established that repackaging of the pharmaceutical product is necessary for further marketing in the Member State of importation, the presentation of the packaging should be assessed only against the condition that it should not be such as to be liable to damage the reputation of the trade mark or that of its proprietor.*

2. *Article 7(2) of Directive 89/104, as amended by the Agreement on the European Economic Area of 2 May 1992, is to be interpreted as meaning that it is for the parallel importer to furnish to the proprietor of the trade mark the information which is necessary and sufficient to enable the latter to determine whether the repackaging of the product under that trade mark is necessary in order to market it in the Member State of importation.*

[1] OJ C 217, 3.9.2005.

Judgment of the Court (First Chamber) of 18 December 2008 — Les Éditions Albert René Sàrl v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Orange A/S

(Case C-16/06 P) [1]

(Appeals — Community trade mark — Regulation (EC) No 40/94 — Articles 8 and 63 — Word mark MOBILIX — Opposition by the proprietor of the Community and national word mark OBELIX — Partial rejection of the opposition — Reformatio in pejus — 'Counteraction' theory — Modification of the subject-matter of the dispute — Documents included as an annex to the application as new evidence before the Court of First Instance)

(2009/C 44/03)

Language of the case: English

Parties

Appellant: Les Éditions Albert René Sàrl (represented by: J. Pagenberg, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, acting as Agent), Orange A/S (represented by: J. Balling, advokat)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 27 October 2005 in Case T-336/03 *Editions Albert René* v *OHIM — Orange (MOBILIX)* by which that Court dismissed an action for annulment brought by the proprietor of the Community and national word mark 'OBELIX' in respect of certain goods and services classed inter alia in Classes 9, 16, 28, 35, 41 and 42 against Decision R 559/2002-4 of the Fourth Board of Appeal of OHIM of 14 July 2003 rejecting in part the application brought against the decision of the Opposition Division rejecting the opposition proceeding brought against the application to register the word mark MOBILIX in respect of certain goods and services classed in Classes 9, 16, 35, 37, 38 and 42

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Les Éditions Albert René Sàrl to pay the costs.*

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Szegedi Ítélőtábla (Republic of Hungary)) — In the proceedings in the case of Cartesio Oktató és Szolgáltató Bt

(Case C-210/06) ([1])

(Transfer of a company seat to a Member State other than the Member State of incorporation — Application for amendment of the entry regarding the company seat in the commercial register — Refusal — Appeal against a decision of a court entrusted with keeping the commercial register — Article 234 EC — Reference for a preliminary ruling — Admissibility — Definition of 'court or tribunal' — Definition of 'a court or tribunal against whose decisions there is no judicial remedy under national law' — Appeal against a decision making a reference for a preliminary ruling — Jurisdiction of appellate courts to order revocation of such a decision — Freedom of establishment — Articles 43 EC and 48 EC)

(2009/C 44/04)

Language of the case: Hungarian

Referring court

Szegedi Ítélőtábla

Party to the main proceedings

Cartesio Oktató és Szolgáltató Bt

Re:

Reference for a preliminary ruling — Szegedi Ítélőtábla — Interpretation of Articles 43, 48 and 234 EC — No possibility to transfer the seat of a company constituted under the law of a Member State to another Member State without first going into liquidation in the Member State of origin.

Operative part of the judgment

1. *A court such as the referring court, hearing an appeal against a decision of a lower court, responsible for maintaining the commercial register, rejecting an application for amendment of information entered in that register, must be classified as a court or tribunal which is entitled to make a reference for a preliminary ruling under Article 234 EC, regardless of the fact that neither the decision of the lower court nor the consideration of the appeal by the referring court takes place in the context of inter partes proceedings.*

2. *A court such as the referring court, whose decisions in disputes such as that in the main proceedings may be appealed on points of law, cannot be classified as a court or tribunal against whose decisions there is no judicial remedy under national law, within the meaning of the third paragraph of Article 234 EC.*

3. *Where rules of national law apply which relate to the right of appeal against a decision making a reference for a preliminary ruling, and under those rules the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal, the second paragraph of Article 234 EC is to be interpreted as meaning that the jurisdiction conferred on any national court or tribunal by that provision of the Treaty to make a reference to the Court for a preliminary ruling cannot be called into question by the application of those rules, where they permit the appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings.*

4. *As Community law now stands, Articles 43 EC and 48 EC are to be interpreted as not precluding legislation of a Member State under which a company incorporated under the law of that Member State may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation.*

([1]) OJ C 165, 15.7.2006.

Judgment of the Court (First Chamber) of 18 December 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-338/06) ([1])

(Failure of a Member State to fulfil obligations — Second Directive 77/91/EEC — Articles 29 and 42 — Public limited liability companies — Capital increase — Right to pre-emptive subscription for shares and for bonds convertible into shares — Withdrawal — Protection of shareholders — Equal treatment)

(2009/C 44/05)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Interveners in support of the defendant: Republic of Poland (represented by: E. Ośniecka-Tamecka, Agent), Republic of Finland (represented by: J. Heliskoski, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson, Agent, assisted by J. Stratford, Barrister)

Re:

Failure by a Member State to fulfil obligations — Infringement of Articles 29 and 42 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1) — Failure to protect minority shareholders

Operative part of the judgment

The Court:

1) *Declares that the Kingdom of Spain:*

   — *by granting the right to pre-emptive subscription of shares in the event of a capital increase by consideration in cash, not only to shareholders, but also to holders of bonds convertible into shares;*

   — *by granting the right to pre-emptive subscription rights for bonds convertible into shares not only to shareholders, but also to holders of bonds convertible into shares pertaining to earlier issues; and*

   — *by failing to provide that the shareholders' meeting may decide to withdraw pre-emptive subscription rights for bonds convertible into shares;*

   has failed to fulfil its obligations under Article 29 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article [48] of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;

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

3) *Orders the Kingdom of Spain to pay three quarters of all the costs. The Commission of the European Communities is ordered to pay a quarter of the costs;*

4) *Orders the Republic of Poland, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Third Chamber) of 22 December 2008 — British Aggregates Association v Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland

(Case C-487/06 P) ([1])

(Appeal — State aid — Environmental levy on aggregates in the United Kingdom)

(2009/C 44/06)

Language of the case: English

Parties

Appellant: British Aggregates Association (represented by: C. Pouncey, Solicitor, and L. Van den Hende, advocaat)

Other parties to the proceedings: Commission of the European Communities (represented by: J. Flett, B. Martenczuk and T. Scharf, Agents); United Kingdom of Great Britain and Northern Ireland (represented by: T. Harris, M. Hall and G. Facenna, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 13 September 2006 in Case T-210/02 *British Aggregates Association* v *Commission*, by which the Court of First Instance rejected as unfounded an application for the partial annulment of Commission Decision C(2002) 1478 final of 24 April 2002 not to raise objections to the system of levies on quarry aggregates in the United Kingdom (State aid 863/01 — United Kingdom, Aggregates Levy)

Operative part of the judgment

The Court (Third Chamber):

1. *Sets aside the judgment delivered by the Court of First Instance of the European Communities on 13 September 2006 in Case T-210/02 British Aggregates Association v Commission;*

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

3. *Reserves the costs.*

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany)) — Heinz Huber v Bundesrepublik Deutschland

(Case C-524/06) (1)

(Protection of personal data — European citizenship — Principle of non-discrimination on grounds of nationality — Directive 95/46/EC — Concept of necessity — General processing of personal data relating to citizens of the Union who are nationals of another Member State — Central register of foreign nationals)

(2009/C 44/07)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicant: Heinz Huber

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Oberverwaltungsgericht für das Land Nordrhein-Westfalen — Interpretation of the first paragraph of Article 12 EC, Article 17 EC, Article 18(1) EC and the first paragraph of Article 43 EC, and of Article 7(e) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — National rules providing for the general processing of personal data relating to citizens of the other Member States in a national central register of foreign nationals, which differ from the national rules relating to the personal data of citizens of the State in question, which are processed only in the municipal registers for declarations of residence

Operative part of the judgment

1) *A system for processing personal data relating to Union citizens who are not nationals of the Member State concerned, such as that put in place by the Law on the central register of foreign nationals (Gesetz über das Ausländerzentralregister) of 2 September 1994, as amended by the Law of 21 June 2005, and having as its object the provision of support to the national authorities responsible for the application of the law relating to the right of residence does not satisfy the requirement of necessity laid down by Article 7(e) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, interpreted in the light of the prohibition on any discrimination on grounds of nationality, unless:*

   — *it contains only the data which are necessary for the application by those authorities of that legislation, and*

   — *its centralised nature enables the legislation relating to the right of residence to be more effectively applied as regards Union citizens who are not nationals of that Member State.*

   It is for the national court to ascertain whether those conditions are satisfied in the main proceedings.

   The storage and processing of personal data containing individualised personal information in a register such as the Central Register of Foreign Nationals for statistical purposes cannot, on any basis, be considered to be necessary within the meaning of Article 7(e) of Directive 95/46.

2) *Article 12(1) EC must be interpreted as meaning that it precludes the putting in place by a Member State, for the purpose of fighting crime, of a system for processing personal data specific to Union citizens who are not nationals of that Member State.*

(1) OJ C 56, 10.3.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 — Masdar (UK) Ltd v Commission of the European Communities

(Case C-47/07 P) (1)

(Appeal — Second paragraph of Article 288 EC — Action alleging unjust enrichment on the part of the Community — Community assistance programmes — Irregularities on the part of the co-contractor of the Commission — Services provided by a subcontractor — Non-payment — Risks inherent in economic activities — Principle of the protection of legitimate expectations — Duty of care of the Community administration)

(2009/C 44/08)

Language of the case: English

Parties

Appellant: Masdar (UK) Ltd (represented by: A.P. Bentley, QC, and P. Green, barrister)

Other party to the proceedings: Commission of the European Communities (represented by: J. Enegren and M. Wilderspin, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 16 November 2006 in Case T-333/03 *Masdar UK Ltd* v *Commission of the European Communities*, dismissing as unfounded an action for damages in respect of loss allegedly suffered by the applicant following refusal by the Commission to pay it for services which it claims to have provided in connection with two projects under the TACIS Programme in Moldavia and Russia.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Masdar (UK) Ltd to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Cour d'appel de Liège — Belgium) — État belge — SPF Finances v Les Vergers du Vieux Tauves SA

(Case C-48/07) ([1])

(Corporation taxes — Directive 90/435/EEC — Status of parent company — Capital holding — Holding of shares in usufruct)

(2009/C 44/09)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Applicant: État belge — SPF Finances

Defendant: Les Vergers du Vieux Tauves SA

Re:

Reference for a preliminary ruling — Cour d'Appel de Liège — Interpretation of Articles 3, 4 and 5 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiary companies of different Member States (OJ 1990 L 225, p. 6) — Meaning of holding in the capital of a subsidiary established in another Member State — Whether holding a right of usufruct over shareholdings is sufficient for tax exemption on dividends received, or whether full ownership is needed.

Operative part of the judgment

The concept of a holding in the capital of a company of another Member State, within the meaning of Article 3 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, does not include the holding of shares in usufruct.

However, in compliance with the freedoms of movement guaranteed by the EC Treaty, applicable to cross-border situations, when a Member State, in order to avoid double taxation of received dividends, exempts from tax both the dividends which a resident company receives from another resident company in which it holds shares with full title and those which a resident company receives from another resident company in which it holds shares in usufruct, that Member State must apply, for the purpose of exempting received dividends, the same treatment to dividends received from a company established in another Member State by a resident company holding shares with full title as that which it applies to such dividends received by a resident company which holds shares in usufruct.

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy, Satamedia Oy

(Case C-73/07) ([1])

(Directive 95/46/EC — Scope — Processing and flow of tax data of a personal nature — Protection of natural persons — Freedom of expression)

(2009/C 44/10)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Tietosuojavaltuutettu

Defendants: Satakunnan Markkinapörssi Oy, Satamedia Oy

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 3(1), 9 and 17 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Scope — Collection, publication, transfer and processing in a text-messaging service of public tax data relating to the amount of income and taxable assets of natural persons

Operative part of the judgment

1) *Article 3(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data is to be interpreted as meaning that an activity in which data on the earned and unearned income and the assets of natural persons are:*

   — *collected from documents in the public domain held by the tax authorities and processed for publication,*

   — *published alphabetically in printed form by income bracket and municipality in the form of comprehensive lists,*

   — *transferred onward on CD-ROM to be used for commercial purposes, and*

   — *processed for the purposes of a text-messaging service whereby mobile telephone users can, by sending a text message containing details of an individual's name and municipality of residence to a given number, receive in reply information concerning the earned and unearned income and assets of that person,*

   must be considered as the 'processing of personal data' within the meaning of that provision.

2) *Article 9 of Directive 95/46 is to be interpreted as meaning that the activities referred to at points (a) to (d) of the first question, relating to data from documents which are in the public domain under national legislation, must be considered as activities involving the processing of personal data carried out 'solely for journalistic purposes', within the meaning of that provision, if the sole object of those activities is the disclosure to the public of information, opinions or ideas. Whether that is the case is a matter for the national court to determine.*

3) *Activities involving the processing of personal data such as those referred to at points (c) and (d) of the first question and relating to personal data files which contain solely, and in unaltered form, material that has already been published in the media, fall within the scope of application of Directive 95/46.*

(1) OJ C 95, 28.4.2007.

Judgment of the Court (Third Chamber) of 18 December 2008 — Coop de France Bétail et Viande, formerly Fédération nationale de la coopération bétail et viande (FNCBV)/Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL), Jeunes agriculteurs (JA) v Commission of the European Communities, French Republic

(Joined Cases C-101/07 P and C-110/07 P) (1)

(Appeals — Competition — Market in beef and veal — Agreement between national federations of farmers and slaughterers with the object of suspending imports of beef and veal and fixing a minimum purchase price — Fines — Regulation No 17 — Article 15(2) — Taking into account of the turnover of undertakings which are members of the federations)

(2009/C 44/11)

Language of the case: French

Parties

Appellants: Coop de France Bétail et Viande, formerly Fédération nationale de la coopération bétail et viande (FNCBV) (represented by M. Ponsard, avocat) (C-101/07 P), Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL), Jeunes agriculteurs (JA) (represented by V. Ledoux and B. Neouze, avocats) (C-110/07 P),

Other parties to the proceedings: French Republic (represented by G. de Bergues and S. Ramet, Agents), Commission of the European Communities (represented by A. Bouquet and X. Lewis, Agents)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 13 December 2006 in Joined Cases T-217/03 and T-245/03 *FNCBV and Others* v *Commission*, by which the Court of First Instance dismissed the applicants' application primarily, to annul Commission Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (OJ 2003 L 209, p. 12) or, alternatively, to cancel or reduce the fine imposed by that decision — Constituent elements of a cartel — Need for acquiescence of the parties — Method of calculating the fines — Entitlement to take into account the turnover of the members of an association where it does not have formal power to bind its members — Duty to state reasons and infringement of the rights of the defence

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Coop de France bétail et viande, formerly Fédération nationale de la coopération bétail et viande (FNCBV), Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL) and Jeunes agriculteurs (JA) to pay the costs;*

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

(1) OJ C 95, 28.4.2007.

Judgment of the Court (Grand Chamber) of 9 December 2008 — Commission of the European Communities v French Republic

(Case C-121/07) (1)

(Failure of a Member State to fulfil obligations — Directive 2001/18/EC — Deliberate release into the environment and placing on the market of GMOs — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Non-compliance — Article 228 EC — Judgment complied with during the proceedings — Pecuniary penalties)

(2009/C 44/12)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and C. Zadra, acting as Agents)

Defendant: French Republic (represented by: E. Belliard, S. Gasri and G. de Bergues, acting as Agents)

Intervener in support of the defendant: Czech Republic (represented by: initially, T. Boček and, subsequently, M. Smolek, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Failure to comply with the judgment of the Court of 15 July 2004 in Case C-419/03 concerning the failure to transpose the provisions of Directive 2001/18/EC Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms (OJ 2001 L 106, p. 1), which diverge from or go beyond the provisions of that directive — Application for the imposition of a penalty payment and a lump sum payment

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, by the date on which the deadline imposed in the reasoned opinion expired, all the measures necessary to comply with the judgment of 15 July 2004 in Case C-419/03 Commission v France concerning its failure to transpose into national law the provisions of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, which diverge from or go beyond the provisions of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms, the French Republic has failed to fulfil its obligations under Article 228(1) EC;*

2. *Orders the French Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a lump sum of EUR 10 million;*

3. *Orders the French Republic to pay the costs;*

4. *Orders the Czech Republic to bear its own costs.*

(1) OJ C 95, 28.4.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Conseil d'État — France) — Société Arcelor Atlantique et Lorraine, Sollac Méditerrannée, Société Arcelor Packaging International, Société Ugine & Alz France, Société Industeel Loire, Société Creusot Métal, Société Imphy Alloys, Arcelor SA v Premier ministre, Ministre de l'Écologie et du Développement durable, Ministre de l'Économie, des Finances et de l'Industrie

(Case C-127/07) (1)

(Environment — Integrated pollution prevention and control — Greenhouse gas emission allowance trading scheme — Directive 2003/87/EC — Scope — Installations in the steel sector included — Installations in the chemical and non-ferrous metal sectors excluded — Principle of equal treatment)

(2009/C 44/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Société Arcelor Atlantique et Lorraine, Sollac Méditerrannée, Société Arcelor Packaging International, Société Ugine & Alz France, Société Industeel Loire, Société Creusot Métal, Société Imphy Alloys, Arcelor SA

Defendants: Premier ministre, Ministre de l'Écologie et du Développement durable, Ministre de l'Économie, des Finances et de l'Industrie

Re:

Reference for a preliminary ruling — Conseil d'État — Validity, in the light of the Community principle of equal treatment, of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — Difference in treatment as between, on the one hand, installations in the steel sector subject to the greenhouse gas emission allowance trading scheme laid down by the Directive and, on the other, the aluminium and plastic industries, which emit identical greenhouse gases and which are not subject to that system — Objective justification for that difference in treatment?

Operative part of the judgment

Consideration of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, from the point of view of the principle of equal treatment has disclosed nothing to affect its validity in so far as it makes the greenhouse gas emission allowance trading scheme applicable to the steel sector without including the chemical and non-ferrous metal sectors in its scope.

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (First Chamber) of 22 December 2008 — Commission of the European Communities v Republic of Austria

(Case C-161/07) ([1])

(Failure of a Member State to fulfil obligations — Article 43 EC — National legislation laying down the conditions for registration of partnerships or companies on application by nationals of the new Member States — Procedure for certification of self-employed status)

(2009/C 44/14)

Language of the case: German

Parties

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

Intervener in support of the applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, Agent)

Defendant: Republic of Austria (represented by: C. Pesendorfer and M. Winkler, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 43 EC — National legislation laying down the conditions for registration of businesses owned by third-country nationals, applicable also to Czech, Estonian, Latvian, Lithuanian, Hungarian, Polish, Slovene and Slovak nationals — Obligation for all members of partnerships and for minority shareholders in limited liability companies who perform activities which are typical of a work relationship to follow a special procedure for determining the applicant's self-employed status, in the course of which they must prove their influence on the management of the business they wish to have registered in the Member State

Operative part of the judgment

The Court:

1. *Declares that, by requiring for the registration of partnerships or companies in the commercial register on application by persons who are nationals of the Member States which acceded to the European Union on 1 May 2004 — with the exception of the Republic of Cyprus and the Republic of Malta — and are members of a partnership or have minority holdings in a limited liability company, a determination by the Arbeitsmarktservice that they are self-employed or the presentation of a work permit exemption certificate, the Republic of Austria has failed to fulfil its obligations under Article 43 EC;*

2. *Orders the Republic of Austria to pay the costs.*

([1]) OJ C 140, 23.6.2007.

Judgment of the Court (Second Chamber) of 22 December 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-189/07) ([1])

(Failure to fulfil obligations — Regulation (EEC) No 2847/93 — Articles 2(1) and 31(1) and (2) — Regulations (EC) No 2406/96 and 850/98 — Control system in the fisheries sector — Common marketing standards for certain fishery products — Unsatisfactory monitoring, inspection and surveillance — Failure to adopt adequate measures to penalise infringements — Enforcement of penalties — General failure to fulfil the provisions of a regulation — Production before the Court of additional evidence intended to support the proposition that the failure is general and consistent — Whether permissible)

(2009/C 44/15)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver and F. Jimeno Fernández, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2(1) and 31(1) and (2) of Council Regulation (EC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) — Infringement of Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (OJ 1996 L 334, p. 1) and Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1) — Unsatisfactory monitoring — Failure to adopt adequate measures to penalise the infringements

Operative part of the judgment

The Court:

1. *Declares that,*

   — *by failing to carry out satisfactorily the monitoring, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, including the landing and marketing of species subject to rules on minimum size under Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, and Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products and by failing to devote the necessary human resources to the monitoring, inspection and surveillance of fishing; and*

   — *by failing to act with sufficient diligence to ensure the adoption of appropriate measures against those responsible for infringing Community provisions in relation to fisheries, in particular by bringing administrative actions or criminal proceedings and imposing penalties which have a deterrent effect on those responsible;*

   the Kingdom of Spain has failed to fulfil its obligations under Articles 2(1) and 31(1) and (2) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, as amended by Council Regulation (EC) No 2846/98 of 17 December 1998;

2. *Dismisses the remainder of the action;*

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

(1) OJ C 129, 9.6.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 — Donal Gordon v Commission of the European Communities

(Case C-198/07 P) (1)

(Appeal — Career development report — Action for annulment — Legal interest in bringing proceedings — Official in a state of total permanent invalidity)

(2009/C 44/16)

Language of the case: English

Parties

Appellant: Donal Gordon (represented by: J. Sambon, P.-P. Van Gehuchten and P. Reyniers, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and H. Krämer, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 7 February 2007 in Case T-175/04 *Gordon* v *Commission* — Action for annulment of the applicant's career development report for the 2001-2002 appraisal procedure — Legal interest in bringing proceedings — Official retired on the ground of total permanent invalidity during the proceedings

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the Court of First Instance of the European Communities of 7 February 2007 in Case T-175/04 Gordon v Commission in so far as the Court of First Instance declared that there was no need to rule on the application for annulment brought by Mr Gordon;*

2) *Dismisses the appeal as inadmissible in so far as it challenges the dismissal of the claim for damages in the judgment of the Court of First Instance referred to;*

3) *Annuls the decision of the Commission of the European Communities of 11 December 2003 rejecting Mr Gordon's complaint against the decision of 28 April 2003 confirming his career development report for the period from 1 July 2001 to 31 December 2002;*

4) *Orders the Commission of the European Communities to pay the costs incurred by Mr Gordon before the Court of Justice of the European Communities and the Court of First Instance of the European Communities.*

(1) OJ C 129, 9.6.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Hof van Beroep te Gent — Belgium) — Criminal proceedings against Lodewijk Gysbrechts, Santurel Inter BVBA

(Case C-205/07) ([1])

(Articles 28 EC to 30 EC — Directive 97/7/EC — Consumer protection in distance contracts — Period for withdrawal — Prohibition on requiring from a consumer an advance or payment before the end of the period for withdrawal)

(2009/C 44/17)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties in the main proceedings

Lodewijk Gysbrechts, Santurel Inter BVBA

Re:

Reference for a preliminary ruling — Hof van Beroep te Gent — Interpretation of Articles 28 and 30 EC — Effects on intra-community trade of a national rule prohibiting a requirement that a consumer pay an advance or make payment before the expiry of a withdrawal period — Compatibility with Community law

Operative part of the judgment

The Court:

Article 29 EC does not preclude national rules which prohibit a supplier in cross-border distance selling from requiring an advance or any payment from a consumer before expiry of the withdrawal period, but Article 29 EC does preclude a prohibition, under those rules, on requesting, before expiry of that period, the number of the consumer's payment card.

([1]) OJ C 140, 23.6.2007.

Judgment of the Court (Grand Chamber) of 16 December 2008 (reference for a preliminary ruling from the Simvoulio tis Epikratias — Greece) — Michaniki AE v Ethniko Simvoulio Radiotileorasis, Ipourgos Epikratias

(Case C-213/07) ([1])

(Public works contracts — Directive 93/37/EEC — Article 24 — Grounds for excluding participation in a contract — National measures establishing an incompatibility between the public works sector and that of the media)

(2009/C 44/18)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Michaniki AE

Defendants: Ethniko Simvoulio Radiotileorasis, Ipourgos Epikratias

Interveners in support of the defendants: Elliniki Technodomiki Techniki Ependitiki Viomichaniki AE, successor in law to Pantechniki AE, Sindesmos Epikhiriseon Periodikou Tipou

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — Question of whether or not the list of grounds for excluding a contractor from participation in the contract is exhaustive

Operative part of the judgment

(1) *The first paragraph of Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, must be interpreted as listing exhaustively the grounds based on objective considerations of professional quality which are capable of justifying the exclusion of a contractor from participation in a public works contract. However, that directive does not preclude a Member State from providing for further exclusionary measures designed to ensure observance of the principles of equal treatment of tenderers and of transparency, provided that such measures do not go beyond what is necessary to achieve that objective;*

(2) *Community law must be interpreted as precluding a national provision which, whilst pursuing the legitimate objectives of equal treatment of tenderers and of transparency in procedures for the award of public contracts, establishes an irrebuttable presumption that the status of owner, partner, main shareholder or management executive of an undertaking active in the media sector is incompatible with that of owner, partner, main shareholder or management executive of an undertaking which contracts with the State or a legal person in the public sector in the broad sense to perform a works, supply or services contract.*

([1]) OJ C 140, 23.6.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Cour d'appel de Liège — Belgium) — État belge — SPF Finances v Truck Center SA

(Case C-282/07) ([1])

(Freedom of establishment — Article 52 of the EC Treaty (now, following amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) — Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC respectively) — Taxation of legal persons — Income from capital and movable property — Retention of tax at source — Withholding tax — Charging of withholding tax on interest paid to non-resident companies — No charging of withholding tax on interest paid to resident companies — Double taxation convention — Restriction — None)

(2009/C 44/19)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Appellant: État belge — SPF Finances

Respondent: Truck Center SA

Re:

Reference for a preliminary ruling — Cour d'appel de Liège — Interpretation of Articles 56 EC and 58 EC — Free movement of capital — Taxation of legal persons — Withholding tax deducted by the tax authorities of one Member State on income from capital allocated by a company established in that State to a company established in another Member State — No deduction of withholding tax where that income is allocated to a company established in the same Member State — Unjustified difference in treatment or difference in situation justifying different treatment? — Effect, in that respect, of a bilateral convention for the avoidance of double taxation

Operative part of the judgment

Articles 52 of the EC Treaty (now, following amendment, Article 43 EC), 58 of the EC Treaty (now Article 48 EC), 73b of the EC Treaty and 73d of the Treaty (now Articles 56 EC and 58 EC respectively) must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, which provides for the retention of tax at source on interest paid by a company resident in that Member State to a recipient company resident in another Member State, while exempting from that retention interest paid to a recipient company resident in the first Member State, the income of which is taxed in that Member State by way of corporation tax.

([1]) OJ C 199 of 25.8.2007.

Judgment of the Court (Eighth Chamber) of 22 December 2008 — Commission of the European Communities v Italian Republic

(Case C-283/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 75/442/EEC — Article 1 — Concept of waste — Scrap intended for use in iron and steel activities — High-quality refuse-derived fuel — Incorrect transposition)

(2009/C 44/20)

Language of the case: Italian

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — Refuse-derived fuel (RDF) and scrap intended for use in iron and steel and metallurgical activities — Exclusion from the scope of the national transposition law

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force provisions such as*

   — *Article 1(25) to (27) and (29)(a) of Law No 308 of 15 December 2004 delegating power to the government to reform, coordinate and supplement legislation in environmental matters and direct implementation measures, and*

   — *Article 1(29)(b) of Law No 308 of 15 December 2004 and Articles 183(1)(s) and 229(2) of Legislative Decree No 152 of 3 April 2006 laying down rules in environmental matters,*

   under which certain scrap intended for use in iron and steel and metallurgical activities and high-quality refuse-derived fuel (RDF-Q) respectively are excluded a priori from the scope of the Italian legislation on waste transposing Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, the Italian Republic has failed to fulfil its obligations under Article 1(a) of that directive;

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

([1]) OJ C 199 of 25.8.2007.

Judgment of the Court (First Chamber) of 18 December 2008 (reference for a preliminary ruling from the Højesteret — Denmark) — Ruben Andersen v Kommunernes Landsforening, acting on behalf of Slagelse Kommune (formerly Skælskør Kommune)

(Case C-306/07) ([1])

(Information to be provided to employees — Directive 91/533/EEC — Article 8(1) and (2) — Scope — Employees 'covered' by a collective agreement — Concept of 'temporary contract or employment relationship')

(2009/C 44/21)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Ruben Andersen

Defendant: Kommunernes Landsforening, acting on behalf of Slagelse Kommune (formerly Skælskør Kommune)

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Article 8(1) and (2) of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32) — Applicability of a collective agreement intended to transpose a directive to an employee who is not a member of one of the organisations which are party to that agreement — Rights of employees who believe themselves to be harmed by the failure to comply with the obligations under the directive

Operative part of the judgment

1. *Article 8(1) of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship must be interpreted as meaning that it does not prohibit national rules which provide that the terms of a collective agreement which is intended to transpose the provisions of the directive into national law are to apply to an employee even though he is not a member of an organisation which is a party to that agreement.;*

2. *The second paragraph of Article 8(2) of Council Directive 91/533 must be interpreted as meaning that it does not prevent an employee who is not a member of a union which is a party to a collective agreement governing his employment relationship being regarded as 'covered by' that agreement within the meaning of the abovementioned provision.*

3. *The words 'a temporary contract or employment relationship' in the second paragraph of Article 8(2) of Directive 91/533 are to be interpreted as referring to contracts and employment relationships entered into for a short period. If no norm has been laid down for that purpose in a Member State's rules, it is for the national courts to determine the duration in each case in the light of the specific characteristics of certain sectors or certain occupations or activities. That duration must, however, be fixed so as to provide effective protection of the rights conferred on workers by the directive.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (Grand Chamber) of 22 December 2008 (reference for a preliminary ruling from the Cour Administrative d'Appel de Lyon — France) — Régie Networks v Direction de Contrôle Fiscal Rhône-Alpes Bourgogne

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

(State aid — Aid scheme to support local radio stations — Financed by a parafiscal charge on advertising companies — Favourable decision by the Commission at the conclusion of the preliminary stage of the review procedure under Article 93(3) of the EC Treaty (now Article 88(3) EC) — Aid that may be compatible with the common market — Article 92(3) of the EC Treaty (now, after amendment, Article 87(3) EC) — Decision challenged on the ground that it is unlawful — Obligation to state the reasons on which the decision is based — Assessment of the facts — Whether the parafiscal charge is compatible with the EC Treaty)

(2009/C 44/22)

Language of the case: French

Referring court

Cour Administrative d'Appel de Lyon

Parties to the main proceedings

Applicant: Régie Networks

Defendant: Direction de Contrôle Fiscal Rhône-Alpes Bourgogne

Re:

Reference for a preliminary ruling — Cour Administrative d'Appel de Lyon — Validity of Commission Decision No N 679/97 of 10 November 1997 by which the Commission decided not to raise any objections to amendments made to the radio broadcasting aid scheme introduced by Decree 92-1053 of 30 September 1992 (JORF No 228 of 1 October 1992) (SG(97) D/9265) — Parafiscal charge on advertisements broadcast on sound radio and television in French territory, the revenue from which is allocated to a fund to support radio broadcasting — Aid scheme which benefits only national undertakings — Applicability to that scheme — and to the charge which funds it — of the exception provided for in Article 87(3)(c) EC

Operative part of the judgment

The decision of the Commission of the European Communities of 10 November 1997 not to raise any objections to the new version of an aid scheme to support local radio stations (State aid No N 679/97 — France) is invalid.

The effects of the declaration that that decision of the Commission of the European Communities of 10 November 1997 is invalid are suspended pending the adoption of a new decision by the Commission under Article 88 EC. Those effects are to be preserved for a period not exceeding two months from the date of delivery of this judgment if the Commission decides to adopt such a new decision under Article 88(3) EC, and for a reasonable further period if the Commission decides to initiate the procedure under Article 88(2) EC. Only undertakings which, prior to the date of delivery of this judgment, brought legal proceedings or made an equivalent complaint regarding the levying of the parafiscal charge on advertising broadcast by sound radio or television, established by Article 1 of Decree No 97-1263 of 29 December 1997 creating a parafiscal charge for the benefit of a fund to support radio broadcasting, are excluded from the temporal limitation of the effects of this judgment.

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Verwaltungsgericht Hannover — Germany) — Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk

(Case C-336/07) ([1])

(Directive 2002/22/EC — Article 31(1) — Reasonable 'must carry' obligations — National law requiring analogue cable network operators to provide access to their cable networks to all television programmes allowed to be broadcast terrestrially — Principle of proportionality)

(2009/C 44/23)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Kabel Deutschland Vertrieb und Service GmbH & Co. KG

Defendant: Niedersächsische Landesmedienanstalt für privaten Rundfunk

Intervening parties: Norddeutscher Rundfunk, Zweites Deutsches Fernsehen, ARTE GEIE, Bloomberg LP, Mitteldeutscher Rundfunk, MTV Networks Germany GmbH, successor in law to VIVA Plus Fernsehen GmbH, VIVA Music Fernsehen GmbH & Co. KG, MTV Networks Germany GmbH, successor in law to MTV Networks GmbH & Co. oHG, Westdeutscher Rundfunk, RTL Television GmbH, RTL II Fernsehen GmbH & Co. KG, VOX Film

und Fernseh-GmbH & Co. KG, RTL Disney Fernsehen GmbH & Co. KG, SAT. 1 Satelliten-Fernsehen GmbH and Others, Regio. TV GmbH, Eurosport SA, TM-TV GmbH & Co. KG, ONYX Television GmbH, Radio Bremen, Hessischer Rundfunk, Nederland 2, Hamburg 1 Fernsehen Beteiligungs GmbH & Co. KG, Turner Broadcasting System Deutschland GmbH, n-tv Nachrichtenfernsehen GmbH & Co. KG, Bayerischer Rundfunk, Deutsches Sportfernsehen GmbH, NBC Europe GmbH, BBC World, Mediendienst Borkum — Kurverwaltung NSHB Borkum GmbH, Friesischer Rundfunk GmbH, Home Shopping Europe GmbH & Co. KG, Euro News SA, Reise-TV GmbH & Co. KG, SKF Spielekanal Fernsehen GmbH, TV 5 Europe, DMAX TV GmbH & Co. KG, formerly XXP TV — Das Metropolenprogramm GmbH & Co. KG, RTL Shop GmbH

Re:

Reference for a preliminary ruling — Verwaltungsgericht Hannover — Interpretation of Article 31(1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — National legislation which requires analogue cable network operators to provide access on their cable networks to all the television programmes approved for terrestrial broadcasting and provides that, in the event of a shortage of channels, the competent national authority has to establish an order of priority of applicants which results in full use of the channels available to the cable network operator concerned.

Operative part of the judgment

1. *Article 31(1) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) is to be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, which requires a cable operator to provide access to its analogue cable network to television channels and services that are already being broadcast terrestrially, thereby resulting in the utilisation of more than half of the channels available on that network, and which provides, in the event of a shortage of channels available, for an order of priority of applicants which results in full utilisation of the channels available on that network, provided that those obligations do not give rise to unreasonable economic consequences, which is a matter for the national court to establish;*

2. *The concept of 'television services' within the meaning of Article 31(1) of Directive 2002/22 includes services of television broadcasters or providers of media services, such as teleshopping, provided that the conditions laid down in that provision are met, which is a matter for the national court to establish.*

([1]) OJ C 247, 20.10.2007.

Judgment of the Court (Third Chamber) of 18 December 2008 (reference for a preliminary ruling from the Verwaltungsgericht Stuttgart — Germany) — Ibrahim Altun v Stadt Böblingen

(Case C-337/07) ([1])

(EEC-Turkey Association Agreement — Article 7, first paragraph of Decision No 1/80 of the Association Council — Right of residence of a child of a Turkish worker — Worker duly registered as belonging to the labour force — Involuntary unemployment — Applicability of that agreement to Turkish refugees — Conditions governing the loss of acquired rights)

(2009/C 44/24)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Ibrahim Altun

Defendant: Stadt Böblingen

Re:

Reference for a preliminary ruling — Verwaltungsgericht Stuttgart — Interpretation of the first indent of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council — Right to stay of a Turkish national who has entered national territory as a minor for the purpose of family reunion — Criminal conviction — Effect on the right to stay — Applicability to Turkish refugees — Asylum granted to the father on the basis of false statements — Withdrawal of grant of asylum as a condition for refusal of the derived right to stay — Derived right conditional on lawful registration as belonging to the labour force of a Member State for a period of three years during which the father lives together in a household with the minor

Operative part of the judgment

1. *The first indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was co-habiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.*

2. *The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Article 7 of Decision No 1/80.*

3. *The first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into to question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.*

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Second Chamber) of 18 December 2008 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Sopropé — Organizações de Calçado Lda v Fazenda Pública

(Case C-349/07) ([1])

(Community Customs Code — Principle of respect for the rights of the defence — Post-clearance recovery of customs import duties)

(2009/C 44/25)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Sopropé — Organizações de Calçado Lda

Respondent: Fazenda Pública

Intervening party: Ministério Público

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Compatibility with Community law and the principle of the rights of the defence of national provisions of fiscal administrative procedure concerning the periods for the exercise of the taxpayer's right to a hearing — Administrative procedure for the post-clearance payment of import duties on goods from the far east

Operative part of the judgment

1. *With regard to recovery of a customs debt for the purpose of effecting post-clearance recovery of customs import duties, a period of 8 to 15 days allowed to an importer suspected of having committed a customs offence in which to submit its observations complies in principle with the requirements of Community law.*

2. *It is for the national court before which the case has been brought to ascertain, having regard to the specific circumstances of the case, whether the period actually allowed to that importer made it possible for it to be given a proper hearing by the customs authorities.*

3. *The national court must also ascertain whether, in the light of the period which elapsed between the time when the authorities concerned received the importer's observations and the date on which they took their decision, they can be deemed to have taken due account of the observations sent to them.*

([1]) OJ C 235, 6.10.2007.

Judgment of the Court (Second Chamber) of 18 December 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof) — Wienstrom GmbH v Bundesminister für Wirtschaft und Arbeit

(Case C-384/07) ([1])

(State aid — Article 88(3) EC — Aid declared compatible with the common market — Dispute between the aid recipient and the national authorities concerning the amount of aid unlawfully put into effect — Role of the national court)

(2009/C 44/26)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Wienstrom GmbH

Defendant: Bundesminister für Wirtschaft und Arbeit

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 88(3) EC — State aid scheme put into effect without prior notification to the Commission, the final amended version of which, however, following its notification, was declared compatible with the common market, without any express negative decision having been taken with regard to the previous non-notified version — Obligations of national courts deriving from the Commission's decision

Operative part of the judgment

The prohibition on putting State aid into effect laid down in the last sentence of Article 88(3) EC does not require a national court, in a situation such as that in the main proceedings, to dismiss an action brought by a State aid recipient concerning the amount of that State aid allegedly due in respect of a period predating a decision of the Commission of the European Communities finding that aid to be compatible with the common market.

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Krakowie — Republic of Poland) — Magoora sp. zoo v Dyrektor Izby Skarbowej w Krakowie

(Case C-414/07) ([1])

(Sixth VAT Directive — Article 17(2) and (6) — National legislation — Deduction of VAT on the purchase of fuel for certain vehicles irrespective of the purpose for which they are used — Effective restriction on deductions — Exclusions laid down by national law when the directive entered into force)

(2009/C 44/27)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Krakowie

Parties to the main proceedings

Applicant: Magoora sp. zoo

Defendant: Dyrektor Izby Skarbowej w Krakowie

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny w Krakowie — Interpretation of Article 17(2) and (6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — National rules excluding the right to deduct tax on purchases of fuel for certain vehicles irrespective of the purpose (business or private) for which the vehicle concerned is used — Amendment of the criteria governing vehicles covered by the exclusion, resulting in a *de facto* restriction of the scope of the right to deduct in comparison with the period before Directive 77/388 entered into force in the Member State concerned

Operative part of the judgment

The second subparagraph of Article 17(6) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment precludes a Member State from repealing in their entirety, when that directive is transposed into national law, national provisions concerning restrictions on the right to deduct input tax on purchases of fuel for vehicles used for a taxable activity, by replacing, on the date on which that directive entered into force on its territory, those provisions by provisions laying down new criteria in that regard, if — which is for the national court to determine — the latter provisions have the effect of extending the scope of those restrictions. It precludes, in any event, a Member State from subsequently amending its legislation which entered into force on that date, so as to extend the scope of those restrictions as compared with the situation existing prior to that date.

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Grand Chamber) of 9 December 2008 (reference for a preliminary ruling from the Oberster Patent- und Markensenat — Austria) — Verein Radetzky-Orden v Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'

(Case C-442/07) ([1])

(Trade marks — Directive 89/104/EEC — Article 12 — Revocation — Marks registered by a non-profit-making association — Concept of 'genuine use' of a trade mark — Charitable activities)

(2009/C 44/28)

Language of the case: German

Referring court

Oberster Patent- und Markensenat

Parties to the main proceedings

Applicant: Verein Radetzky-Orden

Defendant: Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'

Re:

Reference for a preliminary ruling — Oberster Patent- und Markensenat — Interpretation of Article 12(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Trade marks used on business papers, writing

paper, on advertising material and in the form of badges by a non-profit-making association in the context of its activity of seeking to preserve military traditions and collecting and distributing donations — Classification of that use as 'genuine use' capable of preserving the rights attached to the mark?

Operative part of the judgment

Article 12(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be construed as meaning that a trade mark is put to genuine use where a non-profit-making association uses the trade mark, in its relations with the public, in announcements of forthcoming events, on business papers and on advertising material and where the association's members wear badges featuring that trade mark when collecting and distributing donations.

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Second Chamber) of 22 December 2008 — Isabel Clara Centeno Mediavilla, Delphine Fumey, Eva Gerhards, Iona M. S. Hamilton, Raymond Hill, Jean Huby, Patrick Klein, Domenico Lombardi, Thomas Millar, Miltiadis Moraitis, Ansa Norman Palmer, Nicola Robinson, François-Xavier Rouxel, Marta Silva Mendes, Peter van den Hul, Fritz Von Nordheim Nielsen, Michaël Zouridakis v Commission of the European Communities, Council of the European Union

(Case C-443/07 P) ([1])

(Appeal — Staff Regulations of officials — Plea of illegality of Article 12(3) of Annex XIII on the classification of officials recruited after 1 May 2004 — Consulting of the Staff Regulations Committee — No infringement of acquired rights or of the principle of equal treatment)

(2009/C 44/29)

Language of the case: French

Parties

Appellants: Isabel Clara Centeno Mediavilla, Delphine Fumey, Eva Gerhards, Iona M. S. Hamilton, Raymond Hill, Jean Huby, Patrick Klein, Domenico Lombardi, Thomas Millar, Miltiadis Moraitis, Ansa Norman Palmer, Nicola Robinson, François-Xavier Rouxel, Marta Silva Mendes, Peter van den Hul, Fritz Von Nordheim Nielsen, Michaël Zouridakis (represented by: G. Vandersanden and L. Levi, avocats)

Other parties to the proceedings: Commission of the European Communities, (represented by: J. Currall and H. Krämer, acting as Agents), Council of the European Union (represented by: M. Arpio Santacruz and M. Bauer, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 11 July 2007 in Case T-58/05 *Centeno Mediavilla and Others* v *Commission*, by which the Court of First Instance dismissed the actions of the appellants seeking annulment of the decisions appointing them probationary officials, in so far as they fix their grade classification in accordance with the transitional provisions in Article 12(3) of Annex XIII to the Staff Regulations of officials of the European Communities, as amended by Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1) — Implications of the entry into force of the new Staff Regulations for the situation of persons on a list of suitable candidates or a reserve list before the date of entry into force of those regulations, namely 1 May 2004, but recruited after that date — Principles of legal certainty, protection of legitimate expectations and equal treatment — Scope of the duty to give reasons

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Centeno Mediavilla, Ms Fumey, Ms Gerhards, Ms Hamilton, Mr Hill, Mr Huby, Mr Klein, Mr Lombardi, Mr Millar, Mr Moraitis, Ms Palmer, Ms Robinson, Mr Rouxel, Ms Silva Mendes, Mr van den Hul, Mr Von Nordheim Nielsen and Mr Zouridakis to pay the costs of the appeal;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Second Chamber) of 11 December 2008 — Commission of the European Communities v Kingdom of Spain

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

(Failure of a Member State to fulfil its obligations — Directive 2000/59/EC — Port reception facilities for ship-generated waste and cargo residues — Failure to have developed, implemented or approved waste reception and handling plans for all ports)

(2009/C 44/30)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain (represented by: B. Plaza Cruz, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 5(1) and Article 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ 2000 L 332, p. 81) — Failure to have developed and/or implemented waste reception and handling plans for all ports under the jurisdiction of the 'Comunidades Autónomas'

Operative part of the judgment

The Court:

1. *Declares that, by failing to develop, implement and approve waste reception and handling plans for all Spanish ports, the Kingdom of Spain has failed to fulfil its obligations under Article 5(1) and Article 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;*

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

([1]) OJ C 315 of 22.12.2007.

Judgment of the Court (Eighth Chamber) of 18 December 2008 (reference for a preliminary ruling from the Court of Session (Scotland), Edinburgh — United Kingdom) — Royal Bank of Scotland Group plc v The Commissioners for Her Majesty's Revenue and Customs

(Case C-488/07) ([1])

(Sixth VAT Directive — Deduction of input tax — Goods and services used for both taxable and exempt transactions — Deductible proportion — Calculation — Methods laid down in the third subparagraph of Article 17(5) — Obligation to apply the rounding up rule in the second subparagraph of Article 19(1))

(2009/C 44/31)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicant: Royal Bank of Scotland plc

Defendant: The Commissioners for Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — Court of Session (Scotland), Edinburgh — Interpretation of Articles 17(5) and 19(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 (OJ 1977 L 145, p. 1) — Goods and services used for both taxable and exempt transactions — Calculation of the deductible proportion — Rules on rounding up

Operative part of the judgment

Member States are not obliged to apply the rounding up rule in the second subparagraph of Article 19(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 where the proportion of input tax deductible is calculated in accordance with one of the special methods in (a), (b), (c) or (d) of the third subparagraph of Article 17(5) of that directive.

([1]) OJ C 8, 12.1.2008.

Judgment of the Court (Sixth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Landesgericht für Strafsachen Wien (Austria)) — Criminal proceedings against Vladimir Turanský

(Case C-491/07) ([1])

(Convention implementing the Schengen Agreement — Article 54 — 'Ne bis in idem' principle — Scope — Concept of 'finally disposed of' — Decision by which a police authority orders the suspension of criminal proceedings — Decision not barring further prosecution and not having a ne bis in idem effect under national law)

(2009/C 44/32)

Language of the case: German

Referring court

Landesgericht für Strafsachen Wien

Defendant in the criminal proceedings

Vladimir Turanský

Re:

Reference for a preliminary ruling — Landesgericht für Strafsachen Wien — Interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the

French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) — Interpretation of 'ne bis in idem' principle — Scope — Decision by which a police authority terminates criminal proceedings

Operative part of the judgment

The Court:

The ne bis in idem principle enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990, does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Third Chamber) of 18 December 2008 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Afton Chemical Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-517/07) ([1])

(Directive 92/81/EEC — Excise duty on mineral oils — Article 2(2) and (3) and Article 8(1)(a) — Directive 2003/96/EC — Taxation of energy products and electricity — Article 2(2), (3) and (4)(b) — Scope — Fuel additives which are mineral oils or energy products but are not used as motor fuel — National taxation regime)

(2009/C 44/33)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Appellant: Afton Chemical Limited

Respondents: Commissioners for Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 2(3) and 8(1) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), Articles 2(3) and 4(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) and Article 3 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Mineral oils added to fuel for purposes other than increasing the power of the vehicle but not intended to be sold or used as fuel — To be taxed as motor fuel?

Operative part of the judgment

Article 2(3) and Article 8(1) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, as regards the period ending on 31 December 2003, and Article 2(3) and (4) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, as regards the period from 1 January to 31 October 2004, are to be interpreted as meaning that fuel additives, such as those at issue in the main proceedings, which are 'mineral oils' within the meaning of Article 2(1) of Directive 92/81 or 'energy products' within the meaning of Article 2(1) of Directive 2003/96, but which are not intended for use, offered for sale or used as motor fuel, must be made subject to the taxation regime imposed by those directives.

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Handelsgericht Wien — Austria) — Friederike Wallentin-Hermann v Alitalia — Linee Aeree Italiane SpA

(Case C-549/07) ([1])

(Carriage by air — Regulation (EC) No 261/2004 — Article 5 — Compensation and assistance to passengers in the event of cancellation of flights — Exemption from the obligation to pay compensation — Cancellation due to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken)

(2009/C 44/34)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Friederike Wallentin-Hermann

Defendant: Alitalia — Linee Aeree Italiane SpA

Re:

Reference for a preliminary ruling — Handelsgericht Wien — Interpretation of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Concepts of 'extraordinary circumstances' and 'reasonable measures' — Cancellation of a flight on account of an engine defect — Substantially higher rate of cancellations due to technical defects than that of other airlines

Operative part of the judgment

1. *Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, is not decisive for the interpretation of the grounds of exemption under Article 5(3) of Regulation No 261/2004.*

2. *The frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 can be concluded.*

3. *The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of Article 5(3) of Regulation No 261/2004 and, therefore, to relieve that carrier of its obligation to pay compensation provided for by Articles 5(1)(c) and 7(1) of that regulation.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — In the proceedings brought by Erich Stamm, Anneliese Hauser

(Case C-13/08) ([1])

(Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Equal treatment — Self-employed frontier workers — Agricultural lease — Agricultural structure)

(2009/C 44/35)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Erich Stamm, Anneliese Hauser

Interested party: Regierungspräsidium Freiburg

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 12(1), 13(1) and 15(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 6) — Applicability of the principle of equal treatment to self-employed frontier workers — Farmer with Swiss nationality residing in Switzerland having entered into a lease agreement for land for agricultural use located in Germany.

Operative part of the judgment

Pursuant to Article 15(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, a contracting party must accord to the 'self employed frontier workers', within the meaning of Article 13 of that annex, of the other contracting party no less favourable treatment as regards access to self-employed activity and the pursuit thereof in the host State than that which is accorded by that State to its own nationals.

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Seventh Chamber) of 18 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-273/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/81/EC — Atmospheric pollutants — Failure to communicate programmes for the reduction of emissions, national emission inventories and annual projections for the year 2010)

(2009/C 44/36)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to draw up and communicate, within the prescribed time-limits, the documents provided for in Articles 6, 7 and 8 of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22)

Operative part of the judgment

The Court:

1. *declares that, by failing to communicate to the Commission of the European Communities, within the prescribed time-limit, the programmes, inventories and annual projections for the year 2010 relating to the progressive reduction of its emissions of sulphur dioxide (SO_2), nitrogen oxides (NO_X), volatile organic compounds (VOC) and ammonia (NH_3), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants;*

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

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Sixth Chamber) of 22 December 2008 — Commission of the European Communities v Republic of Finland

(Case C-328/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/35/EC — Environmental liability — Failure to transpose within the prescribed period)

(2009/C 44/37)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and I. Koskinen, acting as Agents)

Defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2004/35/EC 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 (OJ 2004 L 143, p. 56)

Operative part of the judgment

The Court:

1. *declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC 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, the Republic of Finland has failed to fulfil its obligations under that directive;*

2. *orders the Republic of Finland to pay the costs.*

([1]) OJ C 236, 13.9.2008.

Judgment of the Court (Third Chamber) of 1 December 2008 (reference for a preliminary ruling from the Korkein oikeus — Finland) — Criminal proceedings against Artur Leymann, Aleksei Pustovarov

(Case C-388/08 PPU) ([1])

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — Article 27 — European arrest warrant and surrender procedures between Member States — Specialty principle — Consent procedure)

(2009/C 44/38)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Artur Leymann, Aleksei Pustovarov

Re:

Reference for a preliminary ruling — Korkein oikeus — Interpretation of Article 27(2), (3) and (4) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Description of the offence on which the prosecution is based altered in relation to the description on which the arrest warrant was based — Concept of 'offence other than that for which he or she was surrendered' — Whether or not necessary to initiate the consent procedure

Operative part of the judgment

1. *In order to establish whether the offence under consideration is an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of that Framework Decision, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.*

2. *In circumstances such as those in the main proceedings, a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584.*

3. *The exception provided for in Article 27(3)(c) of Framework Decision 2002/584 must be interpreted as meaning that, where there is an 'offence other' than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) of the Framework Decision, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgment is given for that offence. The exception in Article 27(3)(c) does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained, where that restriction is lawful on the basis of other charges which appear in the European arrest warrant.*

([1]) OJ C 272, 25.10.2008.

Order of the Court (Seventh Chamber) of 19 December 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Deniz Sahin v Bundesminister für Inneres

(Case C-551/07) ([1])

(Article 104(3) of the Rules of Procedure — Directive 2004/38/EC — Articles 18 EC and 39 EC — Right to respect for family life — Right of residence of a national of a non-member country who entered the territory of a Member State as an asylum seeker and subsequently married a national of another Member State)

(2009/C 44/39)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Austria)

Parties to the main proceedings

Applicant: Deniz Sahin

Defendant: Bundesminister für Inneres

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Articles 18 EC and 39 EC, as well as Articles 3(1), 6(2), 7(1)(d) and (2), 9(1) and 10(1) of 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 2004 L 158, p. 77) — Right of residence of a national of a non-member country who entered the territory of a Member State as an asylum seeker and subsequently married a national of another Member State

Operative part of the order

1. *Articles 3(1), 6(2) and 7(1)(d) and (2) of 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 must be interpreted as applying also to family members who arrived in the host Member State independently of the Union citizen and acquired the status of family member or started to lead a family life with that Union citizen only after arriving in that State. In that regard, the fact that, at the time the family member acquires that status or starts to lead a family life, he resides temporarily in the host Member State pursuant to that State's asylum laws has no bearing.*

2. *Articles 9(1) and 10 of Directive 2004/38 preclude a national provision under which family members of a Union citizen who are not nationals of a Member State and who, in accordance with Community law, and in particular Article 7(2) of the directive, have a right of residence, cannot be issued with a residence card of a family member of a Union citizen solely because they are entitled temporarily to reside in the host Member State under that State's asylum laws.*

([1]) OJ C 64, 8.3.2008.

Order of the Court of 13 November 2008 — Giuseppe Gargani v European Parliament

(Case C-25/08 P) ([1])

(Appeal — Action brought by the Chairman of the Committee on Legal Affairs of the Parliament against the 'action' of the President of the Parliament which led to the submission of observations in the name of the Parliament in a matter which related to a reference for a preliminary ruling — Time-limit for initiating proceedings)

(2009/C 44/40)

Language of the case: German

Parties

Appellant: Giuseppe Gargani (represented by: W. Rothley, Rechtsanwalt)

Other party to the proceedings: European Parliament (represented by: J. Schoo and H. Krück, agents)

Re:

Appeal brought against the Order of the Court of First Instance (Third Chamber) of 21 November 2007, Gargani v Parliament (T-94/06), in which the Court of First Instance dismissed as manifestly inadmissible the action brought by the Chairman of the Committee on Legal Affairs of the European Parliament, seeking a declaration of unlawfulness in relation to the decision of the President of the European Parliament to submit written observations in the name of the Parliament, in accordance with the second paragraph of Article 23 of the Statute of the Court, in the context of a reference for a preliminary ruling, contrary to the advice of the Commission of Legal Affairs, and his refusal to submit the issue to plenary

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Gargani is ordered to pay the costs.*

([1]) OJ C 79, 29.3.2008.

Order of the Court (Sixth Chamber) of 13 November 2008 (references for a preliminary ruling from the Diikitiko Efetio Thessalonikis, Greece) — Maria Kastrinaki v Panepistimiako Geniko Nosokomeio Thessalonikis AHEPA

(Joined Cases C-180/08 and C-186/08) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 89/48/EEC — Recognition of diplomas — Studies completed in an 'independent study centre' not recognised as an educational establishment by the host Member State)

(2009/C 44/41)

Language of the case: Greek

Referring court

Diikitiko Efetio Thessalonikis

Parties

Appellant: Maria Kastrinaki

Respondent: Panepistimiako Geniko Nosokomeio Thessalonikis AHEPA

Re:

Reference for a preliminary ruling — Diikitiko Efetio Thessalonikis — Interpretation of Articles 1, 2, 3 and 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Interpretation of Article 39(1) EC, the first paragraph of Article 10 EC and Articles 43, 47(1), 49, 55, 149 and 150 EC — National of a Member State who has pursued a regulated profession in the host Member State before and after recognition of professional equivalence resulting from academic qualifications obtained in another Member State — Prior completion of part of university studies, under a franchising agreement, in an institution not recognised as an educational establishment by the host Member State — Possibility, by reason of a refusal to recognise such qualifications, of excluding a worker from professional activity

Operative part of the order

The competent authorities of a host Member State are required, under Article 3 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, to permit a national of a Member State who holds a diploma within the meaning of that directive issued by a competent authority of another Member State to pursue his profession on the same conditions as apply to holders of national diplomas even though that diploma:

— *attests to education and training received, in whole or in part, at an establishment located in the host Member State which, according to the legislation of that State, is not recognised as an educational establishment, and*

— *has not been homologated by the competent national authorities.*

([1]) OJ C 171, 5.7.2008.

Reference for a preliminary ruling from the Oberlandesgericht Oldenburg (Germany) lodged on 1 October 2008 — Arnold and Johann Harms, in their capacity as a partnership under German civil law v Freerk Heidinga

(Case C-434/08)

(2009/C 44/42)

Language of the case: German

Referring court

Oberlandesgericht Oldenburg (Germany)

Parties to the main proceedings

Applicants: Arnold and Johann Harms, in their capacity as a partnership under German civil law

Defendant: Freerk Heidinga

Question referred

Is Article 46(2) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy ([1]) and establishing certain support schemes for farmers to be interpreted as meaning that the following contractual arrangements are incompatible with that provision and hence invalid: contractual arrangements outwardly effecting a complete and definitive transfer of payment entitlements, but stipulating — according to an internal agreement between the parties — that the seller is to remain the beneficial owner of those payment entitlements, whereby the purchaser, in his capacity as the person formally entitled to them, is to activate the payment entitlements through cultivation of the corresponding land and to pass on to the seller the full amount of the single payments made to him, or contractual arrangements pursuant to which land premiums are transferred to the purchaser in such a way that he remains under an ongoing obligation to pay to the seller a part of the single payments (the farm-specific part), at any rate once those payments have been activated and disbursed?

([1]) OJ L 270, p. 1.

Reference for a preliminary ruling from the Sächsisches Finanzhof (Germany) lodged on 5 November 2008 — Ingenieurbüro Eulitz GbR Thomas and Marion Eulitz v Finanzamt Dresden I

(Case C-473/08)

(2009/C 44/43)

Language of the case: German

Referring court

Sächsisches Finanzhof

Parties to the main proceedings

Applicants: Ingenieurbüro Eulitz GbR Thomas and Marion Eulitz

Defendant: Finanzamt Dresden I

Questions referred

1. Is teaching and examination work which a graduate engineer performs at an education institute established as a private-law association for participants in advanced training courses who already have at least a university or higher technical college qualification as an architect or an engineer or who have an equivalent education, where the course is concluded with an examination, 'school or university education' within the meaning of Article 13A(1)(j) of Directive 77/388/EEC ([1])?

2. Is a person who otherwise satisfies the requirements to be a teacher giving tuition privately within the meaning of the provision referred to under 1 excluded from that category of persons if

   — he receives payment (in full or in part) for his teaching classes even if no participants have enrolled for the teaching class in question, but he has already done preparatory work for it, or

   — he is responsible, repeatedly and continuously over a considerable period of time, for organising the relevant teaching and examination work, or

   — in addition to his direct tuition work, he has taken on a professionally and/or organisationally prominent position compared with the other lecturers on the course in question?

Is such exclusion to be taken to exist if just one of those criteria is satisfied, or only if two or all three criteria have been met?

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

Reference for a preliminary ruling from the Landesgericht Innsbruck (Austria) lodged on 12 November 2008 — Zentralbetriebsrat der Landeskrankenhauser Tirols v Land Tirol

(Case C-486/08)

(2009/C 44/44)

Language of the case: German

Referring court

Landesgericht Innsbruck als Arbeits- und Sozialgericht

Parties to the main proceedings

Applicant: Zentralbetriebsrat der Landeskrankenhauser Tirols

Defendant: Land Tirol

Questions referred

1. Is it compatible with Clause 4(1) of the Framework Agreement on part-time work of 6 June 1997 which was implemented by the Directive on part-time work (Council Directive 97/81/EC ([1]) of 15 December 1997, OJ 1998 L 14, p. 9), that workers employed under a private law contract by a local or regional authority or a public undertaking and who work less than 12 hours per week (30 % of the normal working time), be treated less favourably than comparable full-time workers with regard to remuneration, classification in salary group, recognition of previous periods of service, entitlement to leave, additional payments and overtime supplements etc.?

2. Is the pro-rata-temporis principle, as set out in Clause 4(2) of the Framework Agreement, to be interpreted as precluding a provision of national law such as Paragraph 55(5) of the L-VBG, under which in the event of a change in the working hours of an employee, the amount of leave not yet taken is adjusted proportionally to the new working hours, with the result that the worker who reduces his working hours from full-time to part-time, has his entitlement to leave accumulated while working full-time reduced or, as a part-time worker, he can only take that leave with a reduced level of payment for leave?

3. Is a provision of national law, such as Paragraph 1(2)(m) of the L-VBG, according to which workers employed for a period not exceeding 6 months or on a casual basis are treated less favourably with regard to remuneration, classification in salary group, recognition of previous periods of service, entitlement to leave, additional payments and overtime supplements etc., contrary to Clause 4 of the Framework Agreement of the European Social Partners as implemented by Directive on fixed-term work 1999/70/EC ([2]) of 28 June 1999 (OJ 1999 L 175, p. 43)?

4. Is there indirect discrimination on grounds of sex within the meaning of Article 14(1)(c) of the Equal Treatment Directive of 5 July 2006 (Directive 2006/54/EC [3], OJ 2006 L 204, p. 23), if, in the case of employees who take the full two years' parental leave permissible by law, the entitlement to annual leave from the year preceding the birth expires before the end of the parental leave, and the majority of the workers affected are women (97 %)?

[1] OJ L 14, p. 9.
[2] OJ L 175, p. 43.
[3] OJ L 204, p. 23.

Action brought on 12 November 2008 — Commission of the European Communities v Italian Republic

(Case C-491/08)

(2009/C 44/45)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Forms of order sought

— Declare that, in respect of the planned tourist complex 'Is Arenas' in the Municipality of Narbolia, which concerns the habitats and species present in site ITB032228 'Is Arenas':

  — the Italian Republic has failed to fulfil its obligations under Directive 92/43/EEC by failing to adopt, before 19 July 2006, preservation measures which, having regard to the conservation aim of that directive, are suitable for the purposes of preserving the relevant ecological interest represented at national level by the proposed site of Community importance (SCI) ITB032228 'Is Arenas', and in particular by failing to prevent an activity likely seriously to endanger the ecological characteristics of the site [1]; and

  — the Italian Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43/EEC by failing to adopt, after 19 July 2006, appropriate measures to prevent the deterioration of natural habitats and the habitats of species, as well as disturbance of the species for which that SCI was designated; and

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission is aware that a tourist complex, which includes a golf course, is under construction within the Is Arenas SCI. In the Commission's view, the planned tourist infrastructure in the Is Arenas SCI is predominantly located in the areas which ensure the ecological connection between the two largest areas of pine forest. It is therefore likely to have a significant negative impact on such areas, and especially on their function as an 'ecological link'.

Moreover, among the undesirable features of the project, the Commission draws attention to the reduction and modification of original habitats, inter alia through the introduction of alien species such as grasses from the golf course; the loss of habitats; the effects of trampling and compaction of ground; the loss of spaces; the impact of the arrival of bathers on the habitats of the first coastal zone, which is particularly important as it contains the dune systems; and tree felling.

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Appeal brought on 18 November 2008 by Pilar Angé Serrano, Jean-Marie Bras, Adolfo Orcajo Teresa, Dominiek Decoutere, Armin Hau and Francisco Javier Solana Ramos against the judgment delivered on 18 September 2008 in Case T-47/05 Angé Serrano and Others v Parliament

(Case C-496/08 P)

(2009/C 44/46)

Language of the case: French

Parties

Appellants: Pilar Angé Serrano, Jean-Marie Bras, Adolfo Orcajo Teresa, Dominiek Decoutere, Armin Hau and Francisco Javier Solana Ramos (represented by: E. Boigelot, lawyer)

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

Form of order sought

— declare the appeal admissible, and consequently:

  — as regards Mrs Angé Serrano, Mr Bras and Mr Orcajo Teresa, annul the judgment under appeal, first, in so far as it holds that there is no need to adjudicate with respect to them as regards their first plea and, secondly, in so far as it dismisses their claim for damages;

— as regards Mr Decoutere, Mr Hau and Mr Solana Ramos, annul points 2 and 4 of the judgment under appeal and the grounds relating thereto;

— give judgment in the dispute and, upholding the applicants' initial action in Case T-47/05:

— annul the decisions concerning the applicants' classification in grade following the entry into force of the new Staff Regulations;

— order the European Parliament to pay damages, assessed *ex aequo et bono* at EUR 60 000 for each applicant

— in any event, order the defendant to pay the costs at both instances.

Pleas in law and main arguments

In the judgment under appeal, the Court of First Instance ruled on the actions by the six applicants, all officials of the European Parliament who were successful in internal competitions carried out under the old Staff Regulations but whose classification was amended following the entry into force of the new Staff Regulations.

The first three applicants make three pleas in support of their appeal.

In their first plea, they argue that, by holding that there was no need to adjudicate, the Court of First Instance made an error of law and failed in its duty to state reasons. The applicants argue that they retain an interest in bringing an annulment action against the disputed classification decisions, despite their having been replaced by the subsequent individual decisions of 20 March 2006, inasmuch as the Court of First Instance itself took the view that those new decisions did not fully remedy the damage suffered by the applicants since they did not re-establish classification in a higher grade. Moreover, the contested decisions were based on Articles 2 and 8 of Annex XIII to the new Staff Regulations, the legality of which they argue is open to challenge.

In their second plea, those applicants claim that the Court of First Instance failed in its duty to state reasons by rejecting their claim for damages, whereas classification in grade in accordance with the new Staff Regulations placed them at the same level as their colleagues who had not passed the competition for change of category, and thus caused them severe damage.

The three latter applicants make a single plea in support of their appeal, arguing that Articles 2 and 8 of Annex XIII of the new Staff Regulations are unlawful.

In that respect, the applicants claim, first, that the Court of First Instance infringed acquired rights and the principles of legal certainty and the protection of legitimate expectations in holding that classification in a higher grade following their success in competitions held under the old Staff Regulations did not constitute an acquired right and could not, therefore, give rise to any legitimate expectation.

In support of the same plea, the applicants argue, secondly, that the Court of First Instance infringed the principle of equal treatment inasmuch as, following reclassification in grade carried out under the new Staff Regulations, they were treated identically with their colleagues who had not passed the same competitions. Moreover, the Court of First Instance applied different treatment to identical situations by concluding that successful candidates of the same competition did not constitute a single category, the rules for classification in grade differing, it its estimation, according to the date on which the classification took place. Application of different provisions to successful candidates of the same competition, namely Articles 2(1) and 5(4) of Annex XIII to the new Staff Regulations, was thus contrary to the principle of equal treatment.

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 24 November 2008 — Vera Mattner v Finanzamt Velbert

(Case C-510/08)

(2009/C 44/47)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Vera Mattner

Defendant: Finanzamt Velbert

Question referred

Are Articles 39 EC and 43 EC and Article 56 EC in conjunction with Article 58 EC to be interpreted as precluding national legislation of a Member State on the charging of gift tax which, where land situated within the country is acquired by a non-resident person, provides for a tax-free amount of only EUR 1 100 for the non-resident acquirer, while on the gifting of the same land a tax-free amount of EUR 205 000 would apply, if at the time the gift was effected the donor or acquirer were domiciled in the Member State concerned?

Action brought on 25 November 2008 — Commission of the European Communities v French Republic

(Case C-512/08)

(2009/C 44/48)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that:

  — by making, pursuant to Article R-332-4 of the Social Security Code, the reimbursement for medical services available at a general practitioner's surgery requiring the use of the extensive material supplies in part II of Article R-712-2 of the Public Health Code, subject to the grant of prior authorisation;

  — by failing to provide, in Article R-332-4, or in any other provision of French law, for the possibility of granting a patient — insured under the French social security system — additional reimbursement in the circumstances set out in paragraph 53 of the judgment of 12 July 2001 in Case C-368/98 *Vanbraekel and Others*,

  the French Republic has failed to fulfil its obligations under Article 49 of the EC Treaty;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission raises two complaints in support of its action.

By its first complaint, the Commission contests the requirement — imposed by the defendant — of obtaining prior authorisation in order to receive reimbursement of expenses for certain non-hospital treatment provided in another Member State. While that requirement can be justified where it concerns medical services provided in a hospital, on account of the need to ensure both adequate and permanent access to a balanced range of high-quality hospital treatment, and a control of the costs which that involves, such a requirement seems disproportionate as regards non-hospital services. Several factors are capable of limiting the possible financial impact of abolishing the prior authorisation, such as the option, for the Member States, to determine the scope of the medical cover to which the insured are entitled, or the national conditions for the granting of benefits, provided that they are not discriminatory and do not constitute an obstacle to the free movement of persons.

By its second complaint, the Commission further objects to the absence, in French law, of a provision allowing the patient — insured under the French social security system — to be granted additional reimbursement in the circumstances set out in paragraph 53 of the judgment of 12 July 2001 in *Vanbraekel and Others*, that is to say, a reimbursement covering the difference in relation to the amount to which that patient would have been entitled if the hospital treatment had been provided in his own Member State. Consequently, those patients, insured under the French social security system, do not benefit fully from the rights which they are granted under Article 49 EC, as interpreted by the Court of Justice.

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 26 November 2008 — Criminal proceedings against Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luís das Neves Palhota, Termiso Lda

(Case C-515/08)

(2009/C 44/49)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Criminal proceedings against Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luís das Neves Palhota, Termiso Lda

Question referred

Do the provisions of Article 8 of the Law of 5 March 2002 and Articles 3, 4 and 5 of the Royal Decree of 29 March 2002 (implementation decree) infringe Article 49 and Article 50 of the EC Treaty, in that they impose on foreign employers who wish to post workers the prior obligation of sending a declaration of posting to the Social Laws Inspection Service (Dienst Toezicht op de Sociale Wetten) and also of keeping documents which are comparable with the Belgian individual accounts or pay slips, as a result of which access to the Belgian services market is prevented or at least hampered?

Reference for a preliminary ruling from the Monomeles Protodikio Athinon (Greece) lodged on 27 November 2008 — Arkhontia Koukou v Elliniko Dimosio

(Case C-519/08)

(2009/C 44/50)

Language of the case: Greek

Referring court

Monomeles Protodikio Athinon (Court of First Instance, Athens)

Parties to the main proceedings

Claimant: Arkhontia Koukou

Defendant: Elliniko Dimosio (Greek State)

Questions referred

1. Is clause 5 of the framework agreement on fixed-term work set out in the annex to Directive 1999/70/EC to be interpreted as meaning that an objective reason for the entering into of successive fixed-term employment contracts or relationships can be considered to be constituted by the fact that those contracts have been entered into in reliance upon a legislative provision which provides for the entering into of fixed-term employment contracts or relationships, irrespective of whether fixed and permanent needs of the employer are in fact covered by them?

2. Does the addition of criteria for establishing abuse, in the measures which were adopted in implementation of clause 5 of the framework agreement on fixed-term work (for example, a maximum duration of contracts and number of renewals within the framework of which employment is permitted even without an objective reason justifying the entering into or renewal of fixed-term employment contracts or relationships), constitute an impermissible reduction, within the meaning of clause 8(3) of the framework agreement, of the general level of protection that existed prior to Directive 1999/70, given that under the legal regime that preceded that directive the sole criterion for establishing abuse was employment under an employment contract or relationship entered into for a fixed term without an objective reason?

3. Does the enactment of imprecise and non-exhaustive lists of exceptions, such as those set out by the permanent provisions of Presidential Decree No 164/2004, to the maximum limits that are laid down in principle with regard to the entering into of successive fixed-term employment contracts or relationships constitute an effective measure for preventing the abuse that arises from the use of successive fixed-term employment contracts or relationships, for the purposes of clause 5 of the framework agreement on fixed-term work?

4. Can measures such as those at issue in the main proceedings, which were laid down by Article 7 of Presidential Decree No 164/2004, be considered to be effective for preventing and protecting against abuse, for the purposes of clause 5 of the framework agreement, when:

   (a) they lay down, as a means of preventing abuse and protecting fixed-term workers against abuse, the obligation on the employer to pay wages and severance 'compensation' in the event of abuse in the form of employment under successive fixed-term employment contracts, given that (i) the obligation to pay wages and severance 'compensation' is laid down by national law for all employment relationships and is not intended specifically to prevent abuse, within the meaning of the framework agreement, and (ii) in particular, the obligation to pay 'compensation' on the termination of fixed-term employment contracts or relationships is a consequence of the application of clause 4 of the framework agreement which is concerned with fixed-term workers not being discriminated against vis-à-vis the corresponding permanent workers; and

   (b) they provide, as a means of preventing abuse, for penalties to be imposed on the competent organs of the employer, in so far as it has been found that similar or analogous penalties which were also prescribed in the past as regards the public sector were ineffective for combating abuse resulting from the use of successive fixed-term employment contracts or relationships?

5. Is Directive 1999/70 correctly transposed into Greek law by measures, even if they are effective, such as those adopted in Article 11 of Presidential Decree No 164/2004, which entered into force on 19 July 2004, that is to say after the time-limit laid down by Directive 1999/70, and which were given only three months' retroactivity, so that they cover only successive fixed-term employment contracts or relationships that were valid after 19 April 2004 and do not cover fixed-term employment contracts or relationships which continued to be entered into successively even after the expiry of the period for compliance with Directive 1999/70 and before 19 April 2004?

6. If the view is taken that the measures adopted in Presidential Decree No 164/2004 to comply with clause 5 of the framework agreement are not effective, is the court obliged, within the framework of the obligation to interpret national law in conformity with Community law, to apply in conformity with Directive 1999/70 the Greek law which existed before that decree (such as Article 8(3) of Law No 2112/1920), on the basis of which it is possible to achieve protection of the claimant against abuse, in a manner that leads to the elimination of the consequences of the breach of Community law?

7. If the view is taken that the measures adopted in Presidential Decree No 164/2004 are not effective and the legal regime existing before it (Article 8(3) of Law No 2112/1920) is applicable, within the framework of the obligation to interpret national law in conformity with Community law, is it compatible with Community law to interpret national rules

which are formally higher-ranking (Article 103(8) of the Constitution) as prohibiting absolutely the conversion of fixed-term contracts into contracts of indefinite duration, even where it is apparent that in reality those contracts have been entered into by way of an abuse on the legal basis of provisions designed to cover needs that are exceptional and temporary generally, because the contracts covered fixed and permanent needs of a public-sector employer (to this effect, Judgments No 19/2007 and No 20/2007 of the Arios Pagos (Full Court)), when a possible interpretation is also that that prohibition must be limited solely to fixed-term employment contracts which have in fact been entered into to cover temporary, unforeseen, urgent or exceptional needs and not also cover cases where they have in reality been entered into to cover fixed and permanent needs (to this effect, Judgment No 18/2006 of the Arios Pagos (Full Court))?

8. Is it consistent with Community law for disputes relating to fixed-term work and clause 5 of the framework agreement to fall, after the entry into force of Presidential Decree No 164/2004, within the exclusive jurisdiction of the administrative courts, when that renders access of a claimant fixed-term worker to justice more difficult, given that, before the adoption of Presidential Decree No 164/2004, all disputes relating to fixed-term work fell within the jurisdiction of the civil courts under the special labour disputes procedure which is more lenient as regards observance of formal requirements, simpler, less costly for the claimant fixed-term worker and, as a rule, quicker?

Action brought on 2 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-526/08)

(2009/C 44/51)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and N. von Lingen, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully and properly with Articles 4 and 5, in conjunction with Annex II A(1) and Annex III 1(1), Annex II A(5) and Annex III 1(2), and Annex II A(2) and Annex II A(6), of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The Commission raises four complaints in support of its action.

By its first complaint, the Commission criticises the defendant for not complying with the procedures and periods for land application, as laid down in the directive. Although the prohibition on land application during certain periods should cover both organic and artificial fertilisers, the Luxembourg legislation refers solely to organic fertilisers. In addition, the prohibition on the land application of fertilisers during certain periods should relate to all agricultural land, including prairies, which are omitted from the national implementing measures. The Commission also claims that the national legislation should define, with greater precision, those circumstances which may give rise to a derogation from the land application prohibition, as this was not envisaged in the directive.

By its second complaint, the Commission claims that the national legislation does not lay down any requirement for a minimum manure storage capacity for all installations, but refers only to new installations or those being modernised. Such an implementing measure does not comply with the Directive in so far as the existing installations also present pollution risks. The national legislation should, therefore, impose a minimum storage capacity for all installations.

By its third complainant, the Commission claims that, in the context of the prohibition of land application on steeply sloping ground, the national legislation should include all fertilisers, and not only organic fertilisers.

By its fourth and final complaint, it is alleged that the defendant did not adopt sufficient measures concerning land application techniques, in particular, to ensure a uniform and efficient application of fertilisers.

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[1] OJ 1991 L 375, p. 1.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 December 2008 — Friedrich Schulze, Jochen Kolenda, Helmar Rendenz v Deutsche Lufthansa AG

(Case C-529/08)

(2009/C 44/52)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Claimants: Friedrich Schulze, Jochen Kolenda, Helmar Rendenz

Defendant: Deutsche Lufthansa AG

Questions referred

1. Can a technical defect which causes a cancellation be an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1])?

2. If so, does the concept of an extraordinary circumstance in the form of a technical defect include also those faults which affect the airworthiness of the aircraft or the safe completion of the flight?

3. Has the operating air carrier taken all reasonable measures where it has complied with the manufacturer's servicing and maintenance programme for the aircraft in question and with the safety standards and instructions of the competent authority or manufacturer, or where the fault could not have been avoided even if the carrier had complied with that programme or those directions?

4. If the answer to question 3 is in the affirmative, is that sufficient to release the air carrier from its obligation to pay compensation, or is further evidence required that the cancellation, that is to say, the fact of the relevant aircraft being taken out of operation and the cancelling of the flight owing to the lack of a replacement aircraft, would also not have been avoided by the taking of all reasonable measures?

([1]) OJ 2004 L 46, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 December 2008 — TNT Express Nederland BV v AXA Versicherung AG

(Case C-533/08)

(2009/C 44/53)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: TNT Express Nederland BV

Respondent: AXA Versicherung AG

Questions referred

1. Must the second subparagraph of Article 71(2)(b) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning: (i) that the rules on recognition and enforcement laid down in Regulation No 44/2001 yield to those of a special convention only if the rules of the special convention claim exclusivity; or (ii) that, in the event of the simultaneous applicability of the conditions for recognition and enforcement laid down in the special convention and those laid down in Regulation No 44/2001, the conditions laid down in the special convention must always be applied and those laid down in Regulation No 44/2001 are not to be applied, even though the special convention makes no claim to exclusive effect vis-à-vis other international rules on recognition and enforcement?

2. Does the Court of Justice have jurisdiction, with a view to forestalling divergent judgments in respect of the concurrence referred to in the first question, to interpret — in a manner binding on the courts of the Member States — the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956 (the CMR Convention), in so far as the matters governed by Article 31 of that convention are concerned?

3. If the answer to the second question is in the affirmative and the answer to part (i) of the first question is likewise in the affirmative, must the rules on recognition and enforcement laid down in Article 31(3) and (4) of the CMR Convention be interpreted as meaning that that convention does not claim exclusivity and leaves room for the application of other international enforcement rules making recognition or enforcement possible, such as Regulation No 44/2001?

   Should the Court of Justice answer part (ii) of the first question in the affirmative and likewise answer the second question in the affirmative, the Hoge Raad also refers the following three questions for the further appraisal of the appeal in cassation:

4. In the event of an application for a declaration of enforceability, does Article 31(3) and (4) of the CMR Convention permit the court of the State addressed to examine whether the court of the State of origin had international jurisdiction to take cognisance of the dispute?

5. Must Article 71(1) of Regulation No 44/2001 be interpreted as meaning that, in the event of the concurrence of the *lis pendens* rules of the CMR Convention and those of Regulation No 44/2001, the *lis pendens* rules of the CMR Convention take precedence over those of Regulation No 44/2001?

6. Do the declaration in law applied for in the present case in the Netherlands and the action in Germany seeking compensation in respect of damage relate to 'the same grounds' within the meaning of Article 31(2) of the CMR Convention?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 December 2008 — KLG Europe Eersel BV v Reedereikontor Adolf Zeuner GmbH

(Case C-534/08)

(2009/C 44/54)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: KLG Europe Eersel BV

Respondent: Reedereikontor Adolf Zeuner GmbH

Questions referred

1. Does the term 'between the same parties' in Article 34(3) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters refer to the rules on the subjective scope of the operation of judgments of the Member States concerned, or is it intended to give to the subjective scope of the operation of the competing judgments a more precise interpretation in isolation from that regulation?

2. If the answer to the first question is that the term 'the same parties' is intended to give to the subjective scope of the operation of the competing judgments a more precise interpretation in isolation from Regulation No 44/2001:

   (i) must, in the interpretation of that term in Article 34(3) of Regulation No 44/2001, support be sought in the interpretation which the Court of Justice of the European Communities gave to the term 'between the same parties' in Article 21 of the Brussels Convention (now Article 27 of Regulation No 44/2001) in its judgment in Case C-351/96 *Drouot assurances* v *CMI and Others* [1998] ECR I-3075; and

   (ii) must K-Line, which was a party to the Rotterdam proceedings, but not to the Düsseldorf proceedings, be deemed, because of the assignment and mandate, to be 'the same party' as Zeuner, which was a party to the Düsseldorf proceedings, but not to the Rotterdam proceedings?

3. If reliance on the ground for refusal laid down in Article 34(3) of Regulation No 44/2001 is to succeed,

   (i) must the judgment given in the Member State in which recognition is sought have acquired the force of *res judicata*?

   (ii) must the judgment given in the Member State in which recognition is sought precede the submission of the application for enforcement or the granting of the order for enforcement?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 4 December 2008 — Staatssecretaris van Financiën v X

(Case C-536/08)

(2009/C 44/55)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: X

Question referred

Must Article 17(2) and (3) and Article 28b(A)(2) of the Sixth Directive [1] be interpreted as meaning that, if the place of an intra-Community acquisition is deemed, on the basis of the first subparagraph of the latter provision, to be within the territory of the Member State which issued the VAT identification number under which the person acquiring made the acquisition, the aforementioned person acquiring the goods has the right immediately to deduct the VAT thus due in that Member State?

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

Appeal brought on 3 December 2008 by Kahla/Thüringen Porzellan GmbH against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) delivered on 24 September 2008 in Case T-20/03 Kahla/Thüringen Porzellan GmbH, supported by Freistaat Thüringen and the Federal Republic of Germany v Commission of the European Communities

(Case C-537/08 P)

(2009/C 44/56)

Language of the case: German

Parties

Appellant: Kahla/Thüringen Porzellan GmbH (represented by: M. Schütte, Rechtsanwalt, S. Zühlke, Rechtsanwältin, und P. Werner, Rechtsanwalt)

Other parties to the proceedings: Freistaat Thüringen, Federal Republic of Germany, Commission of the European Communities

Form of order sought

— set aside the judgment of the Court of First Instance of 24 September 2008 in Case T-20/03 *Kahla/Thüringen Porzellan GmbH* v *Commission of the European Communities*, in so far as it concerns measures 15 and 26 and the decision on costs;

— annul Article 1(2)(d) and (g) of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH [1], as well as Article 2 thereof in so far as it concerns measures 15 and 26, at least in so far as it orders the recovery of measures 15 and 26;

— in the alternative, set aside the judgment under appeal in so far as it holds that the employment promotion grants received conferred an advantage on the appellant and therefore must be recovered;

— order the respondent to pay the cost of the proceedings.

Pleas in law and main arguments

The current appeal is lodged against the judgment of the Court of First Instance dismissing the action brought by the appellant against Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH, in so far as that decision concerns the financial assistance granted to Kahla/Thüringen Porzellan GmbH.

The appellant relies on two main pleas in law and one alternative plea in law. The appellant submits that the judgment infringes Community law by wrongly applying the fundamental principles of legal certainty and the protection of legitimate expectations. Even if the Court of Justice were not to uphold those pleas, certain findings in the judgment in any event constitute an infringement of Article 87(1) EC.

As regards the first plea in law, the judgment of the Court of First Instance infringed the principle of legal certainty by holding that, right from the beginning, the aid scheme approved by the Commission covering the programme of the Land of Thuringia for investments by small and medium-sized enterprises (SMEs) contained restrictions in respect of firms in difficulty and the aid scheme under Paragraph 249h of the Arbeitsförderungsgesetz (Law on the promotion of employment; 'the AFG') approved by the Commission excluded private undertakings from its scope.

As regards the second plea in law, the Court of First Instance infringed the principle of the protection of legitimate expectations by holding that the absence of explicit restrictions in the versions of the Commission decision approving the programme of the Land of Thuringia for investments by SMEs or, as the case may be, the Commission decision finding that Paragraph 249h AFG does not contain State aid published in the Official Journal or otherwise publicly available could not give rise to legitimate expectations on the part of the appellant that the measure was lawful and that, consequently, the appellant could be expected to keep itself informed — by looking beyond the documents that were publicly available — as to whether the grant of the aid that it had been awarded was lawful.

Finally, as regards the third, alternative plea, the Court of First Instance infringed Article 87 EC when it found — without undertaking an assessment of the actual savings made by the appellant — that, because of the measure at issue, the appellant enjoyed an advantage relevant in State aid law in the amount of the grant received.

[1] OJ 2003 L 227, p. 12.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (The Netherlands) lodged on 4 December 2008 — Staatssecretaris van Financiën v Facet BV/Facet Trading BV

(Case C-539/08)

(2009/C 44/57)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Facet BV/Facet Trading BV

Question referred

Must Article 17(2) and (3) and Article 28b(A)(2) of the Sixth Directive ([1]) be interpreted as meaning that, if the place of an intra-Community acquisition is deemed, on the basis of the first subparagraph of the latter provision, to be within the territory of the Member State which issued the VAT identification number under which the person acquiring made the acquisition, the aforementioned person acquiring the goods has the right immediately to deduct the VAT thus due in that Member State?

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

Action brought on 4 December 2008 — Commission of the European Communities v Czech Republic

(Case C-544/08)

(2009/C 44/58)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, L. Jelínek, acting as Agents)

Defendant: Czech Republic

Form of order sought

The Commission claims the Court should:

— Declare that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC ([1]), or in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 64 of that directive;

— order Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for implementing the Directive into the domestic legal order expired on 10 December 2007.

([1]) OJ 2005 L 323, p. 1.

Appeal brought on 17 December 2008 by Le Carbone Lorraine against the judgment of the Court of First Instance (Fifth Chamber) delivered on 8 October 2008 in Case T-73/04 Le Carbone Lorraine v Commission

(Case C-554/08 P)

(2009/C 44/59)

Language of the case: French

Parties

Appellant: Le Carbone Lorraine (represented by: A. Winckler and H. Kanellopoulos, avocats)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside, in part, under Article 225(1) EC and Article 61 of the Statute of the Court of Justice, the judgment of the Court of First Instance of 8 October 2008 in Case T-73/04 *Le Carbone Lorraine* v *Commission*;

— allow the claims submitted by Le Carbone Lorraine at first instance and, consequently, on the basis of Article 229 EC, Article 61 of the Statute of the Court of Justice and Article 17 of Council Regulation No 17/62 ([1]), now Article 31 of Council Regulation No 1/2003 ([2]), reduce the amount of the fine imposed on Le Carbone Lorraine by the Commission in its decision of 3 December 2003 in Case C.38.359 — Electrical and mechanical carbon and graphite products ([3]);

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellant puts forward four pleas in law in support of its appeal.

By its first plea, the appellant claims that the Court of First Instance infringed the principle that penalties must be specific to the offender in that it held that the Commission was not required to assess individually the various elements of the infringement, since there was a single infringement and an overall strategy shared by all the members of the cartel. In the absence of a definition of the relevant product markets or of the categories of products in question, such an overall assessment of the infringement leads to the amount of the fine being set without regard for the actual infringement specifically committed by each member of the cartel.

By its second plea, the appellant asserts that the Court of First Instance misinterpreted the Commission's decision in that it held that the Commission had taken account of the actual impact of the cartel on the market in question in order to determine the amount of the fine, despite the fact that the Commission itself had stated, both in its decision of 3 December 2003, and at the hearing before the Court of First Instance, that that impact could not be determined with any precision. The infringement was classified as 'very serious' on the sole ground of its type and geographical scope.

By its third plea, the appellant claims that the Court of First Instance infringed the principle of equal treatment in that it upheld the Commission's refusal to grant the appellant an additional reduction in the amount of the fine based on the leniency notice, despite the fact that that reduction had been granted additionally to two other companies, which are competitors of the appellant. The close and sustained cooperation of the appellant in the course of the proceedings was, therefore, not sufficiently taken into account and recompensed by the Court of First Instance.

By its fourth and final plea, Carbone Lorraine objects to the breaches, by the Court of First Instance, of the principles of proportionality and equal treatment, in that it held that the appellant could not benefit from a reduction in the amount of the fine on the basis of the serious financial difficulties which it was facing, despite the fact that that same factor was held to be sufficient to reduce the fine imposed on another competing company.

(1) Council Regulation No 17/62 of 7 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (English special edition: Series I Chapter 1959-1962, p. 87).
(2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
(3) OJ 2004 L 125, p. 45.

Action brought on 16 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-556/08)

(2009/C 44/60)

Language of the case: English

Parties

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

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to fully comply with Directive 2005/36/EC (1) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, or in any event by failing to fully communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 20 October 2007.

(1) OJ L 255, p. 22.

Action brought on 16 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-557/08)

(2009/C 44/61)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: L. Lozano Palacios and A.A. Gilly, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/35/EC ([1]) of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 1 April 2007.

([1]) OJ L 255, p. 11.

Appeal brought on 19 December 2008 by the Commission of the European Communities against the judgment of the Court of First Instance (Seventh Chamber) delivered on 15 October 2008 in Case T-160/04 Potamianos v Commission

(Case C-561/08 P)

(2009/C 44/62)

Language of the case: French

Parties

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

Other party to the proceedings: Gerasimos Potamianos

Form of order sought

— Set aside the judgment of the Court of First Instance of 15 October 2008 in Case T-160/04;

— Declare Mr Potamianos's action inadmissible;

— Rule that each of the parties is to bear their own costs as regards both the appeal proceedings and the proceedings before the Court of First Instance of the European Communities.

Pleas in law and main arguments

By its appeal, the Commission is challenging the categorisation by the Court of First Instance of the notification sent to the respondent informing him of the non-renewal of his contract of employment as a temporary servant. The Court of First Instance interpreted that notification as a separate decision of the appointing authority. It is, however, clear from the case-law of the Court of Justice and, in particular, Case C-417/05 P *Fernández Gómez*, that such a notification has merely informative value, with only the terms of the contract stating that the contract will not be renewed upon expiry amounting to an act adversely affecting a party. As that contract was not challenged within the periods prescribed by the Staff Regulations, the Court of First Instance should have dismissed the action as inadmissible.

In disregarding that case-law, the Court of First Instance therefore created a situation of legal uncertainty for the Civil Service Tribunal and for the Commission and other institutions which have concluded contracts similar to that at issue in the present case.

Action brought on 22 December 2008 — European Parliament v Council of the European Union

(Case C-566/08)

(2009/C 44/63)

Language of the case: French

Parties

Applicant: European Parliament (represented by R. Passos, G. Mazzini and D. Gauci, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— annul, on the ground of breach of the EC Treaty, Council Decision 2008/780/EC of 29 September 2008 on the conclusion, on behalf of the European Community, of the Southern Indian Ocean Fisheries Agreement ([1]);

— order the Council to pay the costs.

Pleas in law and main arguments

The European Parliament relies on a single plea in law in support of its application, namely the wrong legal basis of the contested decision. According to the Parliament, it is clear both from the interpretation of Article 300 EC and from the content of the agreement at issue in the present case that that agreement falls within the category of agreements establishing a specific institutional framework by organising cooperation procedures. Consequently, the contested decision should have been adopted on the basis of Article 37 EC in conjunction with the first sentence of the first subparagraph of Article 300(2) EC and the *second subparagraph* of Article 300(3) EC — requiring the assent of the European Parliament to be obtained — and not on the basis of Article 37 EC in conjunction with the first sentence of the first subparagraph of Article 300(2) EC and the *first subparagraph* of Article 300(3) EC, providing merely for the Parliament to be consulted.

([1]) OJ 2008 L 268, p. 27.

Action brought on 19 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-567/08)

(2009/C 44/64)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and V. Perre, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([1]) and, in any event, by failing to notify the Commission thereof, the Grand Duchy of Luxemburg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of Directive 2005/36/EC expired on 20 October 2007. At the date on which the present action was brought, the defendant had not yet adopted all the measures necessary for transposition of the Directive or, in any event, had not notified the Commission thereof.

([1]) OJ 2005 L 255, p. 22.

Action brought on 22 December 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-574/08)

(2009/C 44/65)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: V. Peere and P. Dejmek, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis ([1]), or in any event by failing to communicate those provisions to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/70/EC expired on 15 December 2007. However, at the time the present action was brought, the defendant had not adopted all the necessary implementing measures or, in any event, had not at that time informed the Commission thereof.

([1]) OJ 2006 L 214, p. 29.

Action brought on 22 December 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-575/08)

(2009/C 44/66)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

— declare that in failing to adopt the laws, regulations and administrative measures necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies ([1]) the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for the transposition of Directive 2005/56/EC expired on 14 December 2007. At the date of filing of the present action, the defendant had not adopted all the necessary implementing measures or, in any event, had not yet communicated those measures to the Commission.

([1]) OJ 2005 L 310, p. 1.

Appeal brought on 24 December 2008 by Christos Gogos against the judgment delivered by the Court of First Instance (Seventh Chamber) on 15 October 2008 in Case T-66/04 Christos Gogos v Commission of the European Communities

(Case C-583/08 P)

(2009/C 44/67)

Language of the case: Greek

Parties

Appellant: Christos Gogos (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance;

— annul the decision placing him in Grade A 7 and the decision of 24 November 2003 rejecting his administrative complaint;

— exercise its unlimited jurisdiction and award compensation totalling EUR 538 121,79 in respect of the economic damage which results from the Commission's unlawful conduct in adopting the harmful decision at issue, and which has been aggravated by the administrative reform for the remainder of his expected life;

— award compensation totalling EUR 50 000 for the long delay in delivery of the judgment at first instance;

— order the defendant to pay the appellant's costs in respect of both the case before the Court of First Instance and the present proceedings.

Pleas in law and main arguments

In his appeal against the judgment of 15 October 2008 in Case T-66/04 *Christos Gogos* v *Commission of the European Communities*, the appellant Christos Gogos puts forward, first of all, two pleas to substantiate his claim that the judgment of the Court of First Instance should be set aside.

First, the appellant complains of insufficient and mistaken reasoning in respect of five of the six pleas for annulment which he put forward as applicant.

Secondly, the appellant submits that the length of the proceedings before the Court of First Instance is not justified by objective reasons. Furthermore, he has been harmed economically and has suffered non-material damage because of that delay.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 24 December 2008 — Peter Pammer v Reederei Karl Schlüter GmbH & Co KG

(Case C-585/08)

(2009/C 44/68)

Language of the case: German

Referring court

Oberster Gerichtshof (Austria)

Parties to the main proceedings

Appellant: Peter Pammer

Respondent: Reederei Karl Schlüter GmbH & Co KG

Questions referred

1. Does a 'voyage by freighter' constitute package travel for the purposes of Article 15(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1])?

2. If the answer to Question 1 is in the affirmative: Is the fact that an agent's website can be consulted on the internet sufficient to justify a finding that activities are being 'directed' within the terms of Article 15(1)(c) of Regulation No 44/2001?

([1]) OJ 2001 L 12, p. 1.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 18 December 2008 — Government of Gibraltar and United Kingdom v Commission

(Joined Cases T-211/04 and T 215/04) ([1])

(State aid — Aid scheme notified by the United Kingdom regarding the Government of Gibraltar's reform of corporate tax — Decision declaring the aid scheme incompatible with the common market — Regional selectivity — Material selectivity)

(2009/C 44/69)

Language of the case: English

Parties

Applicant in Case T-211/04: Government of Gibraltar (represented by M. Llamas, barrister, J. Temple Lang, solicitor, and A. Petersen, lawyer, and initially by K. Nordlander and subsequently by K. Karl, lawyers)

Applicant in Case T-215/04: United Kingdom of Great Britain and Northern Ireland (represented initially by M. Bethell and E. Jenkinson, Agents, D. Anderson QC and H. Davies, barrister, and subsequently by E. Jenkinson, E. O'Neill and S. Behzadi-Spencer, Agents)

Defendant: Commission of the European Communities (represented by N. Khan and V. Di Bucci, Agents)

Intervener in support of the applicant in Case T-211/04: United Kingdom of Great Britain and Northern Ireland (represented initially by M. Bethell, Agent, D. Anderson QC and H. Davies, barrister, and subsequently by E. Jenkinson and E. O'Neill, Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by N. Díaz Abad, abogado del Estado)

Re:

Applications for annulment of Commission Decision 2005/261/EC of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement as regards the Government of Gibraltar Corporation Tax Reform (OJ 2005 L 85, p. 1).

Operative part of the judgment

The Court:

1. *Joins Cases T 211/04 and T 215/04 for the purposes of judgment;*

2. *Annuls Commission Decision 2005/261/EC of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement as regards the Government of Gibraltar Corporation Tax Reform;*

3. *Orders the Commission to pay the costs of the Government of Gibraltar and those of the United Kingdom of Great Britain and Northern Ireland in Case T-215/04, and to bear its own costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs as intervener in Case T-211/04;*

5. *Orders the Kingdom of Spain to bear its own costs as intervener in Cases T-211/04 and T-215/04.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 18 December 2008 — Muñiz v Commission

(Case T-144/05) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a meeting of the Working Group of the 'Tariff and Statistical Nomenclature Section (Mechanical/Miscellaneous)' of the Customs Code Committee — Refusal of access — Exception relating to the protection of the decision-making process)

(2009/C 44/70)

Language of the case: English

Parties

Applicant: Pablo Muñiz (Brussels, Belgium) (represented: initially by B. Dehandschutter, and subsequently by L. Defalque, lawyers)

Defendant: Commission of the European Communities (represented by: P. Costa de Oliveira and I. Chatzigiannis, Agents)

Re:

Application for annulment of the Commission's decision of 3 February 2005 refusing to grant access to certain documents relating to the September 2004 meeting of the Working Group of the 'Tariff and Statistical Nomenclature Section (Mechanical/Miscellaneous)' of the Customs Code Committee.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 3 February 2005 inasmuch as it refused access to documents, 'TAXUD/1369/2003' relating to home cinema, 'TAXUD/974/2004' relating to vehicles for dual use, 'TAXUD/1342/2003', 'TAXUD/2465/2004' and 'TAXUD/2495/2004' relating to power supply units, 'XXI/770/1998' relating to incomplete ADP machines, and to the minutes of the September 2004 meeting of the Working Group of the 'Tariff and Statistical Nomenclature Section (Mechanical/ Miscellaneous)' of the Customs Code Committee (document 'TAXUD/3010/2004 — Annex V');*

2. *Declares that there is no need to adjudicate on the remainder of the action;*

3. *Orders the Commission to pay the costs incurred by Mr Pablo Muñiz.*

([1]) OJ C 132, 28.5.2005.

Judgment of the Court of First Instance of 18 December 2008 — Componenta v Commission

(Case T-455/05) ([1])

(State aid — Metallurgy sector — Acquisition of a shareholding held by an undertaking in a property company and repayment of a loan by that undertaking to the property company in consideration for an investment in that undertaking — Decision declaring the aid incompatible with the common market and ordering its recovery — Private investor test — Valuation of the shares in a property company — Valuation of the real property assets of a company — Duty to state the reasons for the decision — Finding of the Court of its own motion)

(2009/C 44/71)

Language of the case: Finnish

Parties

Applicant: Componenta Oyj (Helsinki, Finland) (represented by: M. Savola and A. Järvinen, lawyers)

Defendant: Commission of the European Communities (represented by: C. Giolito and M. Huttunen, Agents)

Intervener in support of the applicant: Republic of Finland (represented by: E. Bygglin, A. Guimaraes-Purokoski and J. Heliskoski, Agents)

Re:

Application for annulment of Commission Decision 2006/900/EC of 20 October 2005 on the State Aid implemented by Finland for investment aid to Componenta Corporation (OJ 2006 L 353, p. 36)

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2006/900/EC of 20 October 2005 on the State Aid implemented by Finland for investment aid to Componenta Corporation;*

2. *Orders the Commission to bear its own costs and pay Componenta's costs;*

3. *Orders the Republic of Finland to bear its own costs.*

([1]) OJ C 48, 25.2.2006.

Judgment of the Court of First Instance of 18 December 2008 — General Química v Commission

(Case T-85/06) ([1])

(Competition — Agreements, decisions and concerted practices — Rubber chemicals sector — Decision finding an infringement of Article 81 EC — Exchange of confidential information and price fixing — Imputation to parent company — Joint and several liability — Fines — Leniency notice)

(2009/C 44/72)

Language of the case: Spanish

Parties

Applicants: General Química, SA (Alava, Spain); Repsol Química, SA (Madrid, Spain); and Repsol YPF, SA (Madrid) (represented by: J.M. Jiménez Laiglesia Oñate and J. Jiménez Laiglesia Oñate, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre and F. Amato, then by F. Castillo de la Torre, Agents)

Re:

Application for partial annulment of Commission Decision 2006/902/EC of 21 December 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement against Flexsys NV, Bayer AG, Crompton Manufacturing Company Inc. (former Uniroyal Chemical Company Inc.), Crompton Europe Ltd, Chemtura Corporation (former Crompton Corporation), General Química SA, Repsol Química SA and Repsol YPF SA (Case No COMP/F/C.38.443 — Rubber chemicals) (OJ 2006 L 353, p. 50), and, alternatively, the reduction of the fine imposed on the applicants

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders General Química, SA, Repsol Química, SA and Repsol YPF, SA to bear their own costs and pay the Commission's costs.*

([1]) OJ C 131, 3.6.2006.

Judgment of the Court of First Instance of 18 December 2008 — Torres v OHIM — Bodegas Cándido (TORRE DE FRIAS)

(Case T-285/06) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark TORRE DE FRIAS — Earlier national and international word marks TORRES and LAS TORRES — Relative ground for refusal — No likelihood of confusion)

(2009/C 44/73)

Language of the case: Spanish

Parties

Applicant: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Bodegas Cándido, SA (Burgos, Spain) (represented by: C. Hernández Hernández, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 July 2006 (Case R-1069/2004-2) relating to opposition proceedings between Miguel Torres, SA and Bodegas Cándido, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miguel Torres, SA to pay the costs.*

([1]) OJ C 310, 16.12.2006.

Judgment of the Court of First Instance of 18 December 2008 — Torres v OHIM — Vinícola de Tomelloso (TORRE DE GAZATE)

(Case T-286/06) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark TORRE DE GAZATE — Earlier national and international word marks TORRES and LAS TORRES — Relative ground for refusal — No likelihood of confusion)

(2009/C 44/74)

Language of the case: Spanish

Parties

Applicant: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Vinícola de Tomelloso, SCL (Tomelloso, Spain) (represented by: J. Casajuana Espinosa, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 July 2006 (Case R-421/2004-2) relating to opposition proceedings between Miguel Torres, SA and Vinícola de Tomelloso, SCL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miguel Torres, SA to pay the costs.*

([1]) OJ C 310, 16.12.2006.

Judgment of the Court of First Instance of 18 December 2008 — Torres v OHIM — Bodegas Peñalba Lopez (Torre Albéniz)

(Case T-287/06) ([1])

(Community trade mark — Opposition procedure — Application for Community figurative mark TG Torre Galatea — Earlier Community word mark TORRES 10 — Relative ground for refusal — No likelihood of confusion)

(2009/C 44/75)

Language of the case: Spanish

Parties

Applicant: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Bodegas Peñalba Lopez, SL (Aranda de Duero, Spain) (represented by: J. Calderón Chavero, T. Villate Consonni and M. Yañez Manglano, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 July 2006 (Case R-597/2004-2) relating to opposition proceedings between Miguel Torres, SA and Bodegas Peñalba Lopez, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miguel Torres, SA to pay the costs.*

([1]) OJ C 310, 16.12.2006.

Judgment of the Court of First Instance of 18 December 2008 — Torres v OHIM — Gala-Salvador Dali (TG Torre Galatea)

(Case T-8/07) ([1])

(Community trade mark — Opposition procedure — Application for Community figurative mark TG Torre Galatea — Earlier Community word mark TORRES 10 — Relative ground for refusal — No likelihood of confusion)

(2009/C 44/76)

Language of the case: Spanish

Parties

Applicant: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Fundación Gala-Salvador Dali (Figueras, Spain) (represented by: A. Seguera Roda and M. Teixdor Jufresa, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 October 2006 (Case R-168/2006-2) relating to opposition proceedings between Miguel Torres, SA and Fundacion Gala-Salvador Dali.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miguel Torres, SA to pay the costs.*

([1]) OJ C 56, 4.3.2007.

Judgment of the Court of First Instance of 18 December 2008 — Torres v OHIM — Sociedad Cooperativa del Campo San Ginés (TORRE DE BENÍTEZ)

(Case T-16/07) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark TORRE DE BENÍTEZ — Earlier national, Community and international word and figurative marks evoking a number of towers — Relative ground for refusal — No likelihood of confusion)

(2009/C 44/77)

Language of the case: Spanish

Parties

Applicant: Miguel Torres, SA (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Sociedad Cooperativa del Campo San Ginés (Cuenca, Spain) (represented by: C. Hernández Hernández, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2006 (Case R-36/2006-2) relating to opposition proceedings between Miguel Torres, SA and Sociedad Cooperativa del Campo San Ginés.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miguel Torres, SA to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court of First Instance of 18 December 2008 — Belgium and Commission v Genette

(Joined Cases T-90/07 P and T-99/07 P) ([1])

(Appeal — Staff cases — Officials — Pensions — Transfer of national pension rights — Decision refusing the withdrawal of a transfer application and the introduction of a new transfer application — Jurisdiction of the Civil Service Tribunal — Alteration of the subject-matter of the proceedings — Inadmissibility of the action at first instance)

(2009/C 44/78)

Language of the case: French

Parties

Appellants: Kingdom of Belgium (represented by: L. Van den Broeck and C. Pochet, Agents, assisted by L. Markey, lawyer) and Commission of the European Communities (represented by V. Joris and D. Martin, Agents)

Respondent: Emmanuel Genette (Gorze, France) (represented by: M.-A. Lucas, lawyer)

Re:

Two appeals against the judgment of 16 January 2007 of the European Union Civil Service Tribunal (First Chamber) in Case F-92/05 *Genette* v *Commission* (not yet published in the ECR) seeking to have that judgment set aide

Operative part of the judgment

The Court:

1. *Sets aside the judgment of 16 January 2007 of the European Union Civil Service Tribunal in Case F-92/05 Genette v Commission;*

2. *Dismisses as inadmissible Mr. Genette's action before the Civil Service Tribunal in Case F-92/05;*

3. *Orders Mr Genette to bear his own costs of the proceedings before the Civil Service Tribunal and the Court of First Instance;*

4. *Orders the Commission to bear its own costs of the proceedings before the Civil Service Tribunal and the Court of First Instance;*

5. *Orders the Kingdom of Belgium to bear its own costs of the proceedings before the Civil Service Tribunal and the Court of First Instance.*

([1]) OJ C 117, 29.5.2007.

Judgment of the Court of First Instance of 18 December 2008 — Lofaro v Commission

(Case T-293/07 P) ([1])

(Appeal — Staff cases — Temporary staff — Time-limit for complaint — Date of bringing of complaint — Receipt by the Administration — Principle of legal certainty)

(2009/C 44/79)

Language of the case: French

Parties

Appellant: Alessandro Lofaro (Brussels, Belgium) (represented by: J.-L. Laffineur, lawyer)

Respondent: Commission of the European Communities (represented by: J. Currall and K. Hermann, Agents)

Re:

Appeal against the order of 24 May 2007 of the European Union Civil Service Tribunal (Third Chamber) in Joined Cases F-27/06 and F-75/06 *Lofaro* v *Commission* (not yet published in the ECR) seeking the setting aside of that order

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Alessandro Lofaro to bear his own costs and pay the Commission's costs before the Court of First Intance.*

([1]) OJ C 223, 22.9.2007.

Order of the Court of First Instance of 3 December 2008 — RSA Security Ireland v Commission

(Case T-227/06) ([1])

(Action for annulment — Common Customs Tariff — Classification in the Combined Nomenclature — Person not individually concerned — Inadmissibility)

(2009/C 44/80)

Language of the case: English

Parties

Applicant: RSA Security Ireland Ltd (Shannon, Ireland) (represented by: B. Conway, Barrister, and S. Daly, Solicitor)

Defendant: Commission of the European Communities (represented by: X. Lewis and J. Hottiaux, Agents)

Re:

Application for the annulment of Commission Regulation (EC) No 888/2006 of 16 June 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 165, p. 6).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *RSA Security Ireland Ltd shall pay the costs.*

([1]) OJ C 249, 14.10.2006.

Order of the Court of First Instance of 2 December 2008 — Longevity Health Products v OHIM — Hennig Arzneimittel (Cellutrim)

(Case T-169/07) ([1])

(Community trade mark — Invalidity proceedings — Community word mark Cellutrim — Earlier national word mark Cellidrin — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2009/C 44/81)

Language of the case: German

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Hennig Arzneimittel GmbH & Co. KG (Flörsheim, Germany) (represented by: S. Ziegler, C. Kleiner and F. Dehn, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 March 2007 (Case R 1123/2006-1) concerning invalidity proceedings between, initially, Celltech Pharma GmbH & Co. KG and, subsequently, Hennig Arzneimittel GmbH & Co. KG and Longevity Health Products, Inc.

Operative part of the order

1. *The action is dismissed.*

2. *Longevity Health Products, Inc. is ordered to pay the costs.*

(1) OJ C 155, 7.7.2007.

Order of the Court of First Instance of 3 December 2008 — RSA Security Ireland v Commission

(Case T-210/07) (1)

(Action for annulment — Common Customs Tariff — Issue of binding tariff information — Power of the national customs authorities — Non-actionable measure — Inadmissibility)

(2009/C 44/82)

Language of the case: English

Parties

Applicant: RSA Security Ireland (Shannon, Ireland) (represented by: B. Conway, Barrister, and S. Daly, Solicitor)

Defendant: Commission of the European Communities (represented by: S. Schønberg and D. Lawunmi, Agents)

Re:

Application for the annulment of a decision allegedly taken by the Commission and communicated to the applicant by email of the Irish Revenue Commissioners of 30 March 2007 concerning the classification of goods under a certain heading of the Combined Nomenclature.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *RSA Security Ireland Ltd shall pay the costs.*

(1) OJ C 183, 4.8.2007.

Action brought on 19 September 2008 — ICF v Commission

(Case T-406/08)

(2009/C 44/83)

Language of the case: French

Parties

Applicant: Industries Chimiques du Fluor SA (ICF) (Tunis, Tunisia) (represented by M. van der Woude and T. Hennen, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision in so far as it concerns the applicant;

— in the alternative, reduce substantially the fine imposed on the applicant;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this application the applicant seeks the annulment in part of Commission Decision C(2008) 3043 final of 25 June 2008 in Case COMP/39.180 — Aluminium fluoride, by which the Commission found that certain undertakings including the applicant had infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area by agreeing, on the world market in aluminium fluoride, on a target price increase, by examining various regions of the world including Europe to establish a general price level and in some cases to agree on a division of the market, and by exchanging commercially sensitive information.

In support of its application, the applicant puts forward four pleas in law:

— infringement of the rights of the defence and Article 27 of Regulation No 1/2003 (1), in that the infringement described in the statement of objections differed from that eventually established in the contested decision and the contested decision was based on documents not mentioned in the statement of objections;

— infringement of Article 81 EC, as the contested decision made an incorrect legal classification of the acts the applicant was accused of, by wrongly classifying a fortuitous exchange of information as an agreement and/or a concerted practice within the meaning of Article 81(1) EC. Moreover, the disputed acts could not in any event, according to the applicant, be classified as a single continuous infringement;

— infringement of Article 23 of Regulation No 1/2003 and the principle of protection of legitimate expectations in fixing the amount of the fine, in that the Commission misapplied the guidelines for calculating fines by (i) not using an audited figure for turnover and (ii) omitting to estimate the total value of sales of goods or services in connection with the infringement in the geographical sector. Moreover, the Commission erred in its classification of the facts. Finally, the applicant puts forward, in support of its claim for a reduction of the fine, the small part of the aggregate market share of the parties to the agreement and the lack of implementation;

— infringement of the Euro-Mediterranean Agreement with Tunisia [2], on the ground that the Commission applied the Community competition rules exclusively, although the competition rules of the Euro-Mediterranean Agreement were applicable, albeit in parallel to the Community competition rules. According to the applicant, the Commission should have consulted the EU/Tunisia Association Committee, as required by Article 36 of the Agreement. The applicant further submits that the unilateral approach taken by the Commission is contrary to the principle of international comity and to its duty of care.

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

[2] Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (OJ 1998 L 97, p. 2).

Action brought on 21 November 2008 — Volkswagen v OHIM — Deutsche BP (SunGasoline)

(Case T-502/08)

(2009/C 44/84)

Language in which the application was lodged: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: H.-P. Schrammek, C. Drzymalla and S Risthaus, 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: Deutsche BP AG (Gelsenkirchen, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 19 September 2008 in appeal case R-513/2007-4, and

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

Pleas in law and main arguments

Applicant for a Community trade mark: Volkswagen.

Community trade mark concerned: word mark 'SunGasoline' in respect of goods and services in Classes 4, 7, 12, 35, 37 and 39 (Application No 3 418 647).

Proprietor of the mark or sign cited in the opposition proceedings: Deutsche BP AG.

Mark or sign cited in opposition: the German word mark 'GASOLIN' (Trade mark No 763 901) in respect of goods in Class 4.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Appeal upheld for certain goods in Class 4.

Pleas in law: Infringement of Article 15(2)(b) in conjunction with Article 43(2) of Regulation No 40/94 [1] in that legally accepted use of the mark in opposition was not proved to the requisite level, and infringement of Article 8(1)(b) of Regulation No 40/1994 in that there is no likelihood of confusion between the marks at issue.

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

Action brought on 20 November 2008 — Rundpack v OHIM (Representation of a tumbler)

(Case T-503/08)

(2009/C 44/85)

Language in which the application was lodged: German

Parties

Applicant: Rundpack (represented by R. Chmilewsky-Lehner, lawyer)

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

Form of order sought

— Annul the contested decision (R 1400/2006-1) of OHIM of 3 September 2008 and refer the trade mark application No 003 317 591 back to OHIM to allow for the registration process to continue, and order OHIM to bear all the costs associated with the case, in particular including those incurred before the Board of Appeal.

— In the alternative, annul the contested decision of OHIM of 3 September 2008 and refer the trade mark application No 003 317 591 in respect of a reduced list of goods back to OHIM to allow for the registration process to continue, and order OHIM to bear all the costs associated with the case, in particular including those incurred before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark 'BECHER RUND' in respect of goods in Classes 16, 17 and 20 (Application No 3 317 591).

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] in that the trade mark applied for has the necessary minimum distinctive character.

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

Action brought on 21 November 2008 — Mologen v OHIM (dSLIM)

(Case T-504/08)

(2009/C 44/86)

Language of the case: German

Parties

Applicant: Mologen AG (Berlin, Germany) (represented by C. Klages, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 17 September 2008 in Case R 1077/2007-4;

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

Pleas in law and main arguments

Community trade mark concerned: the word mark 'dSLIM' for goods and services in classes 1, 5, 10, 42 and 44 (Application No 5 355 136).

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) and (c) of Regulation (EC) No 40/94 [1], in that the sign neither lacks distinctive character nor involves a descriptive indication.

[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 November 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Hunter)

(Case T-505/08)

(2009/C 44/87)

Language of the case: German

Parties

Applicant: Nadine Trautwein Rolf Trautwein GbR, Research and Development (Leopoldshöhe, Germany) (represented by C. Czychowski, lawyer)

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 17 September 2008 in Case R 1733/2007-1, as well as the decision of the examiner of 17 October 2007 and admit Community trade mark application No 4829347 for publication; and

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Hunter' for goods in classes 18 and 25 (Application No 4 829 347)

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) and (c) of Regulation (EC) No 40/94 [1], in that the trade mark neither can be denied the necessary distinctive character nor involves a descriptive indication.

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

Appeal brought on 25 November 2008 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 11 September 2008 in Case F-135/07 Smadja v Commission

(Case T-513/08 P)

(2009/C 44/88)

Language of the case: French

Parties

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

Other party to the proceedings: Daniele Smadja (New Delhi, India)

Form of order sought by the appellant

— Set aside the judgment of the Civil Service Tribunal delivered on 11 September 2008 in Case F-135/07;

— Dismiss the action brought by Mrs Smadja;

— Order that each of the parties bear their own costs before the Court of First Instance and the Civil Service Tribunal.

Pleas in law and main arguments

By the present appeal, the Commission seeks the setting aside of the judgment of the Civil Service Tribunal (CST) of 11 September 2000 in Case F-135/07, by which the CST annulled the Commission decision of 21 December 2006 grading the applicant at first instance in Grade A*15, step 1, in consequence of the judgment of the Court of First Instance of 29 September 2005 in Case T-218/02 *Napoli Buzzanca* v *Commission*.

In support of its appeal, the Commission relies one one ground of appeal, alleging error of law in the interpretation of the principle of proportionality.

In three parts, the Commission claims that:

— the principle of proportionality cannot be invoked when statutory provisions, such as Articles 3 and 4 of the Staff Regulations of Officials of the European Communities, prohibit the Commission from making appointments with retrospective effect;

— the principle of proportionality cannot lead to the denial of the authority of a judgment delivered but still possibly subject to appeal enjoyed by a judgment of the Court of First Instance;

— the principle of proportionality cannot be invoked when statutory provisions, such as Article 5(5) of Annex XIII, read with Article 46(1)(a) of the Staff Regulations of Officials of the European Communities, exclude in this instance grading in a step higher than step 1.

Action brought on 19 November 2008 — Mauerhofer v Commission

(Case T-515/08)

(2009/C 44/89)

Language of the case: English

Parties

Applicant: Volker Mauerhofer (Vienna, Austria) (represented by: J. Schartmüller, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— primarily, annul the contested measure as far as it concerns the applicant;

— additionally, or as an alternative to the claim for annulment, find that the defendant has incurred non contractual liability through the unlawful adoption of the contested measure;

— order the defendant to pay to the applicant, as a result of the contested measure, the sum of 5 500 euros for the non-contractual damages suffered and an annual interest rate of 4 % since 4 November 2008 until delivery of the judgment bringing the present proceedings to an end.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision of 9 September 2008 by which it adopted an administrative order reducing the number of working days allocated to the applicant for carrying out its tasks within an expert contract No MC/5043/025/001/2008 signed between the applicant and the Consultant for the participation in a 'Value Chain Mapping Analysis' project based on the Framework Contract 'EuropeAid/123314/C/SER/multi' carried out in Bosnia and Herzegovina, signed between the Consultant and the Commission. Furthermore, the applicant seeks the compensation for damages suffered as a result of the contested measure.

The applicant puts forward the following pleas in law in support of its claims:

First, the applicant claims that the contested measure was adopted by the Commission with breach of procedural requirement of a written proposal made by a Consultant prior to the Commission decision, as required by the General Conditions and Specific Guidelines applicable to the Framework Contract project 'Value Chain Mapping Analysis'.

Second, the applicant submits that the contested measure was adopted with violation of its right to be heard by impartial authority.

Third, it argues that the contested measure was adopted with breach of its right to be dealt with by an authority free of a conflict of interest.

Further, the applicant contends that, when adopting the contested measure, the defendant failed to correctly and fairly calculate and analyse the number of working days deducted from the total number of the days allocated to the applicant for carrying out its tasks.

Finally, the applicant claims that the Commission misused its power when adopting the contested measure as it didn't take into account for the evaluation of a number of working days allocated to the applicant the mistakes committed by the Consultant.

Action brought on 27 Novembre 2008 — Eriksen/ Commission

(Case T-516/08)

(2009/C 44/90)

Language of the case: English

Parties

Applicant: Heinz Helmuth Eriksen (Ebeltoft, Denmark) (represented by: I. Anderson, advocate)

Defendant: Commission of the European Communities

Form of order sought

— order the Commission to pay to the applicant the sum of 800 000 EUR or such other sum as the Court may considerable just and equitable for past, present and future pain, suffering and diminution of the enjoyment of life from serious impairments to his health resulting from the Commission's capricious and unlawful refusal to enforce the implementation of medical monitoring of former Thule workers for radiation related illnesses and conditions;

— order the Commission to pay to the applicant or the medical treating facilities or care givers, the future costs of medical treatments and medications to alleviate and or treat his impaired health, referred to in the first claim above, which are not available to him through the socialized medical system of his Member State;

— order the Commission to pay reasonable legal costs and disbursements incurred by the applicant in bringing the present proceedings.

Pleas in law and main arguments

In the present case, the applicant is bringing an action for non-contractual liability arising from the damages it claims to have incurred as a result of the alleged illegal refusal by the Commission to comply with plenary resolution of the European Parliament ([1]) and to enforce the application by Denmark of the provisions of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation ([2]) to the case of workers, including the applicant, involved in a nuclear accident in Thule, Greenland.

([1]) European Parliament report of 20 April 2007 on the public health consequences of the 1968 Thule crash (Petition 720/2002) [2006/2012(INI)].
([2]) OJ L 159, p. 1.

Action brought on 2 December 2008 — AIB-Vinçotte Luxembourg v Parliament

(Case T-524/08)

(2009/C 44/91)

Language of the case: French

Parties

Applicant: AIB-Vinçotte Luxembourg ASBL (Luxembourg, Luxembourg) (represented by R. Adam, lawyer)

Defendant: European Parliament

Form of order sought

— annul the decision of the European Parliament of 2 October 2008 rejecting the offer made by the applicant in connection with call for tenders INLO — A — BATI LUX — 07 268 & 271 — 00 for the refurbishment and extension of the Konrad Adenauer Building, Luxembourg,

— reserve to the applicant all other rights, remedies, pleas and actions, in particular an order that the Parliament pay damages in connection with the loss incurred;

— in any event, order the Parliament to pay the costs.

Pleas in law and main arguments

The applicant contests the Parliament's decision to reject its offer submitted in connection with the call for tenders for lot B of the contract relating to the projected extension and refurbishment of the KAD building in Luxembourg — Tasks of an approved inspection body (OJ 2008 S 193-254240).

In support of its application, the applicant puts forward four pleas in law:

— manifest error of assessment on the part of the Parliament, in that (i) the association to which the contract was awarded did not have the necessary authorisations to perform the tasks requested, as required in the tender specifications, and (ii) that association's offer stated a price that was abnormally low having regard to the criteria in the specifications;

— infringement of the obligation to state reasons, in that (i) the Parliament did not state the specific benefits of the offer accepted in comparison with the applicant's offer, thus not enabling the applicant to identify the reasons why its offer was not accepted, and (ii) the applicant was not put in a position to know whether the assessment committee met and, if so, what its conclusions were;

— infringement of the principles of diligence, good administration and transparency, as the Parliament failed to provide the explanations requested within a reasonable time;

— infringement of the provisions of the administrative specifications, in that neither the contested decision nor the subsequent letters mentioned remedies.

Action brought on 1 December 2008 — Poste Italiane v Commission

(Case T-525/08)

(2009/C 44/92)

Language of the case: Italian

Parties

Applicant: Poste Italiane (Rome, Italy) (represented by A. Fratini, A. Sandulli and F. Filpo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Upholding of the action and as a result annulment of the Commission's decision of 16 July 2008 relating to aid C 42/2006 put into effect by Italy in order to provide a return on the current accounts of Poste Italiane with the State Treasury, not yet published in the *Official Journal of the European Union*;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

This action is brought against the Commission's decision of 16 July 2008 relating to aid C 42/2006 put into effect by Italy in order to provide a return on the current accounts of Poste Italiane with the State Treasury. That decision declared incompatible with the common market, ordering its repayment, the system of State aid relating to the return on Poste Italiane current accounts with the Treasury, established by Law No 266 of 23 December 2005, and by the agreement between the Ministry of the Economy and Finance and Poste Italiane of 23 February 2006, which was put into effect by Italy, supposedly unlawfully, in breach of Article 88(3) of the Treaty.

In support of its claims the applicant invokes:

— infringement of Article 253 and of the first subparagraph of Article 87 of the EC Treaty, due to errors of fact and a manifest error of assessment, so far as concerns the Commission's application of the prudent borrower test, going so far as to establish a private borrower rate.

— infringement of the first subparagraph of Article 87 of the EC Treaty, due to a manifest error of assessment, with regard to the evaluation of alternative investments. It is stressed in this respect that, in the course of the administrative proceedings, the Italian authorities stated that the criterion set out in the agreement, governing the management of spare funds derived from the postal collection, penalises Poste with regard to the possibility of making profits from active management, and therefore does not confer any 'advantage' for the purposes of Article 87 of the Treaty.

Here, the applicant also refers to the relevance of the RBS study and of the opinions of financial brokers, and to the comparison with trading type management, with the management of funds from Poste Vita insurance policies, and with the cost of the Treasury's debt.

— Infringement of Article 253 and of the first subparagraph of Article 87 of the Treaty, due to failure to state reasons and a manifest error of assessment, and breach of the principles of the protection of legitimate expectations and legal certainty, in relation to the lack of any analysis of the element of advantage and of distortion of competition in the context of the universal service mission assumed by Poste.

— Breach of the general principles of the protection of legitimate expectations, legal certainty and proportionality in ordering the alleged aid to be repaid by the recipient.

Appeal brought on 3 December 2008 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 25 September 2008 in Case F-44/05 Strack v Commission

(Case T-526/08 P)

(2009/C 44/93)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: H. Krämer and B. Eggers)

Other party to the proceedings: Guido Strack (Cologne, Germany)

Form of order sought

— set aside the judgment of the Civil Service Tribunal of 25 September 2008 in Case F-44/05 *Strack* v *Commission*;

— order the original applicant to pay the costs of the proceedings before the Civil Service Tribunal as well as the costs of the appeal.

Pleas in law and main arguments

The appeal is brought against the judgment of the Civil Service Tribunal of 25 September 2008 in Case F-44/05 *Strack* v *Commission*. That judgment annulled the decision of the Office for Official Publications of the European Communities to reject the candidature of the original applicant for the post of head of the '*Calls for tenders and contracts*' unit and ordered the Commission to pay him EUR 2 000 by way of damages for non-material harm.

In support of its appeal, the appellant puts forward two pleas in law.

1. *Infringement of Community law resulting from the confirmation that there was a defensible interest in bringing the action for annulment*

The Commission's first head of challenge is that the application for annulment of the rejection decision was held to be admissible, notwithstanding the fact that the original applicant did not have a defensible interest in bringing the action challenging the appointing decision inasmuch as a claim for damages was introduced at the same time. That finding, the Commission argues, was wrong in law and could give rise to uncertainty as regards the implementation measures under Article 233 EC. The rule which states that inadmissibility of an action for annulment automatically entails the inadmissibility of a claim for damages directly connected to that action is not applicable where there is no danger that the claim for damages is being used as a means by which to circumvent the necessary preliminary proceedings or other conditions governing admissibility, with the result that a claim for damages may be admissible even though the action for annulment is inadmissible because of the absence of a defensible interest.

2. *Failure to provide a statement of reasons in interpreting and making a finding of 'non-material harm'*

Second, the Civil Service Tribunal erred in paragraph 219 of the judgment under appeal when it found that the original applicant had actually suffered non-material harm on the ground that he had been denied the right to a proper review of his application. That finding necessarily implies that the unlawfulness of a decision rejecting a candidature constitutes, *per se*, non-material harm. Such an interpretation fails to recognise that non-contractual liability on the part of the Community depends on the presence of three cumulative conditions: first, the unlawfulness of the conduct of which the institutions are accused; second, the actual occurrence of the harm alleged; and, third, a causal connection between the two.

Action brought on 5 December 2008 — Norilsk Nickel Harjavalta Oy and Umicore NV v Commission

(Case T-532/08)

(2009/C 44/94)

Language of the case: English

Parties

Applicants: Norilsk Nickel Harjavalta Oy (Harjavalta, Finland) and Umicore SA/NV (Brussels, Belgium) (represented by: K. Nordlander, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare the present application admissible;

— annul the contested acts;

— order the Commission to pay the applicants' costs for these proceedings.

Pleas in law and main arguments

By means of their application, the applicants seek the annulment of the specific entry for a group of four nickel carbonate related compounds — Nickel Hydroxycarbonate, Pure Nickel Carbonate and two other compounds (the 'Nickel Carbonates') — in Commission Directive 2008/58/EC ([1]) ('the 30th ATP Directive'), which is an adaptation to technical progress ('ATP') of Directive 67/548/EEC ([2]) ('The Dangerous Substances Directive').

The applicants' central claim is that the revised classification of the Nickel Carbonates was not based on the applicable legal criteria. According to the applicants, the revised classification of the Nickel Carbonates is contrary to the requirements of Dangerous Substances Directive since it was unsupported by data and was not an adaptation to technical progress. Instead, it is submitted that the Commission revised the classification of the Nickel Carbonates based on a risk assessment of the Nickel Carbonates carried out for a different purpose under Regulation (EC) No 793/93 ([3]) ('The Risk Assessment Regulation'). The applicant further submits that the Commission relied in particular upon a Derogation Statement in which four individual companies, including the applicants, requested permission not to carry out certain testing required under the Risk Assessment Regulation. That Statement, according to the applicants, provided no data to support any of the changes in classification of the Nickel Carbonates that are included in the 30th ATP Directive.

Thus, the applicants seek the annulment of two separate acts of the European Commission:

— the revised classification of the Nickel Carbonates in entry 028-010-00-0 in Annex 1F to the 30th ATP Directive;

— the Commission's decision to use the Derogation Statement given by the applicants under the Risk Assessment Regulation as the basis for the contested entry.

In support of their claims the applicants submit that the contested acts do not comply with the requirements of the Dangerous Substances Directive for the following reasons:

a) the contested acts do not comply with the detailed criteria and scientific data requirements for classification in each hazard class under Annex VI to the Dangerous Substances Directive;

b) in adopting the contested acts, the Commission did not consider the intrinsic properties of the Nickel Carbonates in the context of normal handling and use required by the Dangerous Substances Directive;

c) the contested acts are not an adaptation to technical progress of the Dangerous Substances Directive and, as such, have no legal basis in EC law;

d) in taking the contested decision and basing the contested entry on the Nickel Carbonates risk assessment under the Risk Assessment Regulation, rather than applying Article 4 and Annex VI classification criteria, the Commission exceeded its powers under the Dangerous Substances Directive.

Moreover, the applicants claim that the revised classification of the Nickel Carbonates in the 30th ATP Directive must be annulled because the Commission failed to state the reasons on which it is based, as required by Article 253 EC.

([1]) Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1).

([2]) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1967 196, p. 1).

([3]) Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances (OJ 1993 L 84, p. 1).

Action brought on 3 December 2008 — Telekomunikacja Polska v Commission

(Case T-533/08)

(2009/C 44/95)

Language of the case: Polish

Parties

Applicant: Telekomunikacja Polska SA (Warsaw, Poland) (represented by H. Romańczuk, M. Modzelewska de Raad and S. Hautbourg, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C(2008) 4997 of 4 September 2008 requiring the undertaking Telekomunikacja Polska SA and all undertakings directly or indirectly controlled by it to submit to an inspection in accordance with Article 20(4) of Council Regulation No 1/2003 ([1]);

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2008) 4997 of 4 September 2008 requiring the undertaking Telekomunikacja Polska SA and all undertakings directly or indirectly, wholly or partly controlled by it to submit to an inspection in accordance with Article 20(4) of Council Regulation No 1/2003, in connection with a procedure concerning the alleged application of practices incompatible with Article 82 EC in the electronic communications sector.

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

First, the applicant claims that the contested decision was taken in breach of the obligation to state proper reasons laid down in Article 253 EC and Article 20(4) of Council Regulation No 1/2003. In this connection the applicant complains that the Commission did not demonstrate in a satisfactory manner that it was in possession of information and evidence on the basis of which it could reasonably be asserted that the applicant had committed the infringement it was accused of. Moreover, according to the applicant, the Commission's decision did not describe with sufficient precision the facts which the Commission intended to examine in the course of the inspection. The applicant further submits that the Commission breached the obligations of describing in the contested decision the essential features of the infringement the applicant was accused of.

Second, the applicant claims that the contested decision infringed the principle of proportionality, in that the Commission did not, according to the applicant, choose the method of carrying out the procedure which would have been the least oppressive for the applicant.

Third, the applicant claims that the Commission did not ensure the applicant's rights of defence, particularly in connection with the infringements alleged by the applicant in relation to the contested decision in the first plea in law. In connection with the above, the applicant submits that it was not able to determine clearly what practices would be the subject of the Commission inspection and consequently to make a proper assessment of whether and to what extent the inspection was justified or of its obligation to cooperate with the Commission in the course of the inspection.

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

Action brought on 1 December 2008 — Granuband v OHIM — Granuflex (GRANUflex)

(Case T-534/08)

(2009/C 44/96)

Language in which the application was lodged: Dutch

Parties

Applicant: Granuband BV (Amsterdam, Netherlands) (represented by: M. Ellens, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Granuflex Ipari és Kereskedelmi Kft (Budapest, Hungary)

Form of order sought

— Annul, or at least review, the decision of OHIM of 15 September 2008, served on 24 September 2008, on grounds of infringement of the provisions of Article 52(1), in conjunction with Article 8(4), of Regulation No 40/94, and

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the figurative mark GRANUFLEX for goods in Classes 17, 19 and 27 — Community Trade Mark No 943118

Proprietor of the Community trade mark: Granuband BV

Applicant for the declaration of invalidity of the Community trade mark: Granuflex Ipari és Kereskedelmi Kft.

Trade-mark right of applicant for the declaration of invalidity: commercial designation GRANUFLEX for goods and services in Classes 17, 19, 27 and 37

Decision of the Cancellation Division: declaration that the Community trade mark is invalid

Decision of the Board of Appeal: dismissal of the appeal brought by the applicant

Pleas in law: breach of Articles 52(1)(c) and 8(4) of Regulation No 40/94.

Action brought on 5 December 2008 — Etimine and Etiproducts v Commission

(Case T-539/08)

(2009/C 44/97)

Language of the case: English

Parties

Applicant(s): Etimine SA (Bettembourg, Luxembourg) and Ab Etiproducts Oy (Espoo, Finland) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested measures by annulling the entries in Annex 1G to the contested measure relating to the following substances:

  — boric acid; boric acid, crude natural,

  — diboron trioxide; boric oxide,

— disodium tetraborate anhydrous; boric acid, disodium salt; tetraboron disodium heptaoxide, hydrate; orthobroic acid, sodium salt,

— disodium tetraborate decahydrate; borax decrahydrate,

— disodium tetraborate penthahydrate; borax pentahydrate.

— in alternative, partially annul the contested measures by annulling the entries in Annex 1G to the contested measure relating to the following substances:

— diboron trioxide; boric oxide,

— disodium tetraborate anhydrous; boric acid, disodium salt; tetraboron disodium heptaoxide, hydrate; orthobroic acid, sodium salt,

— disodium tetraborate decahydrate; borax decrahydrate,

— disodium tetraborate penthahydrate; borax pentahydrate.

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

Pleas in law and main arguments

By means of this application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ([1]) in so far as it classifies certain borates as toxic to reproduction for both fertility and development effects.

The applicant puts forward three pleas in law in support of its claims.

First, the applicant claims that the Commission has infringed essential procedural requirements as the contested measure fails to comply with the applicable legislative procedure and therefore infringes Articles 5 and 7 EC, Article 29 of Council Directive 67/548/EEC ([2]) and Article 5 of Council Decision 1999/468/EC ([3]).

Second, the applicant argues that the Commission committed errors of assessment in applying the criteria for classification of the borate substances and thus infringed Council Directive 67/548/EEC. It submits that the Commission did not apply or failed to properly apply the 'normal handling and use' principle provided for in Annex VI to Directive 67/548/EEC, unlawfully applied risk assessment criteria while, in the applicant's opinion, they are irrelevant in the context of classification of substances under Directive 67/548/EEC and failed to apply or misapplied the 'appropriateness' criterion in breach of point 4.2.3.3 of Annex VI to Directive 67/548/EEC. Furthermore, the applicant contends that the Commission failed to give sufficient weight to epidemiological and human data submitted by the applicant and, in result, the contested measure is partially vitiated by a manifest error of assessment. The applicant claims that the Commission unlawfully extrapolated data relating to one of the borate substances for the purposes of classifying the other borate substances and therefore the contested measure must be partially annulled at least in so far as it concerns the other borate substances. The applicant submits that the Commission failed to provide adequate reasons pursuant to Article 253 EC as no justification was given by the Commission to explain the grounds for the extrapolation of data.

Third, the applicant claims that the Commission infringed fundamental principles of the community law such as principle of proportionality as stated in Article 5 EC as, in the applicant's opinion, the contested measure goes beyond what is necessary to achieve the aims pursued by that measure.

([1]) OJ L 246, p. 1.
([2]) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ 196, p. 1.
([3]) Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, p. 23.

Action brought on 12 December 2008 — Esso e.a./Commission

(Case T-540/08)

(2009/C 44/98)

Language of the case: English

Parties

Applicants: Esso Société Anonyme Française (Courbevoie, France), Esso Deutschland GmbH (Hamburg, Germany), Exxon-Mobil Petroleum and Chemical BVBA (Antwerpen, Belgium), Exxon Mobil Corp. (Irving, United States) (represented by: R. Snelders, R. Subiotto, L.-P. Rudolf, M. Piergiovanni, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— partially annul the Commission's decision of 1 October 2008, relating to a proceeding under Article 81 EC (Case COMP/39.181 — Candle waxes);

— reduce the fine imposed on the applicants by that decision, and

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

Pleas in law and main arguments

The applicants seek the partial annulment of Commission's decision C(2008) 5476 final of 1 October 2008, in Case COMP/39.181 — Candle waxes ('the contested decision') and a reduction of the fines imposed on the applicants.

In support of their claims, the applicants put forward the following two main pleas in law:

By their first plea, the applicants submit that the decision errs in law by basing the calculation of Esso Société Anonyme Française's ('Esso') fine on a methodology that fails to reflect the undisputed fact that, before the merger between Exxon and Mobil, Exxon's paraffin wax business did not participate in the infringement. The applicants claim that under the contested decision, Esso is fined as if Exxon had participated in the infringement for seven years prior to the merger, even though the contested decision acknowledges it did not do so. As a result, the contested decision overstates the relative weight of Esso in the infringement and violates the principles of equality and proportionality, as well as Article 23(3) of Regulation (EC) No 1/2003 ([1]) and the 2006 Fining Guidelines ([2]).

By their second plea, the applicants submit that the contested decision errs in law by finding that the applicants' participation in the paraffin wax part of the infringement ended only in November 2003. In particular, the applicants contend that the contested decision fails to meet the Commission's burden of proof in establishing the duration of the applicant's participation in the paraffin wax part of the infringement. Moreover, the applicants claim that the contested decision fails to draw the proper conclusions from the undisputed fact that the applicants did not participate in — and were not informed of the outcome of — any 'Technical Meetings' held after 27/28 February 2003.

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

([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210 p. 2)

Action brought on 15 December 2008 — Sasol e.a./Commission

(Case T-541/08)

(2009/C 44/99)

Language of the case: English

Parties

Applicants: Sasol Ltd (Johannesburg, South Africa), Sasol Holding in Germany GmbH (Hamburg, Germany), Sasol Wax International AG (Hamburg, Germany), Sasol Wax GmbH (Hamburg, Germany) (represented by: W. Bosch, U. Denzel, C. von Köckritz, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— to annul or substantially reduce the fine imposed on Sasol Limited, Sasol Holding in Germany GmbH, Sasol Wax International AG and Sasol Wax GmbH pursuant to Article 2 of the decision; and

— to order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

This application seeks the partial annulment, pursuant to Article 230 EC, of the Commission's decision C(2008) 5476 final, of 1 October 2008, relating to a proceeding under Article 81 EC and Article 53 EEA in Case COMP/39.181 — Candle Waxes on behalf of the applicants.

In its decision, the Commission found that a number of producers of paraffin waxes and slack wax had operated a cartel from 1992 to 2005 in which they held regular meetings to discuss prices, to allocate markets and/or customers and to exchange sensitive commercial information with regard to paraffin waxes and slack wax sold to end customers in Germany.

The applicants base their application on the following pleas in law and main arguments:

According to the applicants, the Commission was wrong to hold Sasol Limited (the parent company of the Sasol group), Sasol Holding in Germany and Sasol Wax International AG liable for 'the joint venture period' (1 May 1995 until 30 June 2002). The applicants submit that the Commission's assumption that Sasol Limited (via its subsidiary Sasol Holding in Germany) exercised a decisive influence over Schümann Sasol International AG amounts to a manifest error of assessment of the evidence available to the Commission.

The applicants further submit that the Commission also erred in holding Sasol Limited, Sasol Holding in Germany and Sasol Wax International AG liable for 'the Sasol period' from 1 July 2002 to 28 April 2005. Further, they claim that the Commission applied the wrong legal standard and ignored the evidence brought forward by Sasol ([1]) demonstrating that Sasol Wax had acted autonomously on the market, thereby rebutting any presumption of parental liability.

Moreover, it is submitted that the Commission erred in not holding VARA jointly and severally liable for 'the Schümann period' (from 3 September 1992 until 30 April 1995). Instead of holding VARA ([2]) liable, which exercised control over the entity participating in the infringements, the Commission attributed comprehensive liability exclusively to Sasol and compromised thus, possible means of recourse for Sasol against VARA.

The applicants submit that the Commission further committed manifest errors in determining the basic amount of the fine to be imposed to Sasol by wrongfully inflating the turnover to be taken into account and including turnover with products to which the infringement did not directly or indirectly relate within the meaning of Article 23(2)(1) of Regulation (EC) No 1/2003 ([3]). The Commission also erred in law in choosing the wrong methodology for determining the basic amount to be applied in cases where the fine decision is directed at different addresses for different periods of the infringement.

Furthermore, it is submitted, that the Commission erred in assuming a leading role of Sasol with respect to paraffin waxes and wrongfully increased the fine to be issued against Sasol by an excessive and disproportionate amount of 50 %.

The applicants further contend that the Commission wrongfully failed to apply the 10 % ceiling laid down in Article 23(2) of Regulation (EC) No 1/2003 and violated the principle of individual legal responsibility in not capping the fine to be issued for this period at 10 % of the turnover attributable to Mr. Schümann, who, according to the applicants ultimately controlled the company which was directly involved in the infringement.

Finally, the applicants claim that the Commission erred in not granting full immunity to Sasol with regards to certain parts of the fine for which the Commission primarily relied on evidence voluntarily provided by Sasol as part of its cooperation with the Commission.

([1]) Unless otherwise specified, refers to companies of the Sasol group allegedly involved in the cartel.
([2]) Partner of the joint venture Schümann Sasol International AG, together with Sasol Ltd which indirectly acquired two thirds of Hans-Otto Schümann GmbH & Co KG.
([3]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 3 December 2008 — Evropaïki Dynamiki v ECHA

(Case T-542/08)

(2009/C 44/100)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, P. Katsimani, and M. Dermitzakis, lawyers)

Defendant: European Chemicals Agency

Form of order sought

— annul European Chemicals Agency's decision to reject the bid of the applicant, filed in response to the open Call for Tender ECHA/2008/24 for the 'Development of a Chemical Safety Assessment tool' (OJ 2008/S 115-152918), communicated to the applicant by an undated letter received by the applicant on 25 September 2008 and all subsequent decisions of ECHA including that to award it to the successful contractor;

— order ECHA to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 1 500 000;

— order ECHA to pay the applicant's legal costs incurred in connection with this application even if the current application is rejected.

Pleas in law and main arguments

By means of its application, the applicant seeks the annulment of the European Chemicals Agency's ('ECHA') decision which was notified to it by way of a letter on 25 September 2008 informing the applicant that its bid submitted in the framework of the contract ECHA/2008/24 for the 'Development of a Chemical Safety Assessment tool' (OJ 2008/S 115-152918) had not been selected and that the contract had been attributed to TRASYS SA.

The applicant claims that the Evaluation Committee committed multiple errors of assessment in relation to the award criteria, whereas fundamental rules and basic principles of public procurement were allegedly infringed by the contracting authority. Moreover, it is submitted that the ECHA misused its powers in the tender evaluation, infringed the Financial Regulation, and/or the principles of transparency and of equal treatment and that it used vague terms or insufficient motivation to substantiate its decision. Finally, the applicant contends that the defendant breached an essential procedural requirement, deriving from Article 158a of Commission Regulation (EC, Euratom) No 478/2007 ([1]), providing for a standstill period before signing the contract with the successful tenderer. The applicant claims that the defendant has deliberately delayed communicating with the applicant in order to be able to finalise the signature of the contract with the wining tenderer before it received any comments from the applicant, thus annulling the spirit and purpose of the standstill period.

In addition, the applicant requests monetary compensation equal to EUR 1 500 000, corresponding to the estimated gross profit from the aforementioned public procurement procedure, should it have been awarded the contract. The applicant submits that its claim for damages is based upon its substantiated arguments that there has been a sufficiently serious breach of a

superior rule of law for the protection of the individual and that the institutions concerned manifestly and gravely disregarded the limits on the exercise of their powers.

(1) Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2007 L 111, p. 13).

Action brought on 2 December 2008 — Villa Almè v OHIM — Bodegas Marqués de Murrieta (i GAI)

(Case T-546/08)

(2009/C 44/101)

Language in which the application was lodged: Italian

Parties

Applicant: Villa Almè Azienda vitivinicola di Vizzotto Giuseppe (Mansuè, Italy) (represented by: G. Massa, lawyer, P. Massa, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bodegas Marqués de Murrieta, SA (Logroño, Spain)

Form of order sought

— Annul the Decision of 24/09/08 of the First Board of Appeal (R 1695/2007-1) and order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Figurative mark 'i GAY' (registration application No 4.458.295) for goods in Class 33 (wines).

Proprietor of the mark or sign cited in the opposition proceedings: Bodegas Marqués de Murrieta S.A.

Mark or sign cited in the opposition proceedings: Spanish word mark (No 2.315.558) 'YGAI' and Community figurative mark (No 1.707.729) and Community word mark (No 1.699.412) 'MARQUES DE MURRIETA YGAY', for goods in Class 33 (wines).

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

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

Action brought on 16 December 2008 — Total v Commission

(Case T-548/08)

(2009/C 44/102)

Language of the case: French

Parties

Applicant: Total SA (Courbevoie, France) (represented by: E. Morgan de Rivery and A Noël-Baron, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— as the main plea, annulment under Article 230 EC of the decision of the Commission of the European Communities No C(2008) 5476 final of 1 October 2008, in so far as it concerns TOTAL SA;

— in the alternative, annulment under Article 230 EC of the fine of EUR 128 163 000 imposed jointly and severally on TOTAL FRANCE and TOTAL SA by Article 2 of the above-mentioned decision;

— further in the alternative, reduction of the said fine pursuant to Article 229 EC;

— in any event, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the partial annulment of the Commission's decision C(2008) 5476 final, of 1 October 2008, in case COMP/39.181 — Candle waxes, in which the Commission found that certain undertakings, including the applicant, had infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area by fixing prices and partitioning the markets for paraffin waxes in the European Economic Area (EEA) and gatsch in Germany.

In support of its action, the applicant makes nine pleas in law, claiming:

— infringement of the rights of the defence and the presumption of the applicant's innocence, inasmuch as the contested decision infringed the scope *ratione personae* of those rights and by reason of procedural irregularities during the investigation phase and circular reasoning in the decision itself;

— contradiction in reasoning as regards (i) the need to verify whether the parent company actually exercised a decisive influence over its subsidiary and (ii) the content of the control which a parent company must exercise over its subsidiary for it to be possible to impute the infringement to the parent company;

— infringement of the rules governing the imputability of infringements of Article 81 EC amongst groups of companies, inasmuch as (i) the contested decision erroneously stated that the Commission was not required to produce evidence supporting the presumption and (ii) the contested decision infringed the principle of legal and economic autonomy of any subsidiary on which national company laws are based;

— manifest error of assessment, inasmuch as (i) the appointment of TOTAL FRANCE board members by TOTAL SA did not strengthen the presumption of decisive influence and (ii) the evidence produced by TOTAL SA enabled the presumption of decisive influence to be definitively rebutted;

— infringement of the principles of liability for one's own actions and the limitation of sanctions to the person concerned, and of the principle of legality, in that the Commission found the existence of an economic unity between TOTAL SA and TOTAL FRANCE;

— infringement of the principles of legal certainty and sound administration, inasmuch as the imputability to TOTAL SA of the infringement allegedly committed by its subsidiary TOTAL FRANCE was based on a new criterion and (ii) the Commission did not assess the situation on a case-by-case basis as it had stated it would do;

— misuse of powers, the object of Regulation No 1/2003 being to penalise an undertaking for committing an infringement of the competition rules and not to maximise the penalty on that company by involving the parent company;

— infringement of the principle of proportionality in that the final amount of the fine imposed on the applicant and its subsidiary were entirely disconnected from the value of the product sales in relation to the infringement alleged by the decision; and

— reduction of the fine, the practices alleged being neither as serious or as long in duration as the Commission claims, and the rights of the defence having been seriously infringed.

Action brought on 16 December 2008 — Luxembourg v Commission

(Case T-549/08)

(2009/C 44/103)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: M. Fisch, agent and P. Kinsch, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decisions;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of Commission Decision C(2008) 5383 of 24 September 2008 on the suspension of interim payments from the European Social Fund (ESF) to the single programming document for Community structural interventions falling under Objective No 3 to the Grand Duchy of Luxembourg, and Commission Decision C(2008) 5730 of 6 October 2008 on the suspension of interim payments from the Community initiative to combat discrimination and inequality in the employment market (EQUAL) to the Grand Duchy of Luxembourg.

In support of its action, the applicant raises three pleas in law:

— an infringement of the principle of protection of legitimate expectations, in so far as the Commission concluded, when two preventive audits of the Luxembourg system of management and monitoring were carried out prior to the programming period concerned, that that system provided sufficient safeguards of compliance with the current rules and the generally accepted criteria of good management; only when an audit was carried out after expiry of the programming period concerned did the Commission come to unfavourable conclusions about the system of management and monitoring;

— an incorrect interpretation of the regulatory provisions on which the contested decisions are based ([1]), since those provisions do not preclude, contrary to what Commission has claimed, (i) the managing authority and the payment authority belonging to the same institution and (ii) the national managing authority submitting to the Commission a statement of expenditure as to which doubt may well exist, but which at the time of statement has not been proved to merit being legally classified as ineligible;

— substantive inaccuracy in some of the facts on which the contested decisions are based as to record keeping by the managing authority.

([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) and Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

Action brought on 17 December 2008 — ENI v Commission

(Case T-558/08)

(2009/C 44/104)

Language of the case: Italian

Parties

Applicant: ENI SpA (Rome, Italy) (represented by: M. Siragusa, lawyer, D. Durante, lawyer, G.C. Rizza, lawyer, S. Valentino, lawyer, L. Bellia, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

— annul the Decision in whole or in part, with all the consequential implications for the level of the fine;

— in the alternative, annul or reduce the fine;

— in any event, order the Commission to pay the costs and associated expenses.

Pleas in law and main arguments

The decision contested in the present case is the same as that contested in Case T-540/08 *Esso and Others* v *Commission*.

The applicant pleads the following in support of its action:

— Infringement and misapplication of Article 81 EC in so far as Article 1 of the Decision found that ENI had participated in a continuing agreement and/or concerted practice by virtue of the presence of Mr Di Serio at the 'technical meeting' held on 30/31 October in Hamburg. In particular, ENI complains of errors of fact, and contests the legal consequences flowing therefrom, in that (i) the Commission stated that ENI had not, as part of its defence during the administrative procedure, maintained that Mr Di Serio 'openly distanced himself' from the content of the meeting in question and (ii) the Commission reported incorrectly ENI's statements concerning the discrepancies between the price increases reported in the documents originating from Sasol and from MOL. Apart from such errors, ENI submits that the Commission erred in law in finding that ENI had participated in a continuing agreement and/or concerted practice, when ENI had not participated in any 'global plan' and the requisite evidence of the two infringements alleged was lacking;

— Infringement and misapplication of Article 81 EC in so far as Article 1 of the Decision found that ENI had participated in an agreement and/or a concerted practice in the period from 21 February 2002 to 28 April 2005. ENI disputes, in particular, the assessment of its participation as anti-competitive in view of the absence of the requisite evidence of an agreement or concerted practice for the fixing of prices and the exchange of sensitive information.

— Infringement and misapplication of Article 81 EC and Article 23 of Regulation (EC) No 1/2003, and of the Guidelines on the method of setting fines. It is submitted in that regard that the Commission:

  — determined the basic amount and the additional amount of the fine in a way that was unreasonable and contrary to the principle of equal treatment and the principle of proportionality. In fact, the percentage applied by the Commission in order to determine the basic amount (and the additional amount) of the fine was 17 % of the value of the sales, on the ground that ENI was responsible for the fixing of prices and the exchange of information, whilst the coefficient applied by the Commission to other undertakings which participated in the cartel and which also shared products and/or customers was practically identical (18 %).

  — disregarded the principle of legal certainty as regards its application of a repeat offender surcharge, even though the offences committed in the 1980s by companies controlled by ENI could not be attributed to ENI and were not blamed on ENI at the time of the respective decisions. Furthermore, application of a repeat offender surcharge is unjustifiable in view of the length of time which has passed between the old offences and those covered by the Decision.

  — failed to categorise as mitigating circumstances the applicant's limited participation in the agreement and the lack of implementation of the decisions made in the course of the 'technical meetings'. ENI adds that it provided evidence of Mr Monti's belief that the meetings that he was attending were entirely legitimate in that they were organised by the European Wax Federation and, in any case, of the lack of any intention by ENI to commit an infringement; the information received from its employee did not enable it to appreciate the anti-competitive implications of those meetings.

Action brought on 17 December 2008 — STIM d'Orbigny v Commission

(Case T-559/08)

(2009/C 44/105)

Language of the case: French

Parties

Applicant: Société de travaux industriels et maritimes d'Orbigny (STIM d'Orbigny SA) (Paris, France) (represented by: F. Froment-Meurice, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested Commission decision

— Annul Article 1 of the contested decision declaring: (1) compensation paid by the French State to SNCM of EUR 53,48 million an unlawful but compatible State aid; (2) the negative sale price of SNCM of EUR 158 million as not constituting State aid; and (3) restructuring aid of EUR 15,81 million an unlawful but compatible State aid;

— Order the Commission to pay STIM d'Orbigny the costs and expenses arising from the contested decision.

Pleas in law and main arguments

The applicant seeks the annulment of Commission decision C(2008) 3182 final of 8 July 2008, in which the Commission stated that:

— compensation paid by the French Republic to the Société Nationale Maritime Corse-Méditerranée ('SNCM') of EUR 53,48 million in respect of public service obligations constituted State aid which was unlawful, but compatible with the common market;

— the negative sale price of EUR 158 million for SNCM, the undertaking by the Compagnie Générale Maritime et Financière ('CGMF') of social measures towards employees for an amount of EUR 38.5 million and the related and concomitant recapitalisation of SNCM by CGMF for EUR 8,75 million did not constitute State aid; and

— restructuring aid of EUR 15,81 million which the French Republic put into operation in favour of SNCM constituted State aid which was unlawful, but compatible with the common market.

In support of its action, the applicant makes three pleas, claiming:

— insufficient statement of reasons, in that the Commission:

  — did not define the market under consideration or explain the position of rival undertakings;

  — did not reply to certain arguments of the Compagnie Méridionale de Navigation operating on the market in question; and

  — did not find incompatibility with the common market of the capital contribution exceeding EUR 15,81 million declared compatible with the common market;

— manifest errors of assessment concerning:

  — application of Article 86(2) EC to the capital contribution of EUR 53,48 million by way of public service compensation, inasmuch as that sum doubly compensated the same public service obligations, giving rise to over-compensation and the rewarding of deficient management and the inability of SNCM to improve its productivity in an effective manner;

  — the negative sale price of EUR 158 million for SNCM, which cannot be free of elements of State aid; the Commission made an incorrect interpretation of the conduct of a private investor in a market economy and erred in holding that the risk of cumulation of liabilities against the State in the event of liquidation justified regarding the sale of SNCM at a negative price as the least costly solution;

  — the capital contribution by CGMF of EUR 8,75 million, the Commission not having taken into consideration all the economic, financial and legal factors, and not having proved that the contribution by CGMF did not constitute State aid;

  — the current account contribution by CGMF of EUR 38,5 million by way of social measures towards employees, the latter placing SNCM in a more favourable position than what would have resulted from the market;

  — the State aid of EUR 22,52 million, none of the grounds permitting the conclusion that that aid was compatible with Community guidelines having been verified in this case;

— infringement of the principles of proportionality and of the unitary nature of aid, in that the aid recipient SNCM did not substantially contribute to the restructuring from its own resources or from external financing obtained on market conditions, and that the measures taken in 2006 constituted unlawful support of an undertaking by the French Republic.

Action brought on 16 December 2008 — Repsol YPF Lubricantes y especialidades and Others v Commission

(Case T-562/08)

(2009/C 44/106)

Language of the case: Spanish

Parties

Applicants: Repsol YPF Lubricantes y especialidades, SA (Madrid, Spain), Repsol Petróleo, SA (Madrid, Spain), Repsol YPF, SA (Madrid, Spain) (represented by: J Jiménez-Laiglesia Oñate and S. Rivero Mena, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 1 and 2 of the Decision; and

— Order the Commission to pay the costs.

Pleas in law and main arguments

The decision which is the subject of the present action is the same as that in Case T-540/08 *Esso and Others* v *Commission*.

In support of its claims, the applicants submit that, in the first instance, it has not been established that Repsol YPF Lubricantes y especialidades S.A. (Rylesa) was involved in certain identified conduct which has been dealt with on an individual basis for the purposes of imposing a penalty. In particular, the Decision did not produce sufficient evidence to show that Rylesa took part in an agreement to share customers and markets.

Nor does the Decision take account of the fact that the purpose of the technical meetings was not to share customers and markets. Such practices, had they existed, would have occurred, as some of the companies to which the Decision was addressed have recognised, within the bilateral and multilateral contacts at the fringes of the technical meetings. However, in the contested Decision it is considered unnecessary to investigate such bilateral and multilateral contacts, as a result of which the applicants may not be deemed party to the infringement identified by the Decision. In any event, the Decision does not explain why Rylesa is deemed liable for such conduct while at the same time it clears other companies that were present at the technical meetings put forward as evidence of such conduct.

The applicants also contest the criteria used by the Commission to determine the turnover of the relevant products and therefore set the penalty applicable. First, the Decision does not precisely define the products concerned by the infringement. Second, in accordance with the 2006 Guidelines on the method of setting fines, applicable to the present case, fines are to be set according to the value of the sales made by a company during the last full business year of its participation in an infringement. However, in the present case, the Commission has departed from that general rule, and has calculated the value of the fine by reference to Rylesa's average sales volume between 2001 and 2003. At no point did the Commission provide any reasons to justify why, in the case of Rylesa, it disregarded the rules it set itself in the Guidelines in order to apply a criterion (the average sales value between the years 2001 and 2003), which, moreover, substantially prejudices Rylesa. The value of sales to be taken into account is ultimately that generated in 2003, as the Decision itself states, since that is the last full year in which the Commission itself alleges that Rylesa participated in the infringement.

In the Decision, the Commission considers that any infringement by Rylesa was terminated by 4 August 2004. However, there is not the slightest evidence that any infringement by Rylesa persisted until that date. In particular, Rylesa is not a party to the agreements or practices adopted in the technical meetings which took place in the first half of 2004. Any infringement must be therefore be deemed to have terminated by January 2004 or May 2004 at the latest.

Lastly, the contested Decision disregards the considerable evidence put forward in the administrative procedure, in which it was proved that Rylesa is a completely autonomous entity from its parent company, Repsol Petróleo S.A. In any event, case-law does not allow the Commission to extend liability for an infringement committed by a company to the whole of the group of which it forms part, which is why the liability of Repsol YPF S.A. is not established.

Action brought on 16 December 2008 — CM Capital Markets v OHIM — Carbon Capital Markets (CM Capital Markets)

(Case T-563/08)

(2009/C 44/107)

Language in which the application was lodged: Spanish

Parties

Applicant: CM Capital Markets Holding, SA (Madrid, Spain), (represented by: T. Villate Consonni and J. Calderón Chavero, lawyers)

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

Other party to the proceedings before the Board of Appeal: Carbon Capital Markets Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 26 September 2008 in Case R-015/2008-1, which would lead to the refusal of the contested mark in its entirety;

— Uphold the applicant's claims, and

— Order OHIM to pay the costs of the present proceedings should they be contested and reject its claims.

Pleas in law and main arguments

Applicant for a Community trade mark: CARBON CAPITAL MARKETS LIMITED.

Community trade mark concerned: The word mark 'CARBON CAPITAL MARKETS' (Application No 4 480 208) for services in class 36.

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

Mark or sign cited in opposition: The national and Community figurative marks 'CAPITAL MARKETS' for services in class 36.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal dismissed.

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

Action brought on 17 December 2008 — Monoscoop v OHIM (SUDOKU SAMURAI BINGO)

(Case T-564/08)

(2009/C 44/108)

Language in which the application was lodged: Spanish

Parties

Applicant: Monoscoop BV (Alkmaar, Netherlands) (represented by A. Canela Giménez, 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 (OHIM) of 30 September 2008, in Case R 816/2008-2; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'SUDOKU SAMURAI BINGO' (Application for registration No 5.769.013) for goods and services in classes 9, 28 and 41.

Decision of the Examiner: Rejection of the application.

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

Pleas in law: Incorrect application of Article 7(1)(b) and (c) and Article 7(2) of Regulation (EC) No 40/94 on the Community trade mark.

Appeal brought on 19 December 2008 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 13 November 2008 in Case F-90/07 Traore v Commission

(Case T-572/08 P)

(2009/C 44/109)

Language of the case: French

Parties

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

Other party to the proceedings: Amadou Traore (Rhode-Saint-Genèse, Belgium)

Form of order sought by the appellant

— annul the judgment of the Civil Service Tribunal of 13 November 2008 in Case F-90/07 in so far as it upheld the first plea alleging irregularity of the recruitment procedure, infringement of Articles 7(1) and 29(1) of the Staff Regulations and the principles of equal treatment and eligibility for promotion, in that the level of posts was fixed at grades AD9 to AD14 in so far as it concerned the post of head of operations in Tanzania, and annulled the rejection of Mr Traore's candidature and the appointment of Mr S. to that post;

— dismiss the action brought by Mr Traore before the Civil Service Tribunal in Case F-90/07 in so far as it was upheld by that tribunal;

— order the applicant at first instance to pay the costs of the appeal and rule as required on the costs of the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

By this appeal, the Commission seeks the annulment of the judgment of the Civil Service Tribunal (CST) of 13 November 2008 in Case F-90/07 *Traore* v *Commission*, in which the CST annulled the Commission's decision of 12 December 2006, rejecting Mr Traore's candidature for the post of head of operations of the Commission's delegation in Tanzania and the decision to appoint another candidate to that post, inasmuch as the level at which the post at issue was to be filled had been fixed at grades AD 9 to AD 14 (and not limited to one of the groups of two grades AD 9/AD 10, AD 11/AD 12 or AD 13/AD 14).

In support of its appeal, the Commission adduces pleas alleging:

— error of law by the CST in misinterpreting the judgment of the Court of First Instance of 8 July 2008 in Case T-56/07 P *Commission* v *Economidis* (not yet published in the ECR), in so far as the CST erroneously limited the scope of that judgment to the case of filling a post of head of unit, whereas the same conditions applied to other AD posts, such as that at issue in this case;

— infringement of the principles of respect for the general interests of the service and sound administration.

Action brought on 23 December 2008 — Proges v Commission

(Case T-577/08)

(2009/C 44/110)

Language of the case: Italian

Parties

Applicant: Proges srl (Rome, Italy) (represented by: M. Falcetta, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

— Annul the contested decision, thereby giving rise to all consequential measures, including compensation for damages;

— Order the defendant to pay the costs of the proceedings, together with all related fees and expenses.

Pleas in law and main arguments

The present action is brought against the measure by which the Commission declined to award the applicant the contract covered by invitation to tender ENV.G.1./SER/2008/0050 for the creation of land use models and, in particular, for the assessment of environmental impact.

In support of its claims, the applicant submits that:

— the decision was incorrect in so far as it stated that the applicant's bid focused exclusively on the Driving force-Pressure-State-Impact-Response (DPSIR) model; in any event, the tender specifications specifically require the integrated use of 'social, economic and environmental institutional indicators of land use changes', with DPSIR being the most internationally established tool for the management and integration of such indicators. Moreover, DPSIR has been developed and properly used by the European Environment Agency. The tool in fact proposed by the applicant is a DPSIR model updated in accordance with an innovative methodology and already successfully used in several projects of the United Nations and the International Union for the Conservation of Nature (IUCN);

— contrary to what is stated in the contested decision, it is specifically stated in the applicant's bid that a land use model will be developed integrating the various models arising from the Sixth Framework Research Programme;

— there is no reason to doubt the appropriateness of involving the applicant's director in the implementation of the project;

— geographical representativeness is rightly not referred to in the invitation to tender since the project is not concerned with development, integration and/or inter-European cohesion. Furthermore, it is not understood on what basis, for the purposes of assessing a company, European experience is deemed more valuable than the United Nations and IUCN experience possessed by the applicant.

Action brought on 23 December 2008 — Eridania Sadam v Commission

(Case T-579/08)

(2009/C 44/111)

Language of the case: Italian

Parties

Applicant: Eridania Sadam SpA (Bologna, Italy) (represented by: G.M. Roberti, lawyer, I. Perego, lawyer, B. Amabile, lawyer, and M. Serpone, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

The applicant claims that the Court should:

— annul the contested Decision;

— require by way of measure of inquiry, in accordance with Articles 65 and 66 of the Rules of Procedure, the production before the Court of the documents in the Commission's case-file;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, Eridania Sadam SpA contests, in accordance with the fourth paragraph of Article 230 EC, the Commission's decision of 16 July 2008 in State aid case C 29/2004 (ex N 328/2003).

In support of its action, the applicant relies on four pleas in law, respectively alleging:

— misapplication of Article 87(1) EC to the facts and, in any event, erroneous assessment of the facts and failure to state sufficient reasons, in so far as the Commission found that the financial aid scheme duly notified by the Italian authorities was likely, if implemented, to affect trade between Member States and to distort competition;

— infringement of Article 87(2)(b) EC and of the guidelines applicable to State aid in the agricultural sector, and breach of the Commission's own working practice — and, in any case, erroneous assessment of the facts and failure to state sufficient reasons — in so far as the Commission found that the financial aid scheme duly notified by the Italian authorities could not be treated as an exception under Article 87(2)(b) EC;

— infringement of Article 87(3)(c) EC — and, in any case, erroneous assessment of the facts and failure to state sufficient reasons — in so far as the Commission found that the financial aid scheme duly notified by the Italian authorities could not be treated as an exception under Article 87(3)(c) EC;

— breach of the principles of sound administration and diligence and of the duty of care, by reason inter alia of the excessive length of the administrative procedure.

Action brought on 24 December 2008 — PJ Hungary/OHIM v Pepekillo (PEPEQUILLO)

(Case T-580/08)

(2009/C 44/112)

Language in which the application was lodged: Spanish

Parties

Applicant: PJ Hungary Szolgáltató (PJ Hungary kft), (Budapest, Republic of Hungary) (represented by: M. Granado Carpenter and C. Gutiérrez Martínez, lawyers)

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

Other party to the proceedings before the Board of Appeal: Pepekillo SL (Algeciras, Spain)

Form of order sought

— Annul the decision of 30 April 2008 (Case R-722/2007) of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM), which granted the *restitutio in integrum* claimed by PEPEKILLO SL;

— Annul the decision of 24 September 2008 (Case R-722/2007) of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM), which set aside the decision of the Opposition Division of 9 March 2007 and, as a result, granted Community trade mark No 3 546 471 'PEPEQUILLO', and make such other order as is appropriate in accordance with Community law; and

— Order the defendant to pay the costs of the present proceedings, in addition to the costs incurred during the administrative procedure before OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Marta Sancho Lora, who subsequently assigned the application to the company PEPEKILLO SL.

Community trade mark concerned: The word mark 'PEPEQUILLO' (Application No 3.546.471) for goods in classes 18 and 25 and services in class 35.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant, to whom the company 'PEPE JEANS N.V.' had assigned its rights.

Mark or sign cited in opposition: Spanish word marks 'PEPE' and 'PEPE JEANS', Spanish figurative marks 'PEPE JEANS LONDON', Spanish word marks 'PEPE 2XL', 'PEPE F4', 'PEPE M99', 'PEPE F4', 'PEPE M3', 'PEPE M5' and 'PEPE F6', Spanish figurative marks 'PEPE JEANS LONDON', 'PEPE JEANS 73', 'PEPE JEANS PORTOBELLO', 'PEPE' and Spanish word marks 'PEPE JEANS M2', 'PEPE BETTY', 'PEPE CLOTHING' and 'PEPECO', for goods in classes 3, 9, 14, 18 and 25; and Community word and figurative marks 'PEPE JEANS' for goods in classes 3, 9, 14 and 18.

Decision of the Opposition Division: Opposition upheld and application refused

Decision of the Board of Appeal: Pleas in law admitted and appeal upheld.

Pleas in law: Incorrect application of Articles 78 and 8(1)(b) and (5) of Regulation No 40/94 on the Community trade mark.

Action brought on 31 December 2008 — Fresh Del Monte Produce v Commission

(Case T-587/08)

(2009/C 44/113)

Language of the case: English

Parties

Applicant: Fresh Del Monte Produce Inc. (George Town, Cayman Islands) (represented by: B. Meyring, lawyer and E. Verghese, solicitor)

Defendant: Commission of the European Communities

Form of order sought

— annul Articles 1, 2, 3 and 4 of Commission decision C(2008) 5955 final of 15 October 2008 in Case COMP/39.188 — Bananas insofar as it pertains to it;

— alternatively, to substantially reduce the fine imposed on the applicant pursuant to Article 2c of that decision;

— alternatively, to annul Articles 1 and 3 of that decision so far as they pertain to it;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of this application, the applicant seeks annulment pursuant to Article 230 EC of the Commission Decision C(2008) 5955 final of 15 October 2008 (Case COMP/39.188 — Bananas) relating to a proceeding under Article 81(1) EC which held it jointly and severally liable for the conduct of Internationale Fruchtimport Gesellscaft Weichert & Co. The Commission held that Weichert had infringed Article 81 EC by participating in a concerted practice of coordination of quotation prices for bananas imported to the eight Member States of the Northern European region of the Community. Alternatively, it seeks the amendment of Article 2(c) of the Decision in so far as it imposes a fine on the applicant.

In support of its claims, the applicant puts forward eight pleas, presented in four parts.

In the first part, the applicant puts forward the pleas in support of its claim for annulment of the decision to hold it jointly and severally liable for the conduct of Weichert.

First, it submits that the Commission misapplied Article 81(1) EC and Article 23(2)(a) of Regulation No 1/2003 ([1]) in finding the applicant jointly and severally liable for Weichert's conduct on the basis of a distribution agreement and its indirect interest in Weichert as a limited partner (*Kommanditist*), neither of which (alone or in combination) gave the applicant decisive influence over Weichert.

Second, the applicant argues that the Commission infringed Article 253 EC by failing to provide reasons for attributing liability to the applicant, a company that had no direct relationship with Weichert.

Third, it contends that the Commission violated the applicant's right of defence by refusing to disclose relevant evidence.

The secondary and alternative pleas are put forward by the applicant in support of its claim of annulment of the contested decision in so far as it relates to both the applicant and Weichert. In this part of its application, the applicant raises fourth and fifth plea.

The fourth plea relates to a misapplication of Article 81 EC by reason of the fact that the Commission concluded that Weichert had engaged in a concerted practice with the object of restricting competition.

The fifth plea relates to a breach of the applicant's rights of defence in that it was not granted the right to be heard as a result of a fundamental shift in the Commission's case between the statement of objections and the decision.

In the third part of its application (also in the alternative), the applicant puts forward the precautionary pleas in support of its claim seeking the reduction of the fine imposed jointly and severally on the applicant and Weichert. This part comprises sixth and seventh pleas.

By its sixth plea, the applicant argues that the Commission committed a manifest error of assessment in determining the level of the fine by failing to properly assess gravity.

The seventh plea relates to a violation of Article 23 of Regulation No 1/2003 and of legitimate expectations by the reason of the fact that the Commission failed to take account of Weichert's cooperation in the investigation.

The fourth part of the application seeks the annulment of Articles 1 and 3 of the decision in respect of the applicant on the basis of the eight pleas stating that those Articles involve a misapplication of Article 81 EC, a violation of Article 7 of Regulation No 1/2003 and a violation of Article 253 EC.

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

Action brought on 24 December 2008 — Dole Food and Dole Germany v Commission

(Case T-588/08)

(2009/C 44/114)

Language of the case: English

Parties

Applicants: Dole Food Company, Inc. (Wilmington, United States) and Dole Germany OHG (Hamburg, Germany) (represented by: J.-F. Bellis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— annul or reduce the amount of the fine imposed;

— order the Commission to bear the costs.

Pleas in law and main arguments

By means of this application, the applicants seek annulment pursuant to Article 230 EC of the Commission Decision C(2008) 5955 final of 15 October 2008 (Case COMP/39.188 — Bananas) relating to a proceeding under Article 81(1) EC which held them liable for participating in a concerted practice of coordination of quotation prices for bananas imported to the eight Member States of the Northern European region of the Community. They also seek the annulment or the reduction of the fine imposed on them.

In support of their claims, the applicants put forward two pleas.

First, the applicants submit that the Commission erred in determining that the conduct at issue was a restriction of competition by object under Article 81 EC. The applicants contend that in fact, the conduct at issue consisted exclusively in occasional bilateral communications between banana importers involving general market gossip and did not form part of a broader price-fixing or market-sharing cartel and was thus not a restriction of competition by object. These communications took place prior to the setting of quotation prices that is at a stage far removed from the negotiation of actual prices with customers. Further the applicants state that these communications were not, and could not be, to restrict competition in the banana market since quotation prices are not actual prices and do not form the basis for the negotiation of actual prices of green bananas.

Second, the applicants claim that the fine imposed on them was unjustified because the basic amount of the fine is based on the value of sales of goods to which the alleged infringement does not relate. Further, the applicants argue that the fine was also disproportionate because the basic amount of the fine was wrongly set on the premise that the conduct concerned price-fixing.

Order of the Court of First Instance of 17 December 2008 — Plant and Others v Commission

(Case T-324/07) ([1])

(2009/C 44/115)

Language of the case: English

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

([1]) OJ C 247, 20.10.2007.

Order of the Court of First Instance of 18 December 2008 — Insight Direct USA v OHIM — Net Insight (Insight)

(Case T-489/07) ([1])

(2009/C 44/116)

Language of the case: English

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

([1]) OJ C 64, 8.3.2008.

Order of the Court of First Instance of 19 December 2008 — iTouch International v OHIM — Touchnet Information Systems (iTouch)

(Case T-347/08) ([1])

(2009/C 44/117)

Language of the case: English

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

([1]) OJ C 272, 25.10.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 5 November 2008 — Avanzata and Others v Commission

(Case F-48/06) ([1])

(Staff cases — Contractual staff — Classification and remuneration — Persons formerly employed under Luxembourg law)

(2009/C 44/118)

Language of the case: French

Parties

Applicants: Eric Avanzata (Hussigny, France) and 20 other members of contract staff (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

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

Re:

Annulment of the Commission decisions determining the applicants' conditions of appointment, in particular, their function groups, grades, steps and remuneration as laid down in their contracts of employment.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 154 of 1.7.2006, p. 26.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2008 — Collée v Parliament

(Case F-148/06) ([1])

(Staff cases — Officials — Promotion — Procedure for allocating merit points in the European Parliament — Examination of comparative merits)

(2009/C 44/119)

Language of the case: French

Parties

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

Defendant: European Parliament (represented by: C. Burgos and A. Lukošiūtė)

Re:

First, annulment of the decision of 9 January 2006 allocating two merit points to the applicant under the 2004 promotion procedure and second, a declaration that paragraph I.3 of the 'Instructions on the procedure for the allocation of promotion points' of the European Parliament of 13 June 2002 is illegal.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision allocating two merit points to Mr Collée under the 2004 promotion procedure;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Parliament to pay the costs.*

([1]) OJ C 42 of 24.2.2007, p. 48.

Judgment of the Civil Service Tribunal (Second Chamber) of 25 November 2008 — Hristova v Commission

(Case F-50/07) ([1])

(Staff cases — Recruitment — Open competition — Conditions for admission — Rejection of candidature — Statement of reasons — Diplomas)

(2009/C 44/120)

Language of the case: English

Parties

Applicant: Valentina Hristova (Pavlikeni, Bulgaria) (represented by: G. Kerelov, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, acting as Agents)

Re:

Annulment of the decision of the selection board in competition EPSO/AST/14/06 refusing to admit the applicant to the tests in that competition on the ground that she did not have three years' professional experience in secretarial work after having obtained her diploma — Claim for damages

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the selection board in open competition EPSO/AST/14/06 refusing to admit Ms Hristova to the tests in that competition;*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission of the European Communities to pay all the costs.*

([1]) OJ C 79 of 29.3.2008, p. 36.

Judgment of the Civil Service Tribunal (Second Chamber) of 25 November 2008 — Iordanova v Commission

(Case F-53/07) ([1])

(Staff cases — Recruitment — Open competition — Conditions for admission — Rejection of candidature — Diplomas)

(2009/C 44/121)

Language of the case: English

Parties

Applicant: Ivanka Iordanova (Varna, Bulgaria) (represented by: G. Kerelov, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, acting as Agents)

Re:

Annulment of the decision of the selection board in competition EPSO/AST/14/06 refusing to admit the applicant to the tests in that competition on the ground that her post-secondary education was not in a field relevant to a secretarial post and she did not have three years' professional experience in that field — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 107 of 26.4.2008, p. 44.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2008 — Collotte v Commission

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

(Staff cases — Officials — Promotion — 2006 promotion procedure — Ability to work in a third language)

(2009/C 44/122)

Language of the case: French

Parties

Applicant: Pascal Collotte (Abstraat, Belgium) (represented by: É. Boigelot, initially, and É. Boigelot and L. Defalque, subsequently, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and G. Berscheid, initially, and C. Berardis-Kayser and L. Lozano Palacios, subsequently, Agents)

Intervener in support of the defendant: Council of the European Union (represented by: I. Šulce and M. Simm, Agents)

Re:

Annulment of the decision not to promote the applicant to grade A*12 in the 2006 promotion procedure for failure to demonstrate the ability to work in a third language — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities not to include Mr Collotte's name on the list of officials promoted to grade A*12 for the 2006 promotion procedure;*

2. *Dismisses the remainder of the forms of order sought;*

3. *Orders the Commission of the European Communities to bear its own costs and to pay the costs of the applicant;*

4. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 199, 25.8.2007, p. 50.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2008 — Dubus and Leveque v Commission

(Case F-66/07) ([1])

(Staff case — Officials — Promotion — 2006 promotion procedure — Ability to work in a third language)

(2009/C 44/123)

Language of the case: French

Parties

Applicant: Charles Dubus (Kraainem, Belgium) and Jean Leveque (Wattignies-la-Victoire, France) (represented by: É. Boigelot, initially, and É. Boigelot and L. Defalque, subsequently, lawyers)

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

Intervener: Council of the European Union (represented by: I. Šulce and M. Simm, Agents)

Re:

Annulment of the decision not to promote the applicants for failure to demonstrate that they were able to work in a third language for the 2006 promotion procedure — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities not to include M. Dubus's name in the list of officials to be promoted to grade C*3 for the 2006 promotion procedure and the decision of the Commission of the European Communities not to include the M. Leveque's name in the list of officials to be promoted to grade B*8 under the procedure for the same year;*

2. *Dismisses the remainder of the forms of order of sought;*

3. *Orders the Commission of the European Communities to bear its own costs and to pay the cost of the applicants;*

4. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 199, 25.8.2007, p. 54.

Judgment of the Civil Service Tribunal (Second Chamber) of 13 November 2008 — Traore v Commission

(Case F-90/07) ([1])

(Staff cases — Officials — Vacancy notice — Rejection of the applicant's candidature — Reassignment — Interest of the service)

(2009/C 44/124)

Language of the case: French

Parties

Applicant: Amadou Traore (Rhode-Saint-Genèse, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers)

Re:

Annulment of the Commission decisions rejecting the applicant's candidature for the post of chargé d'affaires ad interim at the Commission Delegation in Togo and for the post of Head of Operations at the Commission Delegation in Tanzania — Annulment of the Commission decisions appointing other candidates to those posts — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Director of Resources of the EuropeAid Co-operation Office of the Commission of the European Communities of 12 December 2006 rejecting Mr Traore's candidature for the post of Head of Operations at the Commission Delegation in Tanzania and the decision to appoint Mr S to that post;*

2. *Dismisses the remainder of the action;*

3. *Orders Mr Traore to bear half his own costs;*

4. *Orders the Commission of the European Communities to bear its own costs and to pay half of Mr Traore's costs.*

(1) OJ C 269 of 10.11.2007, p. 72.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2008 — Evraets v Commission

(Case F-92/07) (1)

(Staff case — Officials — Promotion — 2006 promotion procedure — Ability to work in a third language)

(2009/C 44/125)

Language of the case: French

Parties

Applicant: Pascal Evraets (Lambusart, Belgium) (represented by: N. Lhoëst, initially, and N. Lhoëst and S. Fernández Menéndez, subsequently, lawyers)

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

Intervener: Council of the European Union (represented by: I. Šulce and M. Simm, Agents)

Re:

Annulment of the decision not to promote the applicants to grade AST 4, for failure to demonstrate the ability to work in a third language, for the 2006 promotion procedure.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions not to promote Mr Evraets for the 2006 promotion procedure;*

2. *Orders the Commission of the European Communities to bear its own costs and to pay the costs of the applicant;*

3. *Orders the Council of the European Union to bear its own costs.*

(1) OJ C 283, 24.11.2007, p. 44.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2008 — Beatriz Acosta Iborra and Others v Commission

(Case F-93/07) (1)

(Staff case — Officials — Promotion — 2006 promotion procedure — Ability to work in a third language)

(2009/C 44/126)

Language of the case: French

Parties

Applicant: Beatriz Acosta Iborra (Alkmaar, Netherlands) and nine other officials of the Commission (represented by: N. Lhoëst, initially, and N. Lhoëst and S. Fernández Menéndez, subsequently, lawyers)

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

Intervener: Council of the European Union (represented by: I. Šulce and M. Simm, Agents)

Re:

Annulment of the decision not to promote the applicants for failure to demonstrate that they were able to work in a third language for the 2006 promotion procedure.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions not to promote for the 2006 promotion procedure Ms Acosta Iborra and the nine other officials of the Commission of the European Communities whose names appear annexed to this judgment;*

2. *Orders the Commission of the European Communities to bear its own costs and to pay the costs of the applicants;*

3. *Orders the Council of the European Union to bear its own costs.*

(1) OJ C 283, 24.11.2007, p. 44.

Judgment of the Civil Service Tribunal (Third Chamber) of 4 November 2008 — Van Beers v Commission

(Case F-126/07) ([1])

(Staff cases — Officials — Promotion — Attestation procedure — Procedure for 2006 — Exclusion from the list of officials pre-selected — Article 45a of the Staff Regulations)

(2009/C 44/127)

Language of the case: French

Parties

Applicant: Isabelle Van Beers (Woluwé-St-Étienne, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents)

Re:

Annulment of the Commission decision of 22 February 2007 rejecting the applicant's application under the attestation procedure for 2006.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 22 of 26.1.2008, p. 57.

Judgment of the Civil Service Tribunal (First Chamber) of 9 December 2008 — Efstathopoulos v European Parliament

(Case F-144/07) ([1])

(Staff case — Former members of the temporary staff — Regulation (EC, Euratom, ECSC) No 2689/95 — Termination of service allowance — Inclusion of a productivity bonus in the calculation of the amount of gross income received in the context of new duties)

(2009/C 44/128)

Language of the case: Greek

Parties

Applicant: Spyridon Efstathopoulos (Chalandri, Greece) (represented by: N. Korogiannakis and M. Michi, lawyers)

Defendant: European Parliament (represented by: A. Lukošiūtė and A. Troupiotis, Agents)

Re:

Annulment of the decision of the Parliament of 18 April 2007 leading to a reduction of the applicant's retirement pension and to the recovery of the overpayment

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 92, 12.4.2008, p. 50.

Order of the Civil Service Tribunal (Third Chamber) of 30 October 2008 — Ortega Serrano v Commission

(Case F-48/08) ([1])

(Staff case — Manifestly inadmissible — Impossible for applicant to be represented by a lawyer who is not a third party — Legal aid — Application to intervene)

(2009/C 44/129)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: K. Herrmann and L. Lozano Palacios, Agents)

Re:

Annulment of the Selection Board's decision in competition EPSO/AD/26/05, refusing to enter the applicant in the reserve list, and fixing of a new date for the oral test.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Ortega Serrano's alternative claim, that he should be allowed to put his application in order, is dismissed.*

3. *Mr Ortega Serrano is ordered to pay the costs.*

4. *It is not necessary to rule on the application to intervene.*

5. *The European Data Protection Supervisor is to bear the costs relating to his application to intervene.*

6. *The application for legal aid in Case F-48/08 AJ Ortega Serrano v Commission is dismissed.*

([1]) OJ C 171, 5.7.2008, p. 52.

Order of the Civil Service Tribunal (Second Chamber) of 18 December 2008 — Nijs v European Court of Auditors

(Case F-64/08) ([1])

(Staff case — Officials — Article 35(1(e) of the Rules of Procedure — Summary statement in application of pleas in law — Staff reporting procedure — Designation of reporting officer and countersigning officer — No act adversely affecting the applicant — Manifestly inadmissible)

(2009/C 44/130)

Language of the case: French

Parties

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

Defendant: European Court of Auditors (represented by: T. Kennedy, J.-M Stenier and G. Corstens, agents)

Re:

Annulment of the decision of the European Court of Auditors designating the applicant's reporting officer and countersigning officer and application for compensation for damage suffered as a result of that decision

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Nijs is ordered to pay the costs.*

([1]) OJ C 247 of 27.9.2008, p. 25.

Order of the President of the Civil Service Tribunal of 17 December 2008 — Wenig v Commission

(Case F-80/08 R)

(Staff case — Interlocutory proceedings — Application for suspension of the operation of a decision to suspend the party concerned from his duties — Urgency not established)

(2009/C 44/131)

Language of the case: French

Parties

Applicant: Fritz Harald Wenig (Woluwé-Saint-Pierre, Belgium) (represented by: G.-A. Dal. D. Voillemot, D. Bosquet, lawyers)

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

Re:

Application for suspension of operation of the decision of 18 September 2008 by which the Commission suspended the applicant for an indefinite period and ordered EUR 1 000 a month to be withheld from his pay for a maximum period of six months.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 3 November 2008 — P v Parliament

(Case F-89/08)

(2009/C 44/132)

Language of the case: French

Parties

Applicant: P (Brussels, Belgium) (represented by E. Boigelot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the Parliament's decision to dismiss the applicant with three months' notice and also a claim for damages.

Form of order sought

— Annulment of the Parliament's decision of 15 April 2008 to dismiss the applicant with three months' notice and immediately to deny him access to the Parliament, ordering him to return his office keys as soon as possible;

— in consequence, reinstatement of the applicant forthwith in his duties, in the post and at the grade that were his at the time of the decision of 15 April 2008, with retroactive effect, and payment of his salary from 15 July 2008 until the date of his actual reinstatement, with default interest at the rate of 7 % per annum;

— an order that the defendant should pay, by way of compensation for non-material damage and prejudice to his career, the sum of EUR 10 000, subject to any increase and/or decrease during the proceedings;

— an order that the European Parliament should pay the costs.

Action brought on 4 November 2008 — Bertolete and Others v Commission

(Case F-92/08)

(2009/C 44/133)

Language of the case: French

Parties

Applicant: Marli Bertolete (Woluwé-Saint-Lambert, Belgium) and Others (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision establishing the new calculation of the applicants' salaries in enforcement of the judgments delivered by the Civil Service Tribunal on 5 July 2007 in Cases F-24/06, F-25/06 and F-26/06.

Form of order sought

— Annul the decision adopted by the authority responsible for concluding contracts of employment on 18 July 2008 rejecting the complaints presented by the applicants challenging a decision adopted on 23 January 2008 establishing a new calculation of the applicants' salaries in enforcement of three judgments given by the European Union Civil Service Tribunal on their application on 5 July 2007 and challenging also the corrective multiples which were later applied to them, as well as the pay slips sent to the applicants pursuant to the decision of 23 January 2008 for the months of February, March and April 2008;

— Inasmuch as it is necessary, annul also the decision against which the applicants brought their complaints;

— Order the defendant to pay the costs.

Action brought on 12 November 2008 — N v Parliament

(Case F-93/08)

(2009/C 44/134)

Language of the case: French

Parties

Applicant: N (Brussels, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the applicant's periodical report for the period from 1 January 2007 to 30 April 2007.

Form of order sought

— Annul the decision of 4 March 2008, which adversely affects the applicant inasmuch as it definitively confirms and approves his periodical report for the period from 1 January 2007 to 30 April 2007;

— Annul the report at issue;

— Annul the decision of the President of Parliament of 25 September 2008 rejecting the applicant's complaint seeking annulment of the contested decision;

— Order the European Parliament to pay the costs.

Action brought on 17 November 2008 — Cerafogli v European Central Bank

(Case F-96/08)

(2009/C 44/135)

Language of the case: French

Parties

Applicant: Maria Concetta Cerafogli (Frankfurt,Germany) (represented by: L. Levi, and M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the decision of the European Central Bank refusing an *ad personam* promotion to the applicant, and an order that the defendant pay compensation for the non-material damage suffered by the applicant.

Form of order sought

— annul the decision refusing an *ad personam* promotion to the applicant, communicated by letter of 11 March 2008;

— consequently, (i) annul all decisions resulting from the decision not to promote the applicant communicated on 11 March 2008, including in particular the applicant's pay slips from March 2008 and (ii) order the defendant to pay EUR 10 000, determined *ex aequo et bono*, as compensation for the non-material damage suffered by the applicant;

— if the enforcement of an order of annulment were to entail serious difficulties, payment of EUR 78 000, or at least, one half of that sum to cover the damage suffered by the applicant;

— order the European Central Bank to pay the costs.

Action brought on 27 November 2008 — Füller-Tomlinson v Parliament

(Case F-97/08)

(2009/C 44/136)

Language of the case: French

Parties

Applicant: Paulette Füller-Tomlinson (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision setting the proportion of partial permanent invalidity attributable to occupational disease at 20 %, and alternatively an order that the defendant pay compensation for the non-material damage suffered by the applicant.

Form of order sought

— annul the decision of 9 April 2008 of the Head of the Pensions and Social Insurance Unit, setting, in Article 3, the proportion of partial permanent invalidity attributable to occupational disease at 20 %;

— so far as necessary, annul the decision rejecting the complaint;

— alternatively, order the defendant to pay the sum of EUR 12 000 as compensation for the non-material damage suffered by the applicant;

— order the European Parliament to pay the costs.

Action brought on 11 December 2008 — Nijs v Court of Auditors

(Case F-98/08)

(2009/C 44/137)

Language of the case: French

Parties

Applicant: Bart Nijs (Aalst, Belgium) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Communities

Subject-matter and description of the proceedings

First, annulment of the decision not to promote the applicant in 2008 and, second, an order that the defendant make good the material and non-material loss suffered by the applicant.

Form of order sought

— Annul the decision not to promote the applicant in 2008, published in Staff Note No 32/2008 of 5 May 2008, and the acts preparatory to that decision, in particular the decisions of 19 and 29 February 2008 which were the subject of the Staff Notes Nos 10-2008 and 17-2008 adopting the lists of those eligible for promotion at 1 January 2008, inasmuch as they concern the applicant;

— Declare expressly that the subsequent decisions and preparatory acts mentioned above are void;

— Order the defendant to make good the material loss amounting to the loss of income which the applicant suffered in relation to the higher salary which he would have received had the period mentioned above not intervened to hindered his career, along with the non-material loss additional to the similar compensation claimed in other disputes, of EUR 10 000;

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

Action brought on 8 December 2008 — Pappas v Commission of the European Communities

(Case F-101/08)

(2009/C 44/138)

Language of the case: French

Parties

Applicant: Spyros A. Pappas (Brussels, Belgium) (represented by: L. Barattini, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of the Office for administration and payment of individual rights determining the applicant's retirement pension rights and of the calculation of the number of years of pensionable service to be taken into account to determine those rights.

Form of order sought

— annul the decision of the Office for administration and payment of individual rights of 6 February 2008 determining the applicant's retirement pension rights and the decisions of 22 February 2003 and 27 February 2003 determining the number of years of pensionable service to be taken into account to determine the pension rights;

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

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Action brought on 23 December 2008 — Katrakasas v Commission

(Case F-103/08)

(2009/C 44/139)

Language of the case: French

Parties

Applicant: Nicolas Katrakasas (Brussels, Belgium) (represented by: L. Levi, and M. Vandenbussche, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision of the selection board in competition EPSO/AD/116/08 refusing to enter the name of the applicant on the list of candidates admitted to the written tests of the competition, and all subsequent decisions, including the reserve list and all appointments.

Form of order sought

— annul the decision of the selection board in competition EPSO/AD/116/08 dated 23 September 2008 refusing to enter the name of the applicant on the list of candidates admitted to the written tests;

— annul all decisions taken after the decision of 23 September 2008, including the reserve list and all appointments;

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

Action brought on 30 December 2008 — Angelidis v Parliament

(Case F-104/08)

(2009/C 44/140)

Language of the case: French

Parties

Applicant: Angel Angelidis (Luxembourg, Luxembourg) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

First, annulment of notice of vacancy No 12564 adopted by the President of the European Parliament, dated 26 February 2008, concerning the filling of the post of Director of the Directorate-General for Internal Policies of the European Union — Directorate D Budgetary Affairs and the recruitment procedure initiated by that notice. Second, annulment of the decision to reject the applicant's candidacy for the post of Director of Budgetary Affairs of the Directorate-General for Internal Policies and to appoint another candidate to that post. Lastly, a claim for damages for the non-material and material loss suffered by the applicant and for him to be appointed to the grade of Director '*ad personam*'.

Form of order sought

— Annul the decision of the appointing authority of 23 September 2008 and, consequently, notice of vacancy No 12564 adopted by the President of the European Parliament, dated 26 February 2008, concerning the filling of the post of Director of the Directorate-General for Internal Policies of the European Union — Directorate D Budgetary Affairs;

— Consequently, annul the procedure for recruitment by means of transfer or promotion initiated by the notice of vacancy;

— Annul the decision of the appointing authority of 21 November 2008 appointing the Director of Budgetary Affairs of the Directorate-General for Internal Policies and the decision to reject the applicant's candidature in respect of that post;

— Order the defendant to pay damages for non-material and material loss and for the detriment to the applicant's career which he assesses, without prejudice to claiming a greater or a lesser sum in the course of the procedure, at the global sum of EUR 25 000, and that, taking account of the inadequate enforcement of the judgment of the Court of First Instance of 13 September 2007, the finding of a serious misuse of powers and of the conditions in which that new contested appointment occurred;

— In any event, order that the applicant be awarded the grade of Director '*ad personam*' by virtue of the serious harm caused to his career in that the Parliament without justification denied him an appointment to a higher grade;

— Order the European Parliament to pay the costs.

Order of the Civil Service Tribunal of 18 December 2008 — X v Parliament

(Case F-14/08) ([1])

(2009/C 44/141)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008, p. 39.

Order of the Civil Service Tribunal of 27 November 2008 — Miguelez Herreras v Commission

(Case F-22/08) ([1])

(2009/C 44/142)

Language of the case: French

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

([1]) OJ C 116, 9.5.2008, p. 33.

Order of the Civil Service Tribunal of 27 November 2008 — Di Bucci v Commission

(Case F-23/08) ([1])

(2009/C 44/143)

Language of the case: French

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

([1]) OJ C 116, 9.5.2008, p. 33.

Order of the Civil Service Tribunal of 27 November 2008 — Wilms v Commission

(Case F-24/08) ([1])

(2009/C 44/144)

Language of the case: French

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

([1]) OJ C 116, 9.5.2008, p. 34.

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.