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COURT OF JUSTICE

(2009/C 205/01)

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Past publications

OJ C 180, 1.8.2009

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 9 July 2009 — Archer Daniels Midland Co. v Commission of the European Communities

(Case C-511/06 P) [1]

(Appeal — Competition — Agreements, decisions and concerted practices — Citric acid market — Determination of the amount of the fine — Role of leader — Rights of the defence — Evidence arising from a procedure conducted in a non-Member State — Definition of the relevant market — Attenuating circumstances)

(2009/C 205/02)

Language of the case: English

Parties

Appellant: Archer Daniels Midland Co. (represented by: C.O. Lenz, Rechtsanwalt, L. Martin Alegi, Solicitor, E. Batchelor and M. Garcia, Solicitors)

Other party to the proceedings: Commission of the European Communities (represented by: A. Bouquet and X. Lewis, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 27 September 2006 in Case T-59/02 *Archer Daniels Midland* v *Commission*, by which the Court dismissed an action for annulment of Commission Decision C(2001)3923 final of 5 December 2001 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-1/36.604 — Citric acid) concerning a cartel on the citric acid market and, in the alternative, for a reduction in the fine imposed on the appellant

Operative part of the judgment

The Court:

(1) *Sets aside the judgment of the Court of First Instance of the European Communities of 27 September 2006 in Case T 59/02 Archer Daniels Midland v Commission inasmuch as it rejects the plea of Archer Daniels Midland Co. relating to the infringement of its rights of defence during the administrative procedure which led to Commission Decision 2002/742/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.604 — Citric acid) in so far as the Commission of the European Communities did not afford it an opportunity to exercise its rights concerning the facts on which it relied when classifying Archer Daniels Midland Co. as a leader of the cartel;*

(2) *Sets aside the judgment of the Court of First Instance of the European Communities of 27 September 2006 in Case T 59/02 Archer Daniels Midland v Commission inasmuch as it rejects as ineffective Archer Daniels Midland Co.'s plea relating to the misapplication by the Commission of the European Communities of Section B(b) of the Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases;*

(3) *Annuls Article 3 of Decision 2002/742 in so far as it sets the amount of the fine payable by Archer Daniels Midland Co. at EUR 39.69 million;*

(4) *Sets the amount of the fine payable by Archer Daniels Midland Co. for the infringement found in Article 1 of Decision 2002/742 as annulled in part by the judgment of the Court of First Instance of the European Communities of 27 September 2006 in Case T59/02 Archer Daniels Midland v Commission at EUR 29.4 million;*

(5) *Dismisses the remainder of the appeal;*

(6) *Orders Archer Daniels Midland Co. to bear three quarters of its own costs and to pay those of the Commission of the European Communities in relation to the proceedings before the Court of First Instance of the European Communities, and to bear half of its own costs and to pay those of the Commission of the European Communities in relation to the appeal proceedings;*

(7) *Orders the Commission of the European Communities to pay one quarter of the costs of Archer Daniels Midland Co. relating to the proceedings before the Court of First Instance of the European Communities and to pay half of the costs of Archer Daniels Midland Co. relating to the appeal proceedings.*

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[1] OJ C 56, 10.03.2007.

Judgment of the Court (Third Chamber) of 9 July 2009 — 3F, formerly Specialarbejderforbundet i Danmark (SID) v Commission of the European Communities, Kingdom of Denmark, Kingdom of Norway

(Case C-319/07 P) ([1])

(Appeals — Tax relief measures for seafarers employed on board vessels registered in the Danish International Register — Commission decision not to raise objections — Action for annulment — Concept of party concerned — Trade union — Admissibility of the action)

(2009/C 205/03)

Language of the case: English

Parties

Appellant: 3F, formerly Specialarbejderforbundet i Danmark (SID) (represented by: A.P. Bentley QC and A. Worsøe, advokat)

Other parties to the proceedings: Commission of the European Communities (represented by: N. Khan and H. van Vliet, Agents), Kingdom of Denmark, Kingdom of Norway

Re:

Appeal against the order of the Second Chamber (Extended Composition) of the Court of First Instance of 23 April 2007 in Case T-30/03 *Specialarbejderforbundet Danmark (SID)* v *Commission of the European Communities* declaring inadmissible an action for the annulment of Commission Decision C(2002) 4370 final of 13 November 2002 to regard the tax reduction measures applicable to seafarers on board Danish vessels as State aid compatible with the common market — Concept of party concerned — Trade union

Operative part of the judgment

1. *The order of the Court of First Instance of the European Communities of 23 April 2007 in Case T-30/03 SID v Commission is set aside in part, in so far as it did not address the arguments of 3F relating, first, to the competitive position of 3F in relation to other trade unions in the negotiation of collective agreements applicable to seafarers and, second, to the social aspects of the fiscal measures in relation to seafarers employed on board vessels registered in the Danish International Register of Shipping.*

2. *The plea of inadmissibility raised by the Commission of the European Communities before the Court of First Instance of the European Communities is rejected.*

3. *The case is remitted to the Court of First Instance of the European Communities for it to rule on the claim by 3F for the annulment of Commission Decision C(2002) 4370 final of 13 November 2002 not to raise objections to the Danish fiscal measures applicable to seafarers employed on board vessels registered in the Danish International Register.*

4. *Costs are reserved.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (Fourth Chamber) of 2 July 2009 (Reference for a preliminary ruling from the Corte d'appello di Torino — Italy) — Bavaria NV, Bavaria Italia s.r.l v Bayerischer Brauerbund eV

(Case C-343/07) ([1])

(Reference for a preliminary ruling — Assessment of validity — Admissibility — Regulations (EEC) No 2081/92 and (EC) No 1347/2001 — Validity — Generic name — Coexistence of a trade mark and a protected geographical indication)

(2009/C 205/04)

Language of the case: Italian

Referring court

Corte d'appello di Torino

Parties to the main proceedings

Applicants: Bavaria NV, Bavaria Italia s.r.l

Defendant: Bayerischer Brauerbund eV

Re:

Reference for a preliminary ruling — Corte d'appello di Torino –Validity of Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 2001 L 182, p. 3) — If valid, possibility of adverse effects, brought about by registration of the protected geographical indication 'Bayerisches Bier', on the validity or use of pre-existing marks of third parties in which the word 'Bavaria' appears.

Operative part of the judgment

1. *Consideration of the first question asked by the referring court has not disclosed any factor liable to affect the validity of Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92;*

2. *Regulation No 1347/2001 must be interpreted as having no adverse effects on the validity and the possibility of using, in one of the situations referred to in Article 13 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, pre-existing trade marks of third parties in which the word 'Bavaria' appears and which were registered in good faith before the date on which the application for registration of the protected geographical indication 'Bayerisches Bier' was lodged, provided that those marks are not affected by the grounds for invalidity or revocation as provided for by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.*

([1]) OJ C 247, 20.10.2007.

Judgment of the Court (Grand Chamber) of 7 July 2009 — Commission of the European Communities v Hellenic Republic

(Case C-369/07) ([1])

(Failure of a Member State to fulfil obligations — State aid — Measures for compliance with a judgment of the Court — Article 228 EC — Financial penalties — Penalty payment — Lump sum payment)

(2009/C 205/05)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Righini, I. Hadjiyiannis and D.Triantafyllou, Agents)

Defendant: Hellenic Republic (represented by: A. Samoni-Rantou and P. Mylonopoulos, Agents, and V. Christianos and P. Anestis, dikigoroi)

Re:

Failure of a Member State to fulfil obligations — Article 228 EC — Non-compliance with the judgment of the Court of 12 May 2005 in Case C-415/03 — Infringement of Articles 3 and 4 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (OJ 2003 L 132, p. 1) — Failure to take measures to recover aid incompatible with the Treaty and aid granted unlawfully — Application for imposition of a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, by the date on which the period prescribed in the reasoned opinion expired, the measures necessary to comply with the judgment in Case C-415/03 Commission v Greece concerning repayment of the aid found to be unlawful and incompatible with the common market in accordance with Article 3 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways, the Hellenic Republic has failed to fulfil its obligations under that decision and under Article 228(1) EC.*

2. *Orders the Hellenic Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a penalty payment of EUR 16 000 for each day of delay in adopting the measures necessary to comply with the judgment in Case C-415/03 Commission v Greece, from one month after the day on which judgment is delivered in the present case until the day on which the judgment in Case C-415/03 is complied with.*

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

4. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Fourth Chamber) of 9 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-397/07) ([1])

(Failure of a Member State to fulfil obligations — Indirect taxes on the raising of capital — Capital companies — Directive 69/335/EEC — Articles 2(1) and (3), 4(1) and 7 — Capital duty — Exemption — Conditions — Transfer of effective centre of management or of registered office from one Member State to another Member State — Capital duty on the capital allocated to commercial activities pursued in a Member State by branches or permanent establishments of companies established in another Member State)

(2009/C 205/06)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: E. Gippini Fournier and M. Afonso, Agents)

Defendant: Kingdom of Spain (represented by: B. Plaza Cruz and M. Muñoz Pérez, Agents)

Re:

Failure by a Member State to fulfil its obligations — Infringement of Council Directive 69/335/EEC of 17 June 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) — Transfer of the registered office of a company — National law providing for the taxation of a transfer of registered office to the extent that the company involved is not subject to capital duty in the Member State of origin — Conditions for application of obligatory exemptions

Operative part of the judgment

The Court:

1. *Declares that:*

   — *by making the exemption from capital duty for the transactions referred to in Article 7(1)(b) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 73/79/EEC of 9 April 1973, Council Directive 73/80/EEC of 9 April 1973 and Council Directive 85/303/EEC of 10 June 1985, subject to the conditions laid down in Article 96 of the second additional provision of the consolidated version of the Spanish Law on corporation tax (Disposición Adicional Segunda del texto Refundido de la Ley del Impuesto sobre Sociedades), enacted by Royal Legislative Decree No 4/2004 of 5 March 2004;*

   — *by subjecting to capital duty the transfer, from a Member State to Spain, of the effective centre of management or the registered office of capital companies which have not been subject to a similar tax in their country of origin, and*

   — *by subjecting to capital duty capital allocated to commercial activities pursued in Spain by branches or permanent establishments of companies established in a Member State which does not apply a similar tax,*

   the Kingdom of Spain has failed to fulfil its obligations under Directive 69/335, as amended by Directives 73/79, 73/80 and 85/303;

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

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

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Third Chamber) of 25 June 2009 (Reference for a preliminary ruling from the Raad van State — Netherlands) — Exportslachterij J. Gosschalk & Zoon BV v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-430/07) ([1])

(Decision 2000/764/EC — Testing and epidemio-surveillance of bovine spongiform encephalopathy — Regulation (EC) No 2777/2000 — Market support measures — Veterinary measures — Community contribution to the financing of part of the costs of the tests — Directive 85/73/EEC — Whether possible for the Member States to finance the part of the costs not covered by the Community by charging national fees for the inspection of meat and fees for combating epizootic diseases)

(2009/C 205/07)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Exportslachterij J. Gosschalk & Zoon BV

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling — Netherlands Raad van State — Interpretation of Article 1(3) of Commission Decision 2000/764/EC of 29 November 2000 on the testing of bovine animals for the presence of bovine spongiform encephalopathy and amending Decision 98/272/EC on epidemio-surveillance for transmissible spongiform encephalopathies (OJ 2000 L 305, p. 35), of Article 2(1) and (2) of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market (OJ 2000 L 321, p. 47), of Article 1(2)(b) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), of Council Regulation (EC) No 1254/99 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21) and of Article 5(4), last sentence, of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended and consolidated by Council Directive 96/43/EC (OJ 1996 L 162, p. 1) — BSE testing — Approved rapid tests — Exclusive financing by the Community or compulsory co-financing by the Member States with costs passed on to traders by way of fees — Judgment in Case C-239/01 *Germany* v *Commission.*

Operative part of the judgment

1. *Article 2(1) of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market, as amended by Commission Regulation No 111/2001 of 19 January 2001, must be interpreted as covering the obligatory tests for bovine spongiform encephalopathy carried out in the Netherlands in May and June 2001 on all meat from bovine animals aged more than 30 months slaughtered for human consumption;*

2. *Article 2(1) of Regulation No 2777/2000, as amended by Regulation No 111/2001, must be interpreted as meaning that the prohibition on marketing meat from bovine animals aged more than 30 months which did not produce a negative result in the bovine spongiform encephalopathy test which it imposed with effect from 1 January 2001, constitutes a veterinary measure, within the meaning of Article 1(2)(d) of Council Regulation No 1258/1999 on the financing of the common agricultural policy, which forms part of the programmes of eradication and monitoring of bovine spongiform encephalopathy;*

3. *Article 2(2) of Regulation No 2777/2000, as amended by Regulation No 111/2001, and Article 4 and Article 5(4), second subparagraph, of Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC, as amended and consolidated by Council Directive 96/43/EC of 26 June 1996, must be interpreted as not precluding Member States from charging national fees intended to finance the cost of testing for bovine spongiform encephalopathy. The total amount of the fees concerning the slaughter procedures for bovine animals intended for human consumption must be set in accordance with the principles adopted for Community fees, according to which that amount may not exceed the costs incurred, which cover salary and social-security costs and the administrative costs of carrying out those tests and any direct or indirect refund of such fees is prohibited.*

([1]) OJ C 297, 8.12.2007.

Judgment of the Court (Grand Chamber) of 7 July 2009 (Reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division) (United Kingdom) — The Queen, on the application of S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Ltd, Hercules Inc. v Secretary of State for the Environment, Food and Rural Affairs

(Case C-558/07) ([1])

(Regulation (EC) No 1907/2006 — Chemicals — Registration, evaluation, authorisation and restriction of chemicals (REACH) — Concept of 'monomer substances' — Validity — Proportionality — Equal treatment)

(2009/C 205/08)

Language of the case: English

Referring court

High Court of Justice (Queen's Bench Division)

Parties to the main proceedings

Applicants: The Queen, on the application of S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Ltd, Hercules Inc.

Defendants: Secretary of State for the Environment, Food and Rural Affairs

Re:

Reference for a preliminary ruling — High Court of Justice, Queen's Bench Division — Interpretation and validity of Article 6(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC — Concept of 'monomer substances'

Operative part of the judgment

1. *The concept of 'monomer substances' in Article 6(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC relates only to reacted monomers which are integrated in polymers;*

2. *Examination of the second question has revealed no factor of such a kind as to affect the validity of Article 6(3) of Regulation No 1907/2006.*

([1]) OJ C 51, 23.2.2008.

Judgment of the Court (First Chamber) of 2 July 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Har Vaessen Douane Service BV v Staatssecretaris van Financiën

(Case C-7/08) ([1])

(Relief from import duties — Regulation (EEC) No 918/83 — Article 27 — Goods of a negligible individual value dispatched as a grouped consignment — Consignments dispatched direct from a third country to a consignee in the Community)

(2009/C 205/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Har Vaessen Douane Service BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden (Netherlands) — Interpretation of Article 27 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Regulation (EEC) No 3357/91 (OJ 1991 L 105, p. 1) — Consignments dispatched direct from a third country to a consignee in the Community, each of negligible value but dispatched as a grouped consignment with a combined intrinsic value which exceeds the maximum value prescribed by law

Operative part of the judgment

Article 27 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Regulation (EEC) No 3357/91 of 7 November 1991, does not preclude grouped consignments of goods, with a combined intrinsic value which exceeds the value threshold laid down in Article 27, but which are individually of negligible value, from being admitted free of import duties, provided that each parcel of the grouped consignment is addressed individually to a consignee within the European Community. In that respect, the fact that the contractual partner of those consignees is itself established in the European Community is not relevant where the goods are dispatched directly from a third country to those consignees.

([1]) OJ C 92, 12.04.2008.

Judgment of the Court (Third Chamber) of 25 June 2009 (reference for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 5, San Javier — Spain) — Roda Golf & Beach Resort SL

(Case C-14/08) ([1])

(Judicial cooperation in civil matters — Preliminary references — Jurisdiction of the Court — Definition of 'dispute' — Regulation (EC) No 1348/2000 — Service of extrajudicial documents in the absence of legal proceedings — Notarial act)

(2009/C 205/10)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción No 5, San Javier

Parties to the main proceedings

Roda Golf & Beach Resort SL

Re:

Reference for a preliminary ruling — Juzgado de Primera Instancia e Instrucción No 5, San Javier — Interpretation of Article 16 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37) — Service of extrajudicial documents exclusively by and to private persons using the physical and personal resources of courts of the European Union outside of any court proceedings

Operative part of the judgment

The service of a notarial act, in the absence of legal proceedings, such as that at issue in the main proceedings, falls within the scope of Council Regulation (EC) No 1348/2000 of 29 May 2002 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

([1]) OJ C 92, 12.04.2008.

Judgment of the Court (First Chamber) of 2 July 2009 (Reference for a preliminary ruling from the Juzgado de lo Mercantil nº 1 de Alicante y nº 1 de Marca Comunitaria — Spain) — Fundación Española para la Innovación de la Artesanía (FEIA) v Cul de Sac Espacio Creativo SL, Acierta Product Position SA

(Case C-32/08) ([1])

(Regulation (EC) No 6/2002 — Community designs — Articles 14 and 88 — Proprietor of the right to the Community design — Unregistered design — Commissioned design)

(2009/C 205/11)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil nº 1 de Alicante y nº 1 de Marca Comunitaria

Parties to the main proceedings

Applicant: Fundación Española para la Innovación de la Artesanía (FEIA)

Defendants: Cul de Sac Espacio Creativo SL, Acierta Product Position SA

Re:

Reference for a preliminary ruling — Juzgado de lo Mercantil nº 1 de Alicante y nº 1 de Marca Comunitaria — Interpretation of Articles 14(1) and (3) and 88(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1) — Proprietor of the rights — Right vesting in the employer or in the employed designer — Definitions

Operative part of the judgment

1. *Article 14(3) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs does not apply to Community designs that have been produced as a result of a commission.*

2. *In circumstances such as those of the main proceedings, Article 14(1) of Regulation No 6/2002 must be interpreted as meaning that the right to the Community design vests in the designer, unless it has been assigned by way of contract to his successor in title.*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (First Chamber) of 2 July 2009 (reference for a preliminary ruling from the Högsta domstolen (Sweden)) — SCT Industri AB i likvidation v Alpenblume AB

(Case C-111/08) ([1])

(Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments — Scope — Insolvency)

(2009/C 205/12)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: SCT Industri AB i likvidation

Defendant: Alpenblume AB

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Article 1(2)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Judgment of a court in Member State A ruling that the liquidator in insolvency proceedings in Member State B does not have power to transfer the assets of the company in liquidation located in Member State A — Action for recovery of property brought by the transferee company to recover the shares in a company which it had acquired in the insolvency proceedings but which were taken back by the transferring company pursuant to the judgment annulling the transfer

Operative part of the judgment

The exception provided for in Article 1(2)(b) of Council Regulation No 44/2001 (EC) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to a judgment of a court of Member State A regarding registration of ownership of shares in a company having its registered office in Member State A, according to which the transfer of those shares was to be regarded as invalid on the ground that the court of Member State A did not recognise the powers of a liquidator from a Member State B in the context of insolvency proceedings conducted and closed in Member State B.

([1]) OJ C 116, 09.05.2008.

Judgment of the Court (Fourth Chamber) of 9 July 2009 (Reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Peter Rehder v Air Baltic Corporation

(Case C-204/08) ([1])

(Regulation (EC) No 44/2001 — Second indent of Article 5(1)(b) — Regulation (EC) No 261/2004 — Articles 5(1)(c) and 7(1)(a) — Montreal Convention — Article 33(1) — Air transport — Passenger claims for compensation against airlines in the case of flight cancellation — Place of performance of the service — Jurisdiction in the case of air transport from one Member State to another Member State by an airline established in a third Member State)

(2009/C 205/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Peter Rehder

Defendant: Air Baltic Corporation

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Compensation under Article 7(1)(a) of Regulation (EC) No 261/2004 claimed by a passenger residing in a Member State from an air carrier established in another Member State following cancellation of a flight between the first Member State and a third member State — Jurisdiction of the courts of the Member State where the passenger resides — Determination of 'the place in a Member State where, under the contract, the services were provided or should have been provided'.

Operative part of the judgment

The second indent of Article 5(1)(b) 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 must be interpreted as meaning that, in the case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on 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, is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

([1]) OJ C 197, 2.8.2008.

Judgment of the Court (Fifth Chamber) of 9 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-272/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/83/EC — Right of asylum — Failure to transpose within the prescribed period)

(2009/C 205/14)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and E. Adsera Ribera, Agent)

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

Re:

Failure of a Member State to fulfil obligations — Failure to have adopted, within the presribed period, the measures necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the Kingdom of Spain has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 209, 15.08.2008.

Judgment of the Court (Sixth Chamber) of 2 July 2009 (Reference for a preliminary ruling from the Finanzgericht München — Germany) — Zino Davidoff SA v Bundesfinanzdirektion Südost

(Case C-302/08) ([1])

(Trade marks — International registration — Protocol Relating to the Madrid Agreement — Regulation (EC) No 40/94 — Article 146 — International registration and a Community trade mark having the same effects in the Community — Regulation (EC) No 1383/2003 — Article 5(4) — Goods suspected of infringing a trade mark — Customs action — Proprietor of a Community trade mark — Right to secure action also in Member States other than the Member State in which the application is lodged — Extension to the holder of an international registration)

(2009/C 205/15)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Zino Davidoff SA

Defendant: Bundesfinanzdirektion Südost

Re:

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Article 5(4) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7) — The right to make an application to the customs authorities to take action which, apart from seeking action to be taken by the customs authorities in the Member State in which the application is made, seeks action from customs authorities of one or more other Member States, exists only for the proprietors of Community trade marks — Extension of that right to proprietors of internationally registered trade marks within the meaning of Article 146 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark — Legal effects of the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks.

Operative part of the judgment

Article 5(4) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, read in the light of Article 146 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003, is to be interpreted as allowing the holder of an internationally registered trade mark to secure action by the customs authorities of one or more other Member States, besides that of the Member State in which it is lodged, just like the proprietor of a Community trade mark.

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (First Chamber) of 25 June 2009 — Commission of the European Communities v Republic of Austria

(Case C-356/08) ([1])

(Failure of a Member State to fulfil obligations — Freedom to provide services — Freedom of establishment — Free movement of capital — National legislation imposing an obligation on medical doctors established in the territory of the Land of Upper Austria to open a bank account with a particular bank)

(2009/C 205/16)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa, acting as Agent and A. Böhlke, Rechtsanwalt)

Defendant: Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC, 49 EC and 56 EC — National legislation imposing an obligation on medical doctors established in the territory of the Land of Upper Austria to open a bank account with the Oberösterreichische Landesbank

Operative part of the judgment

The Court:

1. *Declares that, by imposing an obligation on every medical doctor becoming established in Oberösterreich (Land of Upper Austria) to open a bank account with the Oberösterreichische Landesbank in Linz to which fees for benefits in kind in the context of the exercise of his professional activity are to be transferred by the health insurance funds, the Republic of Austria has failed to comply with its obligations under Article 49 EC;*

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

([1]) OJ C 247, 27.09.2008.

Judgment of the Court (Seventh Chamber) of 2 July 2009 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — EGN BV — Filiale Italiana v Agenzia delle Entrate — Ufficio di Roma 2

(Case C-377/08) ([1])

(Sixth VAT Directive — Article 17(3)(a) — Deductibility and refunding of input VAT — Provision of telecommunications services — Supply of services for a customer established in another Member State — Article 9(2)(e) — Determination of the place where the service is provided)

(2009/C 205/17)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: EGN BV — Filiale Italiana

Defendant: Agenzia delle Entrate — Ufficio di Roma 2

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 9(2)(e) and Article 17(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Supply of cross-border telecommunications services — Right of the supplier of such services to deduct input tax, as permitted under the domestic regime

Operative part of the judgment

Article 17(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that a supplier of telecommunications services such as the one at issue in the main proceedings, which is established in the territory of a Member State,

is entitled under that provision to deduct or obtain a refund in that Member State of input value added tax on telecommunications services that have been supplied to an undertaking having its principal place of business in another Member State, since such a supplier would have had that right if the services at issue had been supplied in the territory of the former Member State.

(1) OJ C 285, 8.11.2008.

Judgment of the Court (Eighth Chamber) of 2 July 2009 — Commission of the European Communities v Hellenic Republic

(Case C-465/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/36/EC — Right of establishment — Recognition of professional qualifications — Failure to adopt within the prescribed period)

(2009/C 205/18)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Karanasou Apostolopoulou and H. Støvbæk, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures 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 (OJ 2005 L 255, p. 22), which repeals Directive 89/49/EEC (OJ 1989 L 19, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by not adopting 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, and in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 327, 20.12.2008.

Judgment of the Court (Eighth Chamber) of 9 July 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-469/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/36/EC — Recognition of professional qualifications — Failure to transpose within the prescribed period)

(2009/C 205/19)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to have adopted or notified, within the prescribed period, all the measures 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 (OJ 2005 L 255, p. 22).

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, all 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, the Kingdom of Belgium has failed to fulfil its obligations under that directive.*

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

(1) OJ C 6, 10.01.2009.

Judgment of the Court (Fifth Chamber) of 30 June 2009 — Commission of the European Communities v Kingdom of Belgium.

(Case C-490/08) (1)

(Failure of Member State to fulfil its obligations — Directive 2005/68/EC — Reinsurance — Failure to adopt within the prescribed period)

(2009/C 205/20)

Language of the case: French

Parties

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

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

Re:

Failure of Member State to fulfil its obligations — Failure to adopt or communicate, within the prescribed period, the measures 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 and 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ 2005 L 323, p. 1)

Operative part of the judgment

The Court:

1. *Declares that by not adopting 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 and 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC or, in any event, by not communicating those measures to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 6, 10.01.2009.

Judgment of the Court (Fifth Chamber) of 9 July 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-556/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/36/EC — Recognition of professional qualifications — Failure to transpose within the period prescribed)

(2009/C 205/21)

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 (represented by: H. Walker, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the 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 (OJ 2005 L 255, p. 22).

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 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 63 of that directive;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the Court (Fifth Chamber) of 9 July 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-557/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/35/EC — Ship-source pollution and introduction of penalties for infringements — Failure to transpose)

(2009/C 205/22)

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 (represented by: H. Walker, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements

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 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

(1) OJ C 44, 21.2.2009.

Judgment of the Court (Seventh Chamber) of 2 July 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-567/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/36/EC — Recognition of professional qualifications — Failure to transpose within the prescribed period)

(2009/C 205/23)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to have adopted or notified, within the prescribed period, all the measures 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 (OJ 2005 L 255, p. 22)

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, all 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, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.*

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

(1) OJ C 44, 21.02.2009.

Order of the Court (Fifth Chamber) of 4 June 2009 (references for a preliminary ruling from the Hof van beroep te Brussel and the Rechtbank van eerste aanleg te Brugge, Belgium) — Belgische Staat v KBC Bank NV

(Joined Cases C-439/07 and C-499/07) (1)

(Article 104(3), first subparagraph, of the Rules of Procedure — Articles 43 EC and 56 EC — Directive 90/435/EEC — Article 4(1) — National legislation designed to prevent double taxation of distributed profits — Deduction of the amount of dividends received from a parent company's basis of assessment only in so far as it has made taxable profits)

(2009/C 205/24)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel, Rechtbank van eerste aanleg te Brugge

Parties to the main proceedings

Applicants: Belgische Staat (C-439/07), Beleggen, Risicokapitaal, Beheer NV (C-499/07)

Defendants: KBC Bank NV (C-439/07), Belgische Staat (C-499/07)

Re:

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Articles 43 EC and 56 EC and Article 4(1), first indent, and 4(2) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — National provisions designed to abolish double taxation of distributed profits — System for the deduction of definitively taxed income

Operative part

(1) *Article 4(1), first indent, 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 must be interpreted as meaning that it precludes legislation of a Member State which, for the purposes of the exemption of the dividends received by a parent company established in that State from a subsidiary with its seat in another Member State, provides that those dividends are included in the basis of assessment of the parent company and 95 % of those dividends are subsequently deducted, in so far as, during the taxable period concerned, a profit remains after deduction of the other exonerated dividends, with the consequence that:*

— *if the parent company had no or insufficient taxable profits during the taxable period in which the distributed profits were received, it would in a subsequent taxable period be taxed on those distributed profits received,*

or that

— *the losses of that taxable period would be offset by means of distributed profits, and cannot, in the amount of those distributed profits, be carried forward to a subsequent taxable period.*

(2) *Article 4(1), first indent, of Directive 90/435, read in combination with Article 4(2) thereof, must be interpreted as meaning that it does not oblige Member States necessarily to allow profits distributed to a parent company established in that State by its subsidiary with its seat in another Member State to be wholly deductible from the profits of the taxable period of the parent company and that it be possible for the resulting loss to be carried forward to a subsequent taxable period. It is for the Member States to estalbish, taking account both of the needs of their domestic legal system and the option provided for in Article 4(2), the method by which the result prescribed in Article 4(1), first indent, is achieved.*

However, where a Member State has chosen the exemption system provided for in Article 4(1), first indent, of Directive 90/435 and, in principle, the legislation of that Member State allows losses to be carried forward to subsequent taxable periods, that provision precludes legislation of a Member State which has the effect of limiting, to the amount of the dividends received, the losses of the parent company which may be carried forward.

(3) *Where, in regulating purely internal situations, domestic legislation adopts the same solutions as those adopted in Community law, it is for the national court alone, pursuant to the allocation of judicial functions between national courts and the Court of Justice under Article 234 EC, to assess the precise scope of that reference to Community law, consideration of the limits which the national legislature may have placed on the application of Community law to purely internal situations being a matter for the law of the Member State concerned and consequently falling within the exclusive jurisdiction of the courts of that Member State.*

(4) *Where, under the national legislation of a Member State, dividends originating from a company established in a non-Member State are entitled to less favourable treatment than those from a company with its seat in that Member State, it is for the national court, taking account both of the purpose of the national legislation and of the facts of the case before it, to ascertain whether Article 56 EC is applicable and, if so, whether it precludes the different treatment.*

(5) *Article 43 EC does not preclude the legislation of a Member State which provides that a parent company established in a Member State and receiving profits distributed by its subsidiary with its seat in another Member State may deduct those profits from its taxable income only up to the amount of the profits of the taxable period during which the profits were distributed, whereas a full exemption of the distributed profits would be possible if that company had set up a permanent establishment in that other Member State, on condition that profits from entities set up in another Member State are not treated in a manner that is discriminatory in comparison with the treatment granted to profits from comparable national entities.*

([1]) OJ C 315, 22.12.2007
OJ C 22, 26.01.2008.

Order of the Court of 26 March 2009 — Efkon AG v European Parliament, Council of the European Union, Commission of the European Communities

(Case C-146/08 P) ([1])

(Appeal — Directive 2004/52/EC — Interoperability of electronic road toll systems in the Community — Appeal manifestly inadmissible or manifestly unfounded)

(2009/C 205/25)

Language of the case: German

Parties

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

Other parties to the proceedings: European Parliament (represented by: U. Rösslein and A. Neergaard, Agents), Council of the European Union (represented by: M. Bauer and E. Karlsson, Agents), Commission of the European Communities (represented by: N. Yerrell and G. Braun, Agent)

Re:

Appeal brought against the order of the Court of First Instance (Fifth Chamber) of 22 January 2008 in Case T-298/04 *Efkon* v *Parliament and Council*, by which the Court of First Instance dismissed as inadmissible the action seeking annulment of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community (OJ 2004 L 166, p. 124) — Requirement of being individually concerned by the contested act — Right to be heard before a court — Length of the proceedings before the Court of First Instance

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Efkon AG to pay the costs.*

([1]) OJ C 171, 05.07.2008.

Order of the Court of 25 March 2009 — Isabella Scippacercola, Ioannis Terezakis v Commission of the European Communities

(Case C-159/08 P) ([1])

(Appeals — Abuse of dominant position — Allegation of excessive charges applied by the operator of Athens International Airport — Rejection of the complaint — No Community interest)

(2009/C 205/26)

Language of the case: English

Parties

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

Other party to the proceedings: Commission of the European Communities (represented by: T. Christoforou, V. Di Bucci and F. Ronkes Agerbeek, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 16 January 2008 in Case T-306/05 *Isabella Scippacercola and Ioannis Terezakis* v *Commission of the European Communities*, dismissing an application seeking to annul the Commission Decision dated 2 May 2005 refusing to take action on the applicants' complaint concerning an alleged abuse by Athens International Airport at Spata of its dominant position and its imposition of excessive charges on users

Operative part of the order

1. *The appeal is dismissed.*

2. *Mrs Scippacercola and Mr Terezakis shall pay the costs.*

([1]) OJ C 171, 5.7.2008.

Order of the Court (Seventh Chamber) of 19 May 2009 — (reference for a preliminary ruling from the Amtsgericht Büdingen — Germany) — Criminal proceedings against Guido Weber

(Case C-166/08) ([1])

(Article 104(3) of the Rules of Procedure — Directive 89/397/EEC — Official control of foodstuffs — Right of those subject to inspection to obtain a second opinion — Concept of person subject to inspection)

(2009/C 205/27)

Language of the case: German

Referring court

Amtsgericht Büdingen

Criminal proceedings against

Guido Weber

Action

Reference for a preliminary ruling — Amtsgericht Büdingen — Interpretation of the second sentence of Article 7(1) of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs (OJ 1989 L 186, p. 23) — Right of those subject to inspection to obtain a second opinion when an official control of foodstuffs is being carried out — Question whether a person liable under criminal or administrative law for the condition and labelling of a foodstuff is a person 'subject to inspection'

Operative part of the judgment

The second sentence of Article 7(1) of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs is to be interpreted as meaning that a company which has imported and then marketed a foodstuff and whose manager, on the basis of the analysis of samples of that product taken in the retail trade, is to be held responsible by the prosecuting authorities for the condition and labelling of that product in proceedings relating to the imposition of criminal penalties or administrative fines, is to be considered a person 'subject to inspection' for the purposes of those provisions.

([1]) OJ C 183, 19.07.2008.

Order of the Court of 5 May 2009 — WWF-UK v Council of the European Union, Commission of the European Communities

(Case C-355/08 P) [1]

(Appeal — Regulation (EC) No 2371/2002 — Consultation of Regional Advisory Councils concerning measures governing access to waters and resources and the sustainable pursuit of fishing activities — Regulation (EC) No 41/2007 — Fixing for 2007 of the total allowable catches for cod — Dissenting minority view recorded by members of a Regional Advisory Council in the RAC report on those total allowable catches — Action for annulment of Regulation No 41/2007 brought by such a member — Inadmissibility — Appeal clearly unfounded)

(2009/C 205/28)

Language of the case: English

Parties

Appellant: WWF-UK (represented by: P. Sands and J. Simor, barristers, and by R. Stein, solicitor)

Other parties to the proceedings: Council of the European Union (represented by: M. Moore and A. De Gregorio Merino, Agents), Commission of the European Communities (represented by: P. Oliver, Agent)

Re:

Appeal brought against the order of 2 June 2008 in Case T-91/07 *WWF-UK* v *Council* by which the Court of First Instance (Eighth Chamber) declared inadmissible an application for the partial annulment of Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2007 L 15, p. 1), to the extent that it fixed the 'total allowable catches' ('TACs') for 2007 in respect of the fishing of cod in the areas covered by Council Regulation (EC) No 423/2004 (OJ 2004 L 70, p. 8) — Requirement that the contested measure must be of individual concern

Operative part of the order

1. *Dismisses the appeal;*

2. *Orders WWF UK Ltd to pay the costs;*

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

[1] OJ C 260, 11.10.2008.

Order of the Court of 5 May 2009 — Atlantic Dawn and Others v Commission of the European Communities, Kingdom of Spain

(Case C-372/08 P) [1]

(Appeal — Regulation (EC) No 147/2007 — Reduction in mackerel quotas allocated to Ireland for years 2007 to 2012 — Action for annulment of Regulation No 147/2007 brought by a group of Irish fishermen comprising 20 out of 23 licence holders from the Refrigerated Sea Water pelagic fleet — Inadmissibility — Appeal clearly unfounded)

(2009/C 205/29)

Language of the case: English

Parties

Appellants: Atlantic Dawn Ltd, Antarctic Fishing Co. Ltd, Atlantean Ltd, Killybegs Fishing Enterprises Ltd, Doyle Fishing Co. Ltd, Western Seaboard Fishing Co. Ltd, O'Shea Fishing Co. Ltd, Aine Fishing Co. Ltd, Brendelen Ltd, Cavankee Fishing Co. Ltd, Ocean Trawlers Ltd, Eileen Oglesby, Noel McGing, Mullglen Ltd, Bradan Fishing Co. Ltd, Larry Murphy, Pauric Conneely, Thomas Flaherty, Carmarose Trawling Co. Ltd, Colmcille Fishing Ltd (represented by: G. Hogan, SC, N. Travers, BL, T. O'Sullivan, BL, and D. Barry, solicitor)

Other parties to the proceedings: Commission of the European Communities (represented by: K. Banks, Agent), Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Appeal against the order of 2 June 2008 in Case T-172/07 *Atlantic Dawn and Others* v *Commission* by which the Court of First Instance (Seventh Chamber) declared inadmissible an action for the annulment of Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy — Requirement that the contested measure must be of direct concern

Operative part of the order

1. *Dismisses the appeal;*

2. *Orders Atlantic Dawn Ltd, Antarctic Fishing Co. Ltd, Atlantean Ltd, Killybegs Fishing Enterprises Ltd, Doyle Fishing Co. Ltd, Western Seaboard Fishing Co. Ltd, O'Shea Fishing Co. Ltd, Aine Fishing Co. Ltd, Brendelen Ltd, Cavankee Fishing Co. Ltd, Ocean Trawlers Ltd, Eileen Oglesby, Noel McGing, Mullglen Ltd, Bradan Fishing Co. Ltd, Larry Murphy, Pauric Conneely, Thomas Flaherty, Carmarose Trawling Co. Ltd and Colmcille Fishing Ltd to pay their own costs.*

([1]) OJ C 285, 08.11.2008.

Order of the Court of 3 April 2009 — VDH Projektentwicklung GmbH, Edeka Handelsgesellschaft Rhein-Ruhr mbH v Commission of the European Communities

(Case C-387/08 P) ([1])

(Appeal — Action for declaration of failure to act — Directive 89/665/EEC — Commission not implementing the corrective mechanism under Article 3(2) of Directive 89/665/EEC — Natural and legal persons — Direct concern — Inadmissibility)

(2009/C 205/30)

Language of the case: German

Parties

Appellants: VDH Projektentwicklung GmbH, Edeka Handelsgesellschaft Rhein-Ruhr mbH (represented by: C. Antweiler, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

Re:

Appeal brought against the order of the Court of First Instance (Second Chamber) in Case T-185/08 *VDH Projektenwicklung and Edeka Rhein-Ruhr* v *Commission* by which the Court of First Instance dismissed as manifestly inadmissible the action for a declaration that the Commission had unlawfully failed to act, on the ground that it failed, in relation to the conclusion of a public works contract and in relation to the award of a general commercial contract, to implement without delay the corrective mechanism provided for under Article 3 of Directive 89/665/EEC and to send the Federal Republic of Germany a notification under Article 3(2) of that directive — Action brought by natural and legal persons for a declaration of failure to act — Need for the measure regarding which the institution is alleged to have unlawfully failed to act to be of direct concern to the applicant

Operative part of the order

1. *The appeal is dismissed.*

2. *VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH are to bear their own costs.*

([1]) OJ C 141, 20.06.2009.

Order of the Court of 24 April 2009 (reference for a preliminary ruling from the Monomeles Protodikio Athinon — Greece.) — Arkontia Koukou/Elliniko Dimosio.

(Case C-519/08) ([1])

(Article 104(3), first paragraph, of the Rules of Procedure — Social Policy — Directive 1999/70/EC — Clauses 5 and 8 of the Framework Agreement on fixed-term work — Public sector fixed-term employment contracts — Successive contracts — Reduction in the general level of protection of workers — Measures intended to prevent abuse — Penalties — Absolute prohibition on conversion of fixed-term employment contracts to contracts of indefinite duration in the public sector — Consequences of incorrect transposition of a directive — Interpretation in conformity with Community law)

(2009/C 205/31)

Language of the case: Greek

Referring court

Monomeles Protodikio Athinon (Court of First Instance, Athens (single judge)).

Parties to the main proceedings

Applicant: Arkontia Koukou

Defendant: Elliniko Dimosio (Greek State)

Re:

Reference for a preliminary ruling — Monomeles Protodikeio Athinon — Interpretation of Clauses 5 and 3 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Objective reasons justifying the renewal without restriction of successive fixed-term employment contracts — Obligation, imposed by national legislation, to enter into such contracts — Prohibition on adoption of transposing legislation reducing the level of protection — Meaning of reduction

Operative part

1. *Clause 5(1)(a) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding the use of successive fixed-term employment contracts on the sole ground that such use is founded on provisions in the general laws or regulations of a Member State. On the contrary, the concept of 'objective reasons', within the meaning of that clause, requires that the use of that particular type of employment relationship, as provided for by the national legislation, must be justified by the existence of specific factors connected inter alia with the activity in question and the conditions under which it is carried out.*

2. *Clause 5(1) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation such as that at issue in the main proceedings which, while imposing the requirement, as a measure to prevent the abuse of successive fixed-term employment contracts, that a maximum total duration of such contracts must not be exceeded, provides that certain categories of workers are excepted from the latter restriction, provided that those workers have the protection of at least one of the measures set out in that clause to prevent the abuse of successive fixed-term employment contracts*

3. *Clause 5(1) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation such as that at issue in the main proceedings which makes provision, as a measure to curb the abuse of successive fixed-term employment contracts, for payment of salary and compensation and for criminal and disciplinary penalties, to the extent that, as the referring court must determine, the conditions for the application and effective implementation of the relevant provisions of domestic law constitute adequate measures to penalise the abuse by the public authorities of successive fixed-term employment contracts.*

4. *Clause 5(1) of the Framework Agreement on fixed-term work must be interpreted as meaning that, where the domestic legal order of the Member State concerned does not contain, in the public sector, other measures which can effectively ensure that the abuse of successive fixed-term employment contracts is avoided and, when appropriate, penalised, which it is for the referring court to determine, national legislation such as that at issue in the main proceedings is precluded, since it is not applicable ratione temporis to successive fixed-term employment contracts which have been entered into or renewed after expiry of the period laid down in Directive 1999/70 for its transposition where those contracts were no longer current at the date when that legislation entered into force or at any time during the period of three months preceding that date.*

5. *In circumstances such as those in the main proceedings, Clause 5(1)(a) of the Framework Agreement on fixed-term work must be interpreted to mean that, where the domestic legal order of the Member State concerned contains, in the sector under consideration, other measures which are effective to avoid and, when appropriate, penalise the abuse of successive fixed-term employment contracts within the meaning of Clause 5(1), it is not precluded that a rule of national law may impose an absolutely prohibition, in the public sector alone, on conversion into a contract of indefinite duration of a succession of fixed-term employment contracts which, when intended to cover fixed and permanent needs of the employer, must be regarded as an abuse. It is however for the referring court to assess the extent to which the conditions for the application and actual implementation of the relevant provisions of domestic law constitute adequate measures to prevent and, when appropriate, penalise the abuse by the public authorities of successive fixed-term employment contracts.*

6. *Clause 5(1)(a) of the Framework Agreement on fixed-term work must be interpreted as not precluding the possibility that, as a general rule, legal disputes concerning the abuse of fixed-term employment contracts in the public sector fall within the exclusive jurisdiction of the administrative courts. It is however for the referring court to ensure that the right to effective legal protection is safeguarded with due regard to the principles of effectiveness and equivalence.*

7. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as precluding national legislation such as that at issue in the main proceedings which lays down, for the purposes of determining whether there is abuse of fixed-term employment contracts, additional conditions beyond those laid down by the earlier domestic law, such as, in particular, Article 8(3) of Law 2112/1920 on the obligatory termination of the employment contract of private sector employees, provided that such conditions, this being for the referring court to determine, either affect a restricted category of workers who have entered into a fixed-term employment contract or are balanced by the adoption of measures to prevent the abuse of fixed-term employment contracts within the meaning of Clause 5(1) of the Framework Agreement.*

8. *It is for the national court to interpret the relevant provisions of national law, so far as possible, in conformity with clauses 5(1) and 8(3) of the Framework Agreement on fixed-term work, and also to determine, in that context, whether a provision of domestic law such as that provided for in Article 8(3) of Law No 2112/1920, must be applied to the main proceedings in place of certain other provisions of domestic law.*

([1]) OJ C 44, 21.02.2009.

Appeal brought on 1 August 2008 by Dr Hans Kronberger against the Order of the Court of First Instance (Seventh Chamber) of 21 May 2008 in Case T-18/07 Dr Hans Kronberger v European Parliament

(Case C-349/08 P)

(2009/C 205/32)

Language of the case: German

Parties

Appellant: Dr Hans Kronberger (represented by: W. Weh, Rechtsanwalt)

Other party to the proceedings: European Parliament

Dr Hans Kronberger brought an appeal on 1 August 2008 before the Court of Justice of the European Communities against the order of the Court of First Instance (Seventh Chamber) of 21 May 2008 in Case T-18/07 *Dr Hans Kronberger v European Parliament*. The appellant is represented by Dr Wilfried Ludwig Weh, Rechtsanwalt, of Wolfeggstraße 1, AT-6900 Bregenz.

By Order of 19 May 2009 the Court of Justice of the European Communities (Eighth Chamber) dismissed the appeal and ordered the appellant to pay his own costs.

Appeal brought on 8 June 2009 by ArcelorMittal Luxembourg SA against the judgment of the Court of First Instance (Seventh Chamber) delivered on 31 March 2009 in Case T-405/06 ArcelorMittal Luxembourg SA and Others v Commission.

(Case C-201/09 P)

(2009/C 205/33)

Language of the case: French

Parties

Appellant: ArcelorMittal Luxembourg SA formerly Arcelor Luxembourg SA (represented by: A. Vandencasteele, lawyer)

Other parties to the proceedings: Commission of the European Communities, ArcelorMittal Belval & Differdange, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International, formerly Arcelor International SA

Form of order sought

— Set aside the judgment of the Court of First Instance in Case T-405/06 to the extent that it upholds, in relation to ArcelorMittal Luxembourg SA, Commission Decision C(2006) 5342 final of 8 November 2006 relating to a proceeding under Article 65 [CS] concerning agreements and concerted practices engaged in by European producers of beams (Case COMP/F/38.907 — Steel beams);

— Order the defendant to pay the costs of the present proceedings and of the proceedings before the Court of First Instance.

Pleas in law and main arguments

In support of its forms of order, the appellant relies on four grounds of appeal.

In its first ground of appeal, which has two parts, the appellant claims, first, that the Court of First Instance infringed Article 97 CS and misused its powers by applying Article 65 CS after the expiry of the ECSC Treaty on 23 July 2002. The obligation on the institutions to interpret the various treaties consistently cannot in any circumstances justify the retention in the Community legal order of the provisions of a treaty after its expiry.

In the second part of that ground of appeal, the appellant claims that the Court of First Instance infringed Regulation No 1/2003 [1] and misused its powers by holding that the legal basis for the Commission's adoption of a decision under Article 65 CS was a regulation which confers powers on the Commission only in relation to the implementation of Articles 81 and 82 EC. Adopted after expiry of the ECSC Treaty under the EC Treaty alone, that regulation could not confer on the Commission any powers to impose penalties for a contravention of Article 65 CS, unless both the ECSC Treaty and the rule of the hierarchy of norms were to be disregarded.

In its second ground of appeal, which has three parts, the appellant claims that the Court of First Instance fails to observe the principle that penalties must fit the offence, the case-law of the Court of Justice on attribution of responsibility, the principle of *res judicata* and the rule of the hierarchy of norms, in that the Court of First Instance held that the Commission was entitled to attribute to one company responsibility for an anti-competitive practice of another member of a group, in which the former company had no part. Neither the fact that the various companies in question, belonging to the same group, were a single economic unit, nor the fact that the parent company had 100 % control of the subsidiary which committed the offence, nor even the fact that the influence of the parent company on its subsidiary was decisive, was sufficient to prove that the appellant had any part in the offence and therefore could not justify the attribution of responsibility for the conduct of the subsidiary to the parent company.

In its third ground of appeal, the appellant claims that the Court of First Instance incorrectly applied the rules relating to the limitation period of proceedings and failed to observe the principle of *res judicata*, in that the Court of First Instance, in its judgment, found that the appellant had committed acts which interrupted the limitation period, when it was very clear from the Commission's original decision, adopted in 1994, that the appellant was expressly identified as having not taken part in the offence.

In its fourth ground of appeal, the appellant claims lastly that the judgment of the Court of First Instance failed to have regard to its rights of defence since the judgment is vitiated by a failure to state reasons in relation to the particularly lengthy duration of the procedure, which meant that it was no longer possible for the appellant to produce the evidence required to displace the presumption that it was responsible. In addition, the judgment of the Court of First Instance failed to have regard to the force of *res judicata* attaching to the judgment of 2 October 2003 in Case C-176/99 P *ARBED* v *Commission* which held that the Commission's decision should be annulled to the extent that it related to the applicant.

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

Reference for a preliminary ruling from the Szombathelyi Városi Bíróság (Republic of Hungary) lodged on 8 June 2009 — Criminal proceedings against Emil Eredics and Another

(Case C-205/09)

(2009/C 205/34)

Language of the case: Hungarian

Referring court

Szombathelyi Városi Bíróság

Parties to the main proceedings

Emil Eredics and Another

Questions referred

1. The Szombathelyi Városi Bíróság wishes to know, in connection with the criminal proceedings pending before it, whether 'a person other than a natural person' falls within the definition of 'victim' in Article 1(a) of Council Framework Decision 2001/220/JHA, in light of the obligation to promote mediation between the victim and the offender in criminal cases, laid down in Article 10 of the Framework Decision, and asks the Court of Justice to explain and supplement its judgment in Case C-467/05 *Dell'Orto* [2007] ECR I-5557.

2. The referring court wishes to know, regarding Article 10(1) of Council Framework Decision 2001/220/JHA, which provides that '[e]ach Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure', whether the meaning of the term 'offences' may be interpreted to refer to all offences the legal classification of which is substantively the same.

3. Is it possible to interpret the words '[e]ach Member State shall seek to promote mediation in criminal cases.]' in Article 10(1) of Framework Decision 2001/220/JHA in such a way that the conditions upon which offender and victim can have access to mediation can be satisfied at least until the point when a decision is made at the first stage of proceedings; or [in such a way] that a condition that the offender have admitted the facts during the legal proceedings, after the investigation has been completed — when all other conditions are satisfied — is a condition which is compatible with the obligation to promote mediation?

4. With regard to Article 10(1) of Framework Decision 2001/220/JHA, do the words '[e]ach Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure' mean that the option of mediation in criminal proceedings must be generally available, provided that all the prerequisite legal conditions are satisfied, and that there is no room for discretion?. That is to say, if the reply to the question is in the affirmative, is the existence of a condition worded as follows: '[where] having regard to the nature of the offence, the form of responsibility and the person of the suspect, the legal proceedings may be omitted or there are grounds for believing that the court will take into account active repentance at the time of sentencing' compatible with the provisions (requirements) of Article 10?

Action brought on 9 June 2009 — Commission of the European Communities v Slovak Republic

(Case C-207/09)

(2009/C 205/35)

Language of the case: Slovak

Parties

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

Defendant: Slovak Republic

Form of order sought

— Declare that, by using the services of organisations which are not recognised within the meaning of Articles 2 and 4 of Directive 94/57/EC [1] for the purposes of undertaking inspections and surveys provided for in Article 3 of the Directive, the Slovak Republic failed to fulfil its obligations arising under that article;

— order Slovak Republic to pay the costs.

Pleas in law and main arguments

The Slovak Republic used the services of organisations which are not recognised as classification societies within the meaning of Directive 94/57/EC and, according to the Commission's information, failed to terminate the authorisation given to such organisations. Moreover, since the Slovak Republic has failed to create an appropriate legislative framework to prevent any future authorisation of organisations which are not recognised as classification societies, there is a danger that similar cases of incorrect application of Directive 94/57/EC, such as that forming the subject matter of this action, will be repeated.

[1] Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ 1994 L 319, p. 20).

Reference for a preliminary ruling from the Cour administrative d'appel de Nantes (France) lodged on 10 June 2009 — Scott SA, Kimberly Clark SNC, now Kimberly Clark SAS v City of Orléans

(Case C-210/09)

(2009/C 205/36)

Language of the case: French

Referring court

Cour administrative d'appel de Nantes

Parties to the main proceedings

Applicants: Scott SA, Kimberly Clark SNC, now Kimberly Clark SAS

Defendant: City of Orléans

Question referred

Is a possible annulment by the French administrative court of the assessments issued for the recovery of aid declared on 12 July 2000 by the Commission of the European Communities to be incompatible with the common market, [1] on the ground that those assessments infringe legislative provisions relating to the physical presentation of those assessments, given the ability of the competent administrative authority to remedy the vitiating defect in those decisions, such as to hinder the immediate and effective implementation of the Decision of the Commission of the European Communities of 12 July 2000, contrary to Article 14(3) of the Council Regulation of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty? [2]

[1] Commission Decision of 12 July 2000 on the state aid granted by France to Scott Paper SA Kimberly-Clark (OJ 2002 L 12, p. 1).

[2] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 15 June 2009 — Barsoum Chabo v Hauptzollamt Hamburg-Hafen

(Case C-213/09)

(2009/C 205/37)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Barsoum Chabo

Defendant: Hauptzollamt Hamburg-Hafen

Question referred [1]

Is the additional amount arising under the third country and preferential customs rate of EUR 222 per 100 kg of net weight of goods charged on imports of preserved mushrooms of the Agaricus genus (CN heading 2003 10 30) void for infringement of the principle of proportionality?

[1] Concerning Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2005 L 286, p. l).

Appeal brought on 15 June 2009 by Commission of the European Communities against the judgment of the Court of First Instance (Seventh Chamber)delivered on 31 March 2009 in Case T-405/06 ArcelorMittal Luxembourg and Others v Commission.

(Case C-216/09)

(2009/C 205/38)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: F. Castillo de la Torre and X. Lewis, agents)

Other parties to the proceedings: ArcelorMittal Luxembourg SA, formerly Arcelor Luxembourg SA, ArcelorMittal Belval & Differdange, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International, formerly Arcelor International SA

Form of order sought

— Set aside the judgment delivered on 31 March 2009 in Case T-405/06 *ArcelorMittal Luxembourg SA and Others* v *Commission*, to the extent that it annuls the fines imposed by Commission Decision C(2006) 5342 final of 8 November 2006 ([1]) on ArcelorMittal Belval & Differdange SA (formerly ProfilARBED) and on ArcelorMittal International SA (formerly TradeARBED);

— Dismiss the actions of ArcelorMittal Belval & Differdange SA and ArcelorMittal International SA;

— Order the other parties to pay the costs.

Pleas in law and main arguments

The appellant relies on a single ground in support of its appeal, namely that the Court of First Instance failed to observe the rules relating to limitation periods in proceedings.

According to the Commission, the judgment of the Court of First Instance is based on a literal and excessively restrictive interpretation of Decision 715/78/ECSC ([2]) and, in particular, its Articles 2(3) and (3), since the Court makes a distinction between the interruption of the limitation period and its suspension. As distinct from Article 2(2), which explicitly states that all parties are affected by the interruption of the limitation period, Article 3 is silent on the effects of suspension. The judgment of the Court of First Instance is vitiated by an error of law in that it concludes that the suspension of the limitation period brought about by the commencement by one party of legal proceedings before the Community judicature applies only as regards the applicant company and holds therefore that the limitation period had expired as regards the other parties.

The Commission claims that, contrary to the ruling of the Court of First Instance, the silence of the legislation does not permit the inference that the effect of suspension is personal and Article 3 of Decision 715/78/ECSC should be interpreted in the light of the objectives of the legislation at issue, relating to the Commission having the opportunity to bring proceedings against and penalise effectively contraventions of competition law.

([1]) Commission Decision C(2006) 5342 final of 8 November 2006 relating to a proceeding under Article 65 [CS] concerning agreements and concerted practices engaged in by European producers of beams (Case COMP/F/38.907 — Steel beams)

([2]) Commission Decision No 715/78/ECSC of 6 April 1978 concerning limitation periods in proceedings and the enforcement of sanctions under the Treaty establishing the European Coal and Steel Community (OJ 1978 L 94, p. 22).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 15 June 2009 — Maurizio Polisseni v A.S.L. No 14 V.C.O.Omegna

(Case C-217/09)

(2009/C 205/39)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Maurizio Polisseni

Defendant: A.S.L. No 14 V.C.O.Omegna

Questions referred

1. Does Article 43 EC and, in any event, Community law on competition, preclude a national rule such as that laid down in Article 1 of Law No 475 of 2 April 1968 and Article 13 of Presidential Decree No 1275 of 21 August 1971, in so far as it makes authorisation to transfer a pharmacy from one set of premises to another, even though it remains within the authorised area, subject to the requirement that it must be located at a distance of at least 200 metres from other similar establishments, measured by the shortest route on foot from door to door; in particular, are the restrictions on freedom of establishment imposed in that rule at odds with the reasons of public interest which could justify such restrictions and are they not in any event inappropriate for the purpose of meeting those interests?

2. Does the principle of proportionality, which must be observed by any legitimate restriction on freedom of establishment and competition, in any event preclude a restriction on a pharmacist's right to engage in free enterprise such as that resulting from the rules on minimum distance referred to in the first question?

3. Do Articles 152 EC and 153 EC, which impose a high level of protection on human health and consumer interests as a matter of priority, preclude a national rule such as that laid down in Article 1 of Law No 475 of 2 April 1968 and Article 13 of Presidential Decree No 1275 of 21 August 1971, in so far as it makes authorisation to transfer a pharmacy from one set of premises to another, even though it remains within the authorised area, subject to the requirement that it be located at a distance of at least 200 metres from other similar establishments, measured by the shortest route on foot from door to door, without any further consideration being given to the customers' interests or to the requirement of efficient local distribution of services relating to the protection of health?

Reference for a preliminary ruling from the Tribunale di Milano (Italy) lodged on 16 June 2009 — Vitra Patente AG v High Tech Srl

(Case C-219/09)

(2009/C 205/40)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: Vitra Patente AG

Defendant: High Tech Srl

Questions referred

(1) Must Articles 17 and 19 of Directive 98/71/EC [1] be interpreted as meaning that — in implementing a national law of a Member State adjusting the domestic legal order to the abovementioned Directive — the discretion accorded to such a Member State to establish independently the extent to which, and the conditions under which, such protection is conferred may include discretion to preclude such protection in the case of designs which — albeit meeting the requirements for protection laid down in copyright law — fell to be regarded as having entered into the public domain before the date on which the national implementing legislation entered into force, in so far as they had never been registered as designs or in so far as the relevant registration had already expired by that date?

(2) If the answer to the first question is in the negative, must Articles 17 and 19 of Directive 98/71/EC be interpreted as meaning that the discretion accorded to the Member State to establish independently the extent to which, and the conditions under which, such protection is conferred may include discretion to preclude such protection where a third party — without authorisation from the holder of the copyright on such designs — has already produced and marketed in that State products based on such designs which were in the public domain before the date on which the national implementing legislation entered into force?

(3) If the answers to the first and second questions are in the negative, must Articles 17 and 19 of Directive 98/71/EC be interpreted as meaning that the discretion accorded to the Member State to establish independently the extent to which, and the conditions under which, such protection is conferred may include discretion to preclude such protection where a third party — without authorisation from the holder of the copyright on such designs — has already produced and marketed products based on such designs in that State, where protection is precluded for a substantial period (a period of 10 years)?

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[1] OJ 1998 L 289, p. 28.

Reference for a preliminary ruling from the First Hall of the Civil Court (Republic of Malta), made on 17 June 2009 — AJD Tuna Ltd v Direttur tal-Agrikoltura u s-Sajd and Avukat Ġenerali

(Case C-221/09)

(2009/C 205/41)

Language of the case: Maltese

Referring court

Prim'Awla tal-Qorti Ċivili

Parties to the main proceedings

Applicant: AJD Tuna Ltd

Defendants: Direttur tal-Agrikoltura u s-Sajd; Avukat Ġenerali

Questions referred

1) Is Commission Regulation No 530/2008 ([1]) invalid because it infringes Article 253 of the Treaty insofar as it does not state sufficiently the reasons for the adoption of the emergency measures established in Articles 1, 2 and 3 of the said regulation, and insofar as it does not give a clear enough picture of the reasoning behind these measures?

2) Is Commission Regulation No 530/2008 invalid because it infringes Article 7(1) of Council Regulation No 2371/2002 ([2]) insofar as, in its recitals, it does not establish adequately (i) the existence of a serious threat to the conservation of living aquatic resources or to the marine eco-system caused by fishing activities and (ii) the need to take immediate action?

3) Is Commission Regulation No 530/2008 invalid insofar as the adopted measures deprive Community operators, such as the applicant, of their legitimate expectations founded on Article 1 of Commission Regulation No 446/2008 ([3]) of 22 May 2008 and on Article 2 of Council Regulation No 2371/2002 of 20 December 2002?

4) Is Article 3 of Commission Regulation No 530/2008 invalid because it infringes the principle of proportionality insofar as it implies that (i) no Community operator can exercise the activity of landing or placing in cages tuna for fattening or farming, even for tuna caught previously and perfectly in conformity with Commission Regulation No 530/2008; and (ii) no Community operator can carry out these activities with regards to tuna caught by fishermen whose ships do not fly the flag of one of the Member States listed in Article 1 of Commission Regulation No 530/2008, even when this tuna was caught in conformity with the quotas laid down by the International Convention for the Conservation of Atlantic Tunas?

5) Is Commission Regulation No 530/2008 invalid because it infringes the principle of proportionality insofar as the Commission failed to establish that the measure it was going to adopt would contribute towards the recovery of tuna stocks?

6) Is Commission Regulation No 530/2008 invalid because the adopted measures are unreasonable and discriminatory on grounds of nationality, within the meaning of Article 12 of the Treaty establishing the European Community, insofar as the said regulation makes a distinction between purse seiners flying the Spanish flag and those flying the flag of Greece, Italy, France, Cyprus and Malta, and insofar as it makes a distinction between these six Member States and the other Member States?

7) Is Commission Regulation No 530/2008 invalid because the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected insofar as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?

8) Is Commission Regulation No 530/2008 invalid because the adversarial principle (audi alteram partem), as a general principle of Community law, was not respected insofar as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?

9) Is Article 7(2) of Council Regulation No 2371/2008 invalid because the adversarial principle (audi alteram partem), as a general principle of Community law, and/or the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected, and consequently, is Commission Regulation No 530/2008 invalid because it was based on Council Regulation No 2371/2008?

10) In the eventuality that the Court of Justice of the European Communities decides that Commission Regulation No 530/2008 is valid, should this regulation be interpreted as meaning that the measures adopted in Article 3 of the said regulation also preclude Community operators from accepting landings, the placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean sea by purse seiners flying the flag of a third country?

([1]) Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea
OJ L 155, p. 9

([2]) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy
OJ L 358, 31.12.2002, p. 59–80

([3]) Commission Regulation (EC) No 446/2008 of 22 May 2008 adapting certain bluefin tuna quotas in 2008 pursuant to Article 21(4) of Council Regulation (EEC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy
OJ L 134, p. 11

Reference for a preliminary ruling from the Tribunale di Bolzano (Italy) lodged on 19 June 2009 — Criminal proceedings against Martha Nussbaumer

(Case C-224/09)

(2009/C 205/42)

Language of the case: Italian

Referring court

Tribunale di Bolzano

Party to the main proceedings

Martha Nussbaumer

Questions referred

1. Is the national legislation enacted by Legislative Decree No 81 of 9 April 2008, in particular the rule in Article 90(11) thereof, in breach of the rules laid down in Article 3 of Directive 92/57/EEC, [1] in so far as it derogates, for private works not subject to planning permission, from the requirement imposed on the client or the project supervisor in Article 90(3) of the decree to appoint a coordinator for the preparation stage for a construction site on which more than one contractor is present and fails to give any consideration to the nature of the works or to whether there are particular risks of the kind listed in Annex II to the directive?

2. Is the national legislation enacted by Legislative Decree No 81 of 9 April 2008, in particular the rule in Article 90(11) thereof, in breach of the rules laid down in Article 3 of Directive 92/57/EEC with respect to the requirement for the client or the project supervisor to appoint, in all cases, a coordinator during the execution stage of works on construction sites, irrespective of the type of works concerned, and hence also in the case of private works not subject to planning permission which may entail the risks referred to in Annex II to the Directive?

3. Is Article 90(11) of Legislative Decree No 81 of 9 April 2008, in so far as it requires the coordinator for the execution stage to draw up a safety plan only if, in the case of private works not subject to planning permission, other undertakings besides the original contractor appointed become involved in the course of the project, in breach of Article 3 of Directive 92/57/EEC, which requires a coordinator for the execution stage to be appointed in all cases, irrespective of the type of works involved, and which allows no derogation from the requirement to draw up a safety and health plan where the work concerned involves particular risks, as set out in Annex II to the Directive?

[1] OJ 1992 L 245, p. 6.

Reference for a preliminary ruling from the Giudice di Pace di Cortona (Italy) lodged on 19 June 2009 — Joanna Jakubowska Edyta v Alessandro Maneggia

(Case C-225/09)

(2009/C 205/43)

Language of the case: Italian

Referring court

Giudice di Pace di Cortona

Parties to the main proceedings

Applicant: Joanna Jakubowska Edyta

Defendant: Alessandro Maneggia

Questions referred

1. Must Articles 3(g), 4, 10, 81 and 98 of the Treaty establishing the European Community be interpreted as precluding national rules, such as those in Articles 1 and 2 of Law No 339 of 25 November 2003 which reintroduce the incompatibility of the practice of law by part-time public employees and prohibit such employees from practising as lawyers, despite being qualified to do so, by laying down that such lawyers shall be struck off the register by the competent Bar Council unless the public employee opts to relinquish his salaried post?

2. Must Articles 3(g), 4, 10, and 98 of the Treaty establishing the European Community be interpreted as precluding national rules, such as those in Articles 1 and 2 of Law No 339 of 25 November 2003 which reintroduce the incompatibility of the practice of law by part-time public employees and prohibit such employees from practising as lawyers, despite being qualified to do so, by laying down that such lawyers shall be struck off the register by the competent Bar Council unless the public employee opts to relinquish his salaried post?

3. Must Article 6 of Council Directive 77/249/EEC ([1]) of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, in providing that '[a]ny Member State may exclude lawyers who are in the salaried employment of a public or private undertaking from pursuing activities relating to the representation of that undertaking in legal proceedings in so far as lawyers established in that State are not permitted to pursue those activities', be interpreted as precluding national rules such as those in Articles 1 and 2 of Law No 339 of 25 November 2003 which reintroduce the incompatibility of the practice of law by part-time public employees and prohibit such employees from practising as lawyers, despite being qualified to do so, by laying down that such lawyers shall be struck off the register by the competent Bar Council unless the public employee opts to relinquish his salaried post, where those national rules are also applicable to lawyers in salaried employment practising law under the freedom to provide services?

4. Must Article 8 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998, which states that 'A lawyer registered in a host Member State under his home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the host Member State so permits for lawyers registered under the professional title used in that State', be interpreted as meaning that it does not apply to lawyers in part-time public employment?

5. Do the general principles of Community law on the protection of legitimate expectations and acquired rights preclude national rules, such as those in Articles 1 and 2 of Law No 339 of 25 November 2003 which reintroduce the incompatibility of the practice of law by part-time public employees and which also apply to lawyers already registered at the Bar when Law No 339/2003 came into effect, providing in Article 2 for only a short 'moratorium' for them to choose between employment and practice of the profession of lawyer?

([1]) OJ 1977 L 78, p. 17.

Reference for a preliminary ruling from the Tribunale Ordinario di Torino (Italy) lodged on 22 June 2009 — Antonino Accardo and Others v Comune di Torino

(Case C-227/09)

(2009/C 205/44)

Language of the case: Italian

Referring court

Tribunale Ordinario di Torino

Parties to the main proceedings

Applicants: Antonino Accardo, Viola Acella, Antonio Acuto, Domenico Ambrisi, Paolo Battaglino, Riccardo Bevilacqua, Fabrizio Bolla, Daniela Bottazzi, Roberto Brossa, Luigi Calabró, Roberto Cammardella, Michelangelo Capaldi, Giorgio Castellaro, Davide Cauda, Tatiana Chiampo, Alessia Ciaravino, Alessandro Cicero, Paolo Curtabbi, Paolo Dabbene, Mauro D'Angelo, Giancarlo Destefanis, Mario Di Brita, Bianca Di Capua, Michele Di Chio, Marina Ferrero, Gino Forlani, Giovanni Galvagno, Sonia Genisio, Laura Dora Genovese, Sonia Gili, Maria Gualtieri, Gaetano La Spina, Maurizio Loggia, Giovanni Lucchetta, Sandra Magoga, Manuela Manfredi, Fabrizio Maschio, Sonia Mignone, Daniela Minissale, Domenico Mondello, Veronica Mossa, Plinio Paduano, Barbaro Pallavidino, Monica Palumbo, Michele Paschetto, Federica Peinetti, Nadia Pizzimenti, Gianluca Ponzo, Enrico Pozzato, Gaetano Puccio, Danilo Ranzani, Piergianni Risso, Luisa Rossi, Paola Sabia, Renzo Sangiano, Davide Scagno, Paola Settia, Raffaella Sottoriva, Rossana Trancuccio, Fulvia Varotto, Giampiero Zucca, Fabrizio Lacognata, Guido Mandia, Luigi Rigon, Daniele Sgavetti

Defendant: Comune di Torino

Questions referred

1. On a proper construction of [Articles 5, 17 and 18 of Council Directive 93/104/EC ([1]) of 23 November 1993 concerning certain aspects of the organisation of working time], are those provisions capable of being applied directly in the legal order of a Member State, irrespective of whether formal transposition has taken place or irrespective of national rules which restrict their applicability to certain occupations, in a dispute in which reference is made to collective measures adopted by both sides of industry which are in conformity with that directive?

2. Are the courts of that Member State in any event under a duty, irrespective of such direct application, to use a directive which has not yet been transposed into national law or the operation of which, following transposition, appears to be precluded by national rules, as an aid to construction of the national law and thus as a basis for resolving possible doubts as to interpretation?

3. Are the courts of that Member State precluded from declaring conduct unlawful, and on that basis awarding damages on grounds of unfairness and unlawfulness, where the conduct in question appears to be authorised by both sides of industry and such authorisation is consistent with Community law, albeit in the form of the directive which has not yet been transposed into national law?

4. Should Article 17(3) of … Directive [93/104] be construed as permitting — on its own terms, and thus wholly independently of Article 17(2) thereof and the list of occupations and professions set out therein — the collective measures adopted by both sides of industry and the provision made thereunder for derogations in relation to weekly rest periods?

(1) OJ 1993 L 307, p. 18.

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 26 June 2009 — Skatteministeriet v DSV Road A/S

(Case C-234/09)

(2009/C 205/45)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: DSV Road A/S

Questions referred

1. Must Article 204(1)(a) with reference to Articles 92 and 96 in conjunction with Article 1 and Article 4(9) and (10) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (1) be interpreted as meaning that

   a) a customs debt arises if a transit procedure for goods which do not physically exist is initiated by mistake in the NCTS system by an authorised consignor, and as a consequence the transit procedure cannot subsequently be discharged in accordance with the rules, or that

   b) a customs debt does not arise, since the transit procedure is presumed to apply solely to physically existing goods, so that the mistaken generation of a transit in the NCTS system for goods which do not physically exist does not lead to the imposition of customs duties?

2. If Question 1(a) is answered in the affirmative, must the concept of the 'importation of goods' in Article 4(10) together with the concept of 'goods' in Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that the concept covers both physically existing goods and goods which do not physically exist?

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

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 29 June 2009 — DHL Express France SAS v Chronopost SA

(Case C-235/09)

(2009/C 205/46)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: DHL Express France SAS

Defendant: Chronopost SA

Questions referred

1. Must Article 98 of Council Regulation (EC) No 40/94 of 20 December 1993 (1) on the Community trade mark be interpreted as meaning that the prohibition issued by a Community trade mark court has effect as a matter of law throughout the entire area of the Community?

2. If not, is that court entitled to apply specifically that prohibition to the territories of other States in which the acts of infringement are committed or threatened?

3. In either case, are the coercive measures which the court, by application of its national law, has attached to the prohibition issued by it applicable within the territories of the Member States in which that prohibition would have effect?

4. In the contrary case, may that court order such a coercive measure, similar to or different from that which it adopts pursuant to its national law, by application of the national laws of the States in which that prohibition would have effect?

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

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 29 June 2009 — Association Belge des Consommateurs Test-Achats ASBL, Yann van Vugt, Charles Basselier v Conseil des ministres

(Case C-236/09)

(2009/C 205/47)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Association Belge des Consommateurs Test-Achats ASBL, Yann van Vugt, Charles Basselier

Defendant: Conseil des ministres

Questions referred

1. Is Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (1) compatible with Article 6(2) of the Treaty on European Union, and more specifically with the principle of equality and non-discrimination guaranteed by that provision?

2. If the answer to the first question is negative, is Article 5(2) of the Directive also incompatible with Article 6(2) of the Treaty on European Union if its application is restricted to life assurance contracts?

(1) OJ L 373, p. 37.

Reference for a preliminary ruling from the Cour d'appel, Brussels lodged on 3 July 2009 — Fluxys SA v Commission de régulation de l'électricité et du gaz (CREG)

(Case C-241/09)

(2009/C 205/48)

Language of the case: French

Referring court

Cour d'appel, Brussels

Parties to the main proceedings

Applicant: Fluxys SA

Defendant: Commission de régulation de l'électricité et du gaz (CREG)

Questions referred

Do Articles 1, 2 and 18 of Directive 2003/55/EC (1) and Article 3 of Regulation No 1775/2005/EC (2) preclude national legislation establishing a separate tariff regime for the transit activity, which derogates from the rules governing transportation, by creating a distinction, within the transportation activity, between 'transmission' and 'transit'?

(1) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57).

(2) Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ 2005 L 289, p. 1).

Action brought on 7 July 2009 — Commission of the European Communities v Portuguese Republic

(Case C-252/09)

(2009/C 205/49)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and G. Braga da Cruz, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2007/16/EC [1] of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions, or in any event by failing to communicate those measures to the Commission, the Portuguese Republic has failed to fulfil its obligations under Directive 2007/16/EC;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 23 March 2008.

[1] OJ 2007 L 79, p. 11.

Appeal brought on 9 July 2009 by Calvin Klein Trademark Trust against the judgment of the Court of First Instance (Sixth Chamber) delivered on 7 May 2009 in Case T-185/07 Calvin Klein Trademark Trust v OHIM and Zafra Marroquineros, S.L.

(Case C-254/09 P)

(2009/C 205/50)

Language of the case: Spanish

Parties

Appellant: Calvin Klein Trademark Trust (represented by: T. Andrade Boué, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Zafra Marroquineros, S.L.

Form of order sought

— Set aside the judgment of the Court of First Instance (Sixth Chamber) of 7 May 2009 in Case T-185/07;

— Order OHIM and Zafra Marroquineros, S.L. to pay the costs.

Pleas in law and main arguments

The judgment runs counter to the case-law on the interpretation of Article 8(1) of Regulation No 40/94 [1] on the Community trade mark concerning the need to take into account all the factors characterising a specific case: the Court of First Instance failed to give appropriate legal weight to the fact that the party applying for the Community trade mark has used that mark to copy the cK marks which have reputation, and through its own acts, it makes it clear, in no uncertain terms, that the letters CK constitute the most distinctive part of the Community trade mark in question.

Infringement of Article 8(5) of Regulation No 40/94 as the Court of First Instance failed to assess the reputation of the opposing marks in the context of that article.

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

Action brought on 9 July 2009 — Commission of the European Communities v Portuguese Republic

(Case C-255/09)

(2009/C 205/51)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— Declare that the Portuguese Republic has failed to fulfil its obligations under Article 49 EC, by not providing for the reimbursement of non-hospital medical expenses incurred in another Member State, other than in the circumstances laid down in Regulation (EEC) No 1408/71, [1] either in Decree-Law No 177/92 of 13 August, which lays down the conditions for reimbursement of medical expenses incurred abroad, or in any other provision of national law; or to the extent that that Decree-Law allows for the reimbursement of non-hospital medical expenses incurred in another Member State, by making such reimbursement subject to prior authorisation.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the Portuguese Republic has failed to fulfil its obligations under Article 49 EC, as interpreted by the case-law of the Court of Justice.

The effect of that case-law is that Article 49 EC applies to the situation of a patient who receives, in a Member State other than his Member State of residence, medical services which are provided for consideration.

In Portugal, Decree-Law No 177/92, which lays down the conditions for reimbursement of medical expenses incurred abroad, does not specifically provide for the reimbursement of non-hospital medical expenses incurred in another Member State, other than in the circumstances laid down in Regulation No 1408/71, or, in accordance with the interpretation put forward by the Portuguese authorities, it makes the reimbursement of those non-hospital medical expenses subject to prior authorisation, on restrictive conditions.

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971(II), p. 416).

Order of the President of the Court of 2 April 2009 — Commission of the European Communities v Republic of Cyprus

(Case C-426/08) (1)

(2009/C 205/52)

Language of the case: Greek

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

(1) OJ C 285, 8.11.2008.

Order of the President of the Court of 3 June 2009 — People's Mojahedin Organisation of Iran v Council of the European Union, United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities, Kingdom of the Netherlands

(Case C-576/08) (1)

(2009/C 205/53)

Language of the case: English

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

(1) OJ C 55, 7.3.2008.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 9 July 2009 — JSC Kirovo-Chepetsky Khimichesky Kombinat v Council

(Case T-348/05 INT)

(Procedure — Interpretation of a judgment)

(2009/C 205/54)

Language of the case: English

Parties

Applicant: JSC Kirovo-Chepetsky Khimichesky Kombinat (Kirovo-Chepetsk, Russia) (represented by: B. Evtimov, lawyer)

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

Intervener in support of the defendant: Commission of the European Communities (represented by K. Talabér-Ritz and H. van Vliet, Agents)

Re:

Application for interpretation of the judgment of the Court of First Instance of 10 September 2008 in Case T-348/05.

Operative part of the judgment

The Court:

1. *Declares that the first point of the operative part of the judgment of the Court of First Instance of 10 September 2008 in Case T-348/05 JSC Kirovo-Chepetsky Khimichesky Kombinat v Council is to be interpreted as meaning that Regulation (EC) No 945/2005 of 21 June 2005, amending Regulation (EC) No 658/2002, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia, and Regulation (EC) No 132/2001, imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96, is annulled in so far as it concerns JSC Kirovo-Chepetsky Khimichesky Kombinat;*

2. *Orders JSC Kirovo-Chepetsky Khimichesky Kombinat, the Council of the European Union and the Commission of the European Communities to bear their own costs;*

3. *Orders that the original of this judgment be appended to the original of the judgment interpreted, in the margin of which reference shall be made to this judgment.*

Judgment of the Court of First Instance of 10 July 2009 — Italy v Commission

(Case T-373/05) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Raw tobacco — Obligation to state reasons — Article 7(4) of Regulation (EC) No 1258/1999)

(2009/C 205/55)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, avvocato dello Stato)

Defendant: Commission of the European Communities (represented by C. Cattabriga and L. Visaggio, Agents)

Re:

Application for annulment in part of Commission Decision 2005/579/EC of 20 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2005 L 199, p. 84), in so far as it excludes certain expenditure incurred by the Italian Republic in the sector of raw tobacco.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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[1] OJ C 296, 26.11.2005.

Judgment of the Court of First Instance of 9 July 2009 — Peugeot and Peugeot Nederland v Commission

(Case T-450/05) ([1])

(Competition — Agreements, decisions and concerted practices — Distribution of Motor vehicles — Decision finding an infringement of Article 81 EC — Limitation of parallel exports from the Netherlands — System of remuneration of dealers and pressure — Agreement with an anti-competitive aim — Fines — Seriousness and length of the infringement)

(2009/C 205/56)

Language of the case: French

Parties

Applicant: Automobiles Peugeot SA (Paris, France) and Peugeot Nederland NV (Utrecht, Netherlands) (represented by: O. d'Ormesson and N. Zacharie, lawyers)

Defendant: Commission of the European Communities (represented by: A. Bouquet, F. Arbault and A. Whelan, initially, and A. Bouquet and M. Kellerbauer, subsequently, Agents)

Re:

Annulment of Commission Decision C (2005)3683 final of 5 October 2005 relating to proceedings under Article 81 [EC] (Cases COMP/F2-36.623, COMP/F2-36.820 and COMP/F2-37.275 — SEP and Others/Automobiles Peugeot SA) and, in the alternative, an application for the reduction of the amount of the fine imposed on the applicants by the decision.

Operative part of the judgment

The Court:

1. *Orders that the fine imposed on Automobiles Peugeot SA and Peugeot Nederland NV by Article 3 of Commission Decision C (2005) 3683 final of 5 October 2005 relating to proceedings under Article 81 [EC] (Cases COMP/F2-36.623, COMP/F2-36.820 and COMP/F2-37.275 — SEP and Others/Automobiles Peugeot SA) be fixed at EUR 44.55 million;*

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

3. *Orders Automobiles Peugeot and Peugeot Nederland to bear nine-tenths of their own costs and to pay nine-tenths of the costs incurred by the Commission of the European Communities;*

4. *Orders the Commission to bear one tenth of its own costs and to pay one tenth of the costs incurred by Automobiles Peugeot and Peugeot Nederland.*

([1]) OJ C 74, 25.03.2006.

Judgment of the Court of First Instance of 8 July 2009 — Zenab v Commission

(Case T-33/06) ([1])

(Community financial support — Programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus) — Call for proposals — Rejection of the proposal — Alleged unlawful delegation of powers which have been transferred to the Commission — Manifest errors of assessment — Obligation to state reasons — Access to documents — Action for annulment and for compensation)

(2009/C 205/57)

Language of the case: French

Parties

Applicant: Zenab SPRL (Brussels, Belgium) (represented by: J. Windey and P. De Bandt, lawyers)

Defendant: Commission of the European Communities (represented by: J.-P. Keppenne and L. Pignataro-Nolin, acting as Agents)

Re:

Action, first, for annulment of the Commission's Decision of 9 November 2005 with reference number 648599 and, secondly, for a finding that the European Community is non-contractually liable, for an order that the Commission should pay to the applicant the sum of EUR 37 807 as compensation for the costs incurred in the context of the call for proposals, the amount of the non-material loss because of damage to reputation and the amount of the material loss resulting from the delay in the implementation of the EuroVOD project, and for the appointment of an expert to assess that loss

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Zenab SPRL to pay the costs.*

([1]) OJ C 74, 25.3.2006.

Judgment of the Court of First Instance of 8 July 2009 — DSV Road v Commission

(Case T-219/07) [1]

(Customs union — Importation of diskettes originating in Thailand — Post-clearance recovery of import duties — Application for remission of import duties — Articles 220(2)(b) and 239 of Regulation (EEC) No 2913/92)

(2009/C 205/58)

Language of the case: Dutch

Parties

Applicant: DSV Road NV (Puurs, Belgium) (represented by: A. Poelmans, A. Calewaert and R. de Wit, lawyers)

Defendant: Commission of the European Communities (represented by: M. Konstantinidis and S. Schønberg, Agents, assisted by F. Tuytschaever, lawyer)

Re:

Application for annulment of the Commission decision of 24 April 2007 informing the Belgian authorities that they may proceed with post-clearance recovery of import duties on diskettes originating in Thailand and that there are no grounds for granting remission of those duties (file reference REC 05/02).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders DSV Road NV to pay the costs.*

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[1] OJ C 211, 8.9.2007.

Judgment of the Court of First Instance of 8 July 2009 — Laboratorios Del Dr. Esteve v OHIM — Ester C (ESTER-E)

(Case T-230/07) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark ESTER-E — Earlier Community figurative mark ESTER-E — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation No 207/2009))

(2009/C 205/59)

Language of the case: English

Parties

Applicant: Laboratorios Del Dr. Esteve SA (Barcelona (Spain)) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: The Ester C Company (Prescott, Arizona, United States) (represented by: initially R. Bird, Solicitor, and subsequently by H. Wistam, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 17 April 2007 (Case R 737/2006-2) concerning opposition proceedings between Laboratorios Del Dr. Esteve, SA and The Ester C Company.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Laboratorios Del Dr. Esteve, SA to pay the costs.*

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[1] OJ C 199, 25.8.2007.

Judgment of the Court of First Instance of 9 July 2009 — Ristic and Others v Commission

(Case T-238/07) [1]

(Animal Health — Protective measures — Decision 2007/362/EC — Action for annulment — No need to adjudicate — Action for damages — Principle of proportionality — Principle of protection of legitimate expectations — Duty of care — Right to property and right to carry on economic activity)

(2009/C 205/60)

Language of the case: German

Parties

Applicants: Ristic AG (Burgthann, Germany); Piratic Meeresfrüchte Import GmbH (Burgthann, Germany); Prime Catch Seafood GmbH (Burgthann, Germany); and Rainbow Export Processing, SA (represented by: H. Schmidt, lawyer)

Defendant: Commission of the European Communities (represented by: F. Erlbacher and A. Szmytkowska, Agents)

Re:

First, application for annulment of Commission Decision 2007/362/EC of 16 May 2007 amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC (OJ 2007 L 138, p. 18), and, second, application for damages.

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the application for annulment;*

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

3. *Orders Ristic AG, Piratic Meeresfrüchte Import GmbH, Prime Catch Seafood GmbH and Rainbow Export Processing, SA to pay the costs, including those of the interlocutory proceedings.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court of First Instance of 8 July 2009 — Mars v OHIM — Ludwig Schokolade (Shape of a chocolate bar)

(Case T-28/08) ([1])

(Community trade mark — Invalidity proceedings — Community three-dimensional mark — Shape of a chocolate bar — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Lack of distinctive character acquired through use — Article 7(3) of Regulation No 40/94 (now Article 7(3) of Regulation No 207/2009) — Right to be heard — Articles 73 and 74 of Regulation No 40/94 (now Articles 75 and 76 of Regulation No 207/2009))

(2009/C 205/61)

Language of the case: English

Parties

Applicant: Mars, Inc. (McLean, Virginia, United States) (represented by: A. Bryson, Barrister, and G. Mills, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Ludwig Schokolade GmbH & Co. KG (Bergisch Gladbach, Germany) (represented by: M. Knitter and R. Jacobs, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 October 2007 (Case R 1325/2006-2), relating to invalidity proceedings between Ludwig Schokolade GmbH & Co. KG and Mars, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mars, Inc. to pay the costs.*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court of First Instance of 8 July 2009 — Promat v OHIM — Prosima Comercial (PROSIMA PROSIMA COMERCIAL S.A.)

(Case T-71/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark PROSIMA PROSIMA COMERCIAL S.A. — Earlier national word mark PROMINA — Relative ground for refusal — Likelihood of confusion — Absence of similarity between the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation No 207/2009))

(2009/C 205/62)

Language of the case: German

Parties

Applicant: Promat GmbH (Ratingen, Germany) (represented initially by S. Beckmann, and subsequently by H. Alt, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Prosima Comercial, SA (Barcelona, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 November 2007 (Case R 574/2007-2) relating to opposition proceedings between Promat GmbH and Prosima Comercial, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 92, 12.4.2008.

Judgment of the Court of First Instance of 8 July 2009 — Commission v Atlantic Energy

(Case T-182/08) [1]

(Arbitration clause — Contract for financial assistance concluded under a specific programme in the field of non-nuclear energy — Failure to comply with the contract — Reimbursement of sums advanced — Statutory set-off — Procedure for judgment by default)

(2009/C 205/63)

Language of the case: English

Parties

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

Defendant: Atlantic Energy Ltd (Truro, Cornwall, United Kingdom)

Re:

Action brought by the Commission under Article 238 EC for reimbursement of an advance paid by the European Community, together with interest, under contract BU 183/95 UK/AT.

Operative part of the judgment

The Court:

1. *Orders Atlantic Energy Ltd to reimburse to the Commission of the European Communities the principal sum of EUR 226 010, together with the interest provided for under Article 23.1 of the general conditions of contract BU 183/95 UK/AT in respect of the periods between 1 June 1996 and 28 February 2002 and between 16 July 2002 and 31 May 2008, less the sum of EUR 3 610,53, the final sum being increased by the interest provided for under the abovementioned Article 23.1 of the general conditions as from 1 June 2008 until the debt is discharged in full.*

2. *Orders Atlantic Energy to pay the costs.*

[1] OJ C 171, 5.7.2008.

Judgment of the Court of First Instance of 8 July 2009 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (ALASKA)

(Case T-225/08) [1]

(Community trade mark — Invalidity proceedings — Community figurative mark ALASKA — Absolute ground for refusal — Lack of descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2009/C 205/64)

Language of the case: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, 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: Schwarzbräu GmbH (Zusmarshausen, Germany) (represented by: L. Schlarmann, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 April 2008 (Case R 877/2004-4) concerning invalidity proceedings between Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH and Schwarzbräu GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH to bear its own costs and those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders Schwarzbräu GmbH to bear its own costs.*

[1] OJ C 223, 30.8.2008.

Judgment of the Court of First Instance of 8 July 2009 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (Alaska)

(Case T-226/08) [1]

(Community trade mark — Invalidity proceedings — Community word mark ALASKA — Absolute ground for refusal — Lack of descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2009/C 205/65)

Language of the case: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, 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: Schwarzbräu GmbH (Zusmarshausen, Germany) (represented by: L. Schlarmann, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 April 2008 (Case R 1124/2004-4) concerning invalidity proceedings between Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH and Schwarzbräu GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH to bear its own costs and those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders Schwarzbräu GmbH to bear its own costs.*

[1] OJ C 223, 30.8.2008.

Judgment of the Court of First Instance of 8 July 2009 — Procter & Gamble v OHIM — Laboratorios Alcala Farma (oli)

(Case T-240/08) [1]

(Community trade mark — Opposition proceedings — Application for the figurative Community mark oli — Earlier Community word marks OLAY — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 [now Article 8(1)(b) of Regulation (EC) No 207/2009])

(2009/C 205/66)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: Laboratorios Alcala Farma SL (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 April 2008 (Case R 1481/2007-2), relating to opposition proceedings between The Procter & Gamble Company and Laboratorios Alcala Farma, SL

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders The Procter & Gamble Company to pay the costs.*

[1] OJ C 209, 15.8.2008.

Judgment of the Court of First Instance of 9 July 2009 — Melli Bank v Council

(Joined Cases T-246/08 and T-332/08) ([1])

(Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran to prevent nuclear proliferation — Freezing of funds — Actions for annulment — Judicial review — Proportionality — Equal treatment — Obligation to state reasons — Plea of illegality — Article 7(2)(d) of Regulation (EC) No 423/2007)

(2009/C 205/67)

Language of the case: English

Parties

Applicant: Melli Bank plc (London, United Kingdom) (represented initially by R. Gordon QC, J. Stratford and M. Hoskins, Barristers, R. Gwynne and T. Din, Solicitors, and subsequently by D. Anderson, QC, M. Hoskins, S. Gadhia, D. Murray and M. Din, Solicitors)

Defendant: Council of the European Union (represented by M. Bishop and E. Finnegan, Agents)

Interveners in support of the defendant: French Republic (represented by G. de Bergues, E. Belliard and L. Butel, Agents); United Kingdom of Great Britain and Northern Ireland (represented by V. Jackson, Agent, assisted by S. Lee, Barrister); and Commission of the European Communities (represented by S. Boelaert and P. Aalto, Agents)

Re:

Application in Joined Cases T-246/08 and T-332/08, for annulment of paragraph 4 of Table B of the Annex to Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2008 L 163, p. 29) in so far as it relates to Melli Bank plc, and, in Case T-332/08, if necessary, a declaration that Article 7(2)(d) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Melli Bank plc to pay, in addition to its own costs, those incurred by the Council of the European Union, including those incurred in the proceedings for interim measures;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland, the French Republic and the Commission of the European Communities to bear their own costs, including those incurred in the proceedings for interim measures.*

([1]) OJ C 197, 2.8.2008.

Judgment of the Court of First Instance of 9 July 2009 — Biotronik v OHIM (BioMonitor)

(Case T-257/08) ([1])

(Community trade mark — Application for Community word mark BioMonitor — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2009/C 205/68)

Language of the case: German

Parties

Applicant: Biotronik GmbH & Co. KG (Berlin, Germany) (represented initially by U. Sander and R. Böhm, and subsequently by R. Böhm, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 24 April 2008 (Case R 466/2007-4) concerning an application for registration of the word sign BioMonitor as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Biotronik GmbH & Co. KG to pay the costs.*

([1]) OJ C 223, 30.8.2008.

Order of the Court of First Instance of 30 June 2009 — Impala v Commission

(Case T-464/04) ([1])

(Competition — Concentration — Sony BMG joint venture — Action becoming devoid of purpose — No need to adjudicate)

(2009/C 205/69)

Language of the case: English

Parties

Applicant: Independent Music Publishers and Labels Association (Impala, international association) (Brussels, Belgium) (represented by: S. Crosby and J. Golding, Solicitors, and I. Wekstein-Steg, lawyer)

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

Interveners in support of the defendant: Bertelsmann AG (Gütersloh, Germany) (represented by: P. Chappatte and J. Boyce, Solicitors); Sony BMG Music Entertainment BV (Vianen, Netherlands); and Sony Corporation of America (NewYork, New York, United States) (represented by N. Levy, Barrister, and by R. Snelders and T. Graf, lawyers)

Re:

Application for annulment of Commission Decision 2005/188/EC of 19 July 2004 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case No COMP/M.3333 — Sony/BMG) (OJ 2005 L 62, p. 30).

Operative part of the order

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

2. *Each party is to bear its own costs, both before the Court of First Instance and before the Court of Justice.*

([1]) OJ C 6, 8.1.2005.

Order of the Court of First Instance of 26 June 2009 — Marcuccio v Commission

(Case T-114/08 P) ([1])

(Appeal — Staff cases — Officials — Reasonable time for the submission of a claim for compensation — Lateness — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2009/C 205/70)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 14 December 2007 in Case F-21/07 *Marcuccio* v *Commission*, not yet published in the ECR, seeking the annulment of that order

Operative part of the order

The Court:

1. *dismisses the appeal;*

2. *orders Mr Luigi Marcuccio to bear his own costs and to pay those incurred by the Commission of the European Communities in the present case.*

([1]) OJ C 107, 26.4.2008.

Order of the Court of First Instance of 30 June 2009 — Securvita v OHIM (Natur-Aktien-Index)

(Case T-285/08) ([1])

(Community trade mark — Application for the Community word mark Natur-Aktien-Index — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Request for an amendment — Manifest inadmissibility)

(2009/C 205/71)

Language of the case: German

Parties

Applicant: Securvita — Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH (Hamburg, Germany) (represented by: M. van Eendenburg, C. Uhlig and J. Nabert, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 May 2008 (Case R 525/2007-4), concerning an application for the registration of the word sign Natur-Aktien-Index as a Community trade mark

Operative part of the judgment

The Court:

1. *dismisses the action as manifestly inadmissible;*

2. *orders Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH to pay the costs.*

([1]) OJ C 247, 27.9.2008.

Order of the President of the Court of First Instance of 2 July 2009 — Insula v Commission

(Case T-246/09 R)

(Application for interim measures — Debit notes — Application for suspension of operation — Failure to comply with formal requirements — Inadmissibility)

(2009/C 205/72)

Language of the case: French

Parties

Applicant: Conseil scientifique international pour le développement des îles (Insula) (Paris, France) (represented by: P. Marsal and J.-D. Simonet, lawyers)

Defendant: Commission of the European Communities

Re:

Application for suspension of the operation of two debit notes requiring the repayment of sums of money paid to the applicant under subsidy contracts

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 19 May 2009 — Balfe and Others v Parliament

(Case T-219/09)

(2009/C 205/73)

Language of the case: French

Parties

Applicant: Richard Balfe (Newmarket, United Kingdom), C (Milan, Italy), C (Madrid, Spain), C (Lancashire, United Kingdom), C (Gnobkummerfeld, Germany), C (Longré, France), C (Saint-Martin de Crau, France), C (Bregenz, Austria), C (West Yorkshire, United Kingdom), C (Marseille, France), C (Rudsebheim, Germany), C (Devon, United Kingdom), C (Barcelona, Spain), C (Paris, France), C (Wexford, Ireland), C (Bozen, Italy), C (Madrid), C (Porto, Portugal), C (Iaf Nennhau, United Kingdom), C (Milan), C (Limonest, France), C (Colares-Sintra, Portugal), C (Benfica do Ribatejo, Portugal), C (Saint-Étienne, France), C (Cournon-d'Auvergne, France) C (Lutterworth, Leics, United Kingdom), C (Cumbria, United Kingdom), C (Oxfordshire, United Kingdom), C (Bratislava, Slovakia), C (Poland), C (Warsaw, Poland), C (Radom, Poland), C (Boulogne-Billancourt, France), C (Helsinki, Finland), C (Lyon, France), C (Athens, Greece), C (Funchal, Portugal), C (London, United Kingdom), C (Le Val-d'Ajol, France), C (Tallinn, Estonia), C (Glasgow, United Kingdom), C (Riom, France), C (Hampshire, United Kingdom), C (Coventry, United Kingdom), C (Helsinki), C (Cracow, Poland), C (Pamplona, Spain), C (Scotland, United Kingdom), C (Lisbon, Portugal), C (Lisbon), C (Paris), C (Budapest, Hungary), C (Maia, Portugal), C (Bielsko-Biala, Poland), C (Wetherby, United Kingdom), C (La Possession, France), C (Cornwall, United Kingdom), C (Epernay, France), C (Bolton, United Kingdom), C (Kępno, Poland), C (Amsterdam, Netherlands), C (Palermo, Italy), C (Kent, United Kingdom), C (Bedfordshire, United Kingdom) C (Warsaw), Pension Fund — Members of the European Parliament (Luxembourg, Luxembourg) (represented by: S Orlandi, A Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Parliament

Form of order sought

— annul the decision adopted by the Bureau of the Parliament of 9 March and 3 April 2009 amending the Additional Voluntary Pension Scheme for Members of the European Parliament;

— order the Parliament to pay the costs.

Pleas in law and main arguments

By the present action, the applicants seek the annulment of the decisions of the Bureau of the European Parliament of 9 March and 3 April 2009 amending the rules on the Additional (Voluntary) Pension Scheme in Annex VIII of the Rules governing the payment of expenses and allowances to Members of the European Parliament. The amendments essentially concern the withdrawal of the possibility to take early retirement from age 50 and the possibility to receive the pension as a lump sum, and the raising of the retirement age from 60 to 63 years.

In support of their action, the applicants rely as to the substance on four pleas:

— the Parliament is not competent to unilaterally amend the terms of the contract governing the terms and conditions for joining the Additional Voluntary Pension Scheme;

— infringement of acquired rights and the principles of equal treatment, proportionality and legal certainty by failing to comply, in particular, with the clear wording of the Statute of Members of the European Parliament and by failing to provide for any transitional measures;

— errors in the grounds and reasons in the statements of reasons of the contested acts, as far as concerns the legal regime of that specific, supplementary and optional type of pension scheme as regards the management and the financial position of the pension fund;

— infringement of the principle that obligations should be performed in good faith and that purely arbitrary clauses are null and void by unilaterally and retroactively amending the terms of the contract and by failing to provide for compensation.

Action brought on 5 June 2009 — CEVA v Commission

(Case T-224/09)

(2009/C 205/74)

Language of the case: French

Parties

Applicant: Centre d'étude et de valorisation des algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— principally, declare that no contractual link exists between the European Commission and CEVA (European Research Center for Algae) and, consequently,

— annul enforcement order No 3230900440 of the European Commission of 6 April 2009;

— in the alternative, find that no statement of reasons has been provided for enforcement order No 3230900440 of the European Commission of 6 April 2009;

— declare that there is a risk of unjust enrichment of the Commission in the event that CEVA reimburses the sum of EUR 179 896 together with default interest;

— consequently, annul enforcement order No 3230900440 of the European Commission of 6 April 2009.

Pleas in law and main arguments

By this action, the applicant seeks annulment of the enforcement order by which the Commission demanded reimbursement of all the payments made on account to the applicant in the framework of contract PROTOP No EVK3-CT-2002-30004 relating to a research and technological development project.

In support of its action, the applicant puts forward three pleas alleging:

— that the enforcement order is inadmissible since no contractual link exists between the applicant and the Commission;

— failure to provide a sufficient statement of reasons, since the Commission relied on an alleged infringement of the contractual obligations by the applicant without however setting out the legal and factual reasons in support of that claim;

— infringement of the principle of unjust enrichment, since the reimbursement in full of the sum demanded by the Commission means that it would be unjustly enriched insofar as it has obtained work and studies by the applicant without however paying for them to be carried out.

Action brought on 12 June 2009 — Access Info Europe v Council

(Case T-233/09)

(2009/C 205/75)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer and J. Blockx, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul the contested decision;

— order the Council to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the Court of First Instance, including the costs of any intervening parties.

Pleas in law and main arguments

The applicant seeks, pursuant to Regulation (EC) No 1049/2001 [1], the annulment of the Council's decision to refuse full access to document 16338/08, a note from the General Secretariat to the Working Party on Information concerning the Proposal for a Regulation of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents. The Council has allegedly only granted the applicant access to a redacted version of this document, excluding those parts which enable the delegations making proposals for modifications to be identified.

The applicant submits that the contested decision should be annulled on the following grounds:

First, the applicant claims that the Council breached Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 in that

(a) it failed to show how the disclosure of the names of the delegations would seriously undermine the institution's decision-making process;

(b) it did not substantiate the risk that the delegations' views would cease to be submitted in writing nor how this would seriously undermine the institution's decision-making process; and in that

(c) it failed to take into account the overriding public interest in disclosure of the identity of the national delegations.

Second, the applicant submits that the Council violated the duty to state reasons as required by Article 253 EC and Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

Action brought on 16 June 2009 — Nikolaou v Court of Auditors

(Case T-241/09)

(2009/C 205/76)

Language of the case: Greek

Parties

Applicant: Kalliopi Nikolaou (Athens, Greece) (represented by: V. Christianos)

Defendant: Court of Auditors

Form of order sought

The Court is asked to:

— order the Court of Auditors to compensate Mrs Nikolaou for the non-material damage she has suffered by the following means:

  — by issuing a formal communication, cooperating with Mrs Nikolaou as to its content, which will be notified to her as well, to all the Community authorities, in particular to the European Parliament, the European Commission and the other Community institutions and bodies, concerning the fact that Mrs Nikolaou has been cleared of the allegations against her;

  — by issuing a formal communication for publication in those newspapers in Luxembourg, Germany, Greece, France, Spain and Belgium which published negative comments on Mrs Nikolaou, the source of which was the Court of Auditors, and in the European Voice, concerning the fact that the applicant has been cleared of the allegations against her;

— in the alternative, if the Court of Auditors does not restore Mrs Nikolaou's public image by the above means, order it to pay her the amount of EUR 100 000 as compensation for non-material damage, together with interest from the date of notification to it of her Request for compensation to the date of settlement, which Mrs Nikolaou undertakes to use to ensure the above publication and communications;

— order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the non-material damage she suffered owing to the proceedings before the Luxembourg judicial authorities the amount of EUR 40 000, together with interest from the date of notification to it of her Request for compensation to the date of settlement.

— order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the financial damage to which she was subjected owing to the proceedings before the Luxembourg judicial authorities, specifically before the Juge d'instruction and the Tribunal d'arrondissement de Luxembourg, the sum of EUR 57 771,40 in respect of the fees of her lawyer, Maître Hoss, for appearing in the above, and the amount of EUR 4 000 in respect of her travelling expenses to appear in the above, more specifically EUR 1 500 to appear before the Juge d'instruction and EUR 2 500 to appear before the Tribunal d'arrondissement de Luxembourg, together with interest on all the above sums from 14 April 2009,the date of notification to the Court of Auditors of her Request for compensation to the date of settlement;

— order the Court of Auditors to pay Mrs Nikolaou's costs in these proceedings.

Pleas in law and main arguments

The applicant maintains that the Court of Auditors flagrantly infringed specific provisions which confer rights on individuals and the fundamental rights which the Court of Auditors should respect in exercising its powers.

First, the applicant maintains that the Court of Auditors flagrantly infringed Article 4 of Regulation No 45/2001, (1) Article 2 of Decision 99/50 of the Court of Auditors and was in breach of its duty to provide assistance, because it allowed various allegations against Mrs Nikolaou to be leaked to third parties before any formal investigation had been conducted. The Court of Auditors took no steps, in the applicant's view, to prevent those leaks, nor, moreover, at any later point was it concerned to review the allegations and to withdraw them, the result being that significant non-material damage was caused to the applicant.

Secondly, the Court of Auditors flagrantly infringed Articles 2 and 4 of Decision 99/50, the applicant's rights of defence, and the principle of impartiality of the investigation, in conjunction with the principle of sound administration, in its conduct of the preliminary investigation, to the detriment of the applicant. That conduct caused non-material damage and significant financial damage to the applicant, because on the basis of the evidence in the investigation, the applicant was referred to the judicial authorities of Luxembourg and subjected to considerable expense.

Thirdly, the Court of Auditors was in flagrant breach of its duty to provide assistance and the principle of sound administration, because it did not produce evidence to the Luxembourg authorities which it had available and which was of decisive importance for clearing the applicant of the charges against her. The applicant adds that that evidence concerned the question of staff leave in the Court of Auditors and, if it had been transmitted by the latter, would have prevented her referral to the investigating authorities and the Luxembourg criminal court and would have led to restoring her honour and her reputation.

Fourthly, according to the applicant, the Court of Auditors was in flagrant breach of the principle of impartiality and sound administration in deciding to refer the applicant's case to the courts. That conduct caused even greater non-material damage to the applicant.

Fifthly, according to the applicant's arguments, the Court of Auditors was in flagrant breach of its duty to provide assistance in failing to adopt a formal decision clearing the applicant, and omitting to restore Mrs Nikolaou's good name after her acquittal. That omission resulted in doubts persisting as to Mrs Nikolaou's innocence and further non-material damage being caused to her.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1.

Action brought on 24 June 2009 — Ralf Schräder v CPVO (Lemon Symphony)

(Case T -242/09)

(2009/C 205/77)

Language in which the application was lodged: German

Parties

Applicant: Ralf Schräder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal of OHIM: Jørn Hansson (Søndersø, Denmark)

Form of order sought

— Annul the decision of the Board of Appeal of CPVO of 23 January 2009;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Lemon Symphony

Proprietor of the mark or sign cited in the opposition proceedings: Jørn Hansson.

Decision of the Community Plant Variety Office, appealed against before the Board of Appeal: Refusal to annul Community plant variety right of for Lemon Symphony in accordance with Article 20(1)(a) of Council Regulation (EC) No 2100/94 ([1])

Appellant before the Board of Appeal: the applicant

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law:

— Infringement of Article 76 of Regulation No 2100/94 and the generally recognised principles of procedure within the meaning of Article 81 of Regulation No 2100/94 insofar as the Board of Appeal ruled in the contested decision without sufficiently investigating the facts of the case;

— Infringement of Article 20(1)(a) and Article 7 of Regulation No 2100/94 insofar as the Board of Appeal apparently wrongly assumed that the applicant could not fulfil the conditions referred to in Article 20(1)(a) and accordingly, failed to appreciate the scope of that provision;

— Infringement of Article 75 of Regulation No 2100/94 insofar as the Board of Appeal based its ruling on grounds on which the applicant did not have an opportunity to express itself before the decision;

— Infringement of Article 63(1) and (2) of Regulation No 1239/95 ([2]) insofar as the essentials of the oral proceedings were not properly recorded.

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

([2]) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).

Action brought on 18 June 2009 — Fedecom v Commission

(Case T-243/09)

(2009/C 205/78)

Language of the case: French

Parties

Applicant: Fédération de l'Organisation Économique Fruits et Légumes (Fedecom) (Paris, France) (represented by: C. Galvez, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision on the basis of the fourth paragraph of Article 230 EC;

— Order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 203 final of 28 January 2009, [1] by which the Commission had declared incompatible with the common market the State aid granted by the French Republic to fruit and vegetable producers in the context of 'contingency plans' aimed at facilitating the marketing of agricultural products harvested in France and had instructed the French Republic to recover the aid in question.

In support of its claim, the applicant raises three pleas in law alleging:

— disregard of the concept of State aid within the meaning of Article 87(1) EC, since the Commission took the view that the voluntary contributions paid by the producers in the context of contingency plans (sectoral contributions) constitute State aid;

— disregard of the provisions of Article 87(3) EC, since, without carrying out an in-depth analysis of each contingency plan, the Commission took the view that the measures implemented as part of the contingency plans were not compatible with the common market;

— breach of the principle of legitimate expectations, since the Commission's lack of action for a period of 10 years, when it must of necessity have been aware of the existence of the contingency plans, gave rise to expectations on the part of the producers as to the regularity of the contingency plans.

[1] OJ L 127, p. 11.

Action brought on 16 June 2009 — Evropaïki Dynamiki v Commission

(Case T-247/09)

(2009/C 205/79)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision to reject the bid of the applicant, filed in response to the open Call for Tenders AO 10186 for the 'Production and dissemination of the Supplement to the Official Journal of the European Union: TED website, OJS DVD-ROM and related Offline and Online media' (OJ 2009/S 2-001445), communicated to the applicant by a letter dated 7 April 2009, and all further decisions of the Commission including the one to award the contract to the successful contractor;

— order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 1 490 215,58;

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

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision to reject its bid submitted in response to a call for an open tender for services of production and dissemination of the Supplement to the Official Journal of the European Union: TED website, OJS DVD-ROM and related Offline and Online media (AO 10186) and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward following pleas in law.

First, the applicant claims that the defendant committed various and manifest errors of assessment and that it refused to provide any justification or explanation to the applicant in breach of the financial regulation [1] and its implementing rules as well as in breach of directive 2004/18 [2] and of Article 253 EC. It states that the Commission never informed the applicant on the relative merits of the winning tenderer as it was obliged, despite the applicant's written request. In the applicant's opinion the comments given by the Commission were vague, unsubstantiated and telegraphic and do not constitute reasonable motivation. The applicant further argues that the Commission corrected ex-post the motivation of the contested decision after the evaluation committee reviewed its report and decided to remove a comment regarding the successful tenderer.

Second, the applicant claims that the defendant infringed Articles 106 and 107 of the financial regulation as well as the principles of transparency and of non-discrimination by not excluding tenderers relying on work performed in non WTO/GPA countries; should it allow this participation, the applicant contends that it should proceed on a fair, transparent and non-discriminatory manner, clarifying the selection criteria it would use for excluding certain companies or accepting others.

Third, the applicant claims that the defendant committed manifest errors of assessment in respect of the applicant's bid in comparison with other tenderers and that it failed to state reasons as the negative considerations given by the evaluation committee in respect to the applicant's bid were vague and unsubstantiated.

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

[2] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

Action brought on 26 June 2009 — Wilo SE v OHIM (shape of a motor casing)

(Case T-253/09)

(2009/C 205/80)

Language in which the application was lodged: German

Parties

Applicant: Wilo SE (Dortmund, Germany) (represented by G. Braun)

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

Form of order sought

— Annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 March 2009 in Case R 1184/2008-1;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a three-dimensional mark representing the casing of a motor of a heating pump, for goods in Classes 7 and 11 (Application No 5 805 692)

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 Council Regulation (EC) No 40/94 (now Article 7(1)(b) of Council Regulation (CE) No 207/2009 [1])as the mark applied for has the requisite distinctive character

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 26 June 2009 T-254/09 — Wilo SE v OHI (Representation of a green casing)

(Case T-254/09)

(2009/C 205/81)

Language in which the application was lodged: German

Parties

Applicant: Wilo SE (Dortmund, Germany) (represented by G. Braun)

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

Form of order sought

— Annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 March 2009 in Case R 1196/2008-1;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a figurative mark, which represents a green casing

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 Council Regulation (EC) No 40/94 (now Article 7(1)(b) of Council Regulation (CE) No 207/2009 ([1])) as the mark applied for has the requisite distinctive character

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 6 July 2009 — i-content Ltd Zweigniederlassung Deutschland v OHIM (BETWIN)

(Case T-258/09)

(2009/C 205/82)

Language in which the application was lodged: German

Parties

Applicant: i-content Ltd Zweigniederlassung Deutschland (Berlin, Germany) (represented by A. Nordermann, lawyer)

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

Form of order sought

— Annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2009 in appeal case R 1528/2008-4 concerning Community trade mark application No 006849641 — word mark: BETWIN — and the earlier decision of the Office of 10 September 2008 concerning Community trade mark application No 006849641 — word mark: BETWIN;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: word mark 'BETWIN' for services in Classes 35, 38 and 41 (application No 6849641)

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 Council Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Council Regulation (CE) No 207/2009 ([1])) as the mark applied for has the requisite distinctive character and there is no need to maintain it in the public domain; Infringement of Article 79 of Regulation (EC) No 207/2009, the principle of equal treatment in connection with Articles 6 and 14 ECHR; infringement of Article 49 EC

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 6 July 2009 — Defense Technology v OHIM — DEF-TEC Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)

(Case T-262/09)

(2009/C 205/83)

Language in which the application was lodged: English

Parties

Applicants: Defense Technology Corporation of America (Jacksonville, United States) (represented by: R. Kunze, lawyer and Solicitor)

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

Other party to the proceedings before the Board of Appeal: DEF-TEC Defense Technology GmbH (Frankfurt/Main, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2009 in case R 493/2002-4 (II); and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'FIRST DEFENSE AEROSOL PEPPER PROJECTOR', for goods in classes 5, 8 and 13 — application No 643 668

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

Mark or sign cited: United States trade mark registration for the word mark 'FIRST DEFENSE' for goods in class 13; Two United States trade mark registrations of figurative marks for goods in class 13; An earlier well-known mark in Belgium, Germany and France 'FIRST DEFENSE'; An earlier well-known mark in Belgium, Germany and France 'FIRST DEFENSE AND DESIGN'; An earlier non-registered work mark 'FIRST DEFENSE' protected in Germany and France; An earlier non-registered mark in Belgium, Germany and France 'FIRST DEFENSE AND DESIGN'; A trade name 'FIRST DEFENSE', protected in Germany

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and rejected the opposition

Pleas in law: Infringement of Article 8(3) of Council Regulation 207/2009 as the Board of Appeal did not properly apply the said provision and, moreover, wrongly rendered a decision based on a flawed understanding of the facts presented; Infringement of Articles 65, 75 and 76 of Council Regulation 207/2009 as the Board of Appeal failed to take the necessary measures to comply with the judgment of the Court of First Instance of 6 September 2006 in case T-6/05 DEF-TEC Defense Technology v OHIM — Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)

Action brought on 7 July 2009 — Mannatech v OHIM (BOUNCEBACK)

(Case T-263/09)

(2009/C 205/84)

Language of the case: English

Parties

Applicant(s): Mannatech, Inc. (Coppell, United States) (represented by R. Niebel and C. Steuer, lawyers)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 March 2009 in case R 100/2009-1; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark "BOUNCEBACK" for goods in class 5

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (2) of Council Regulation 207/2009 as the Board of Appeal erred in its application of the legal standards laid down in the said legal provisions.

Action brought on 10 July 2009 — Serrano Aranda v OHIM — Burg Groep (LE LANCIER)

(Case T-265/09)

(2009/C 205/85)

Language in which the application was lodged: Spanish

Parties

Applicant: Enrique Serrano Aranda (Murcia, Spain) (represented by: J. Calderón Chavero and T. Villate Consonni, 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: Burg Groep BV (Bergen, Netherlands)

Form of order sought

— Annulment of the decision of the First Board of Appeal of OHIM of 27 March 2009 in Case R-366/2008-1.

— On the basis of that annulment, uphold the opposition and implement the legal consequences arising therefrom by rejecting Community trade mark application 3 343 365 in its entirety.

— Order OHIM and any intervening parties to pay the costs of these proceedings, should they be opposed, and reject the forms of order which OHIM and the intervening parties seek.

Pleas in law and main arguments

Applicant for a Community trade mark: Burg Groep B.V.

Community trade mark concerned: Figurative mark containing the word component 'LE LANCIER' (Application No 3 343 365) for goods in Classes 29 and 30.

Proprietor of the mark or sign cited in the opposition proceedings: Enrique Serrano Aranda.

Mark or sign cited in opposition: Spanish word mark 'EL LANCERO' No 838 740 for goods in Class 30; Spanish figurative mark No 941 979 containing the word component 'EL LANCERO' for goods in Class 30; Spanish word mark No 943 767 'EL LANCERO' for goods in Class 31, and Spanish word mark No 1 806 835 'El LANCERO' for goods in Class 29.

Decision of the Opposition Division: The opposition was rejected.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Misapplication of Article 8(1)(b) of Council Regulation (EC) No 207/2009 on the Community trade mark.

Order of the Court of First Instance of 1 July 2009 — Du Pont de Nemours (France) and Others v Commission

(Case T-467/07) ([1])

(2009/C 205/86)

Language of the case: English

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

([1]) OJ C 51, 23.2.2008.

Order of the Court of First Instance of 2 July 2009 — Imperial Chemical Industries v OHIM (FACTORY FINISH)

(Case T-487/07) ([1])

(2009/C 205/87)

Language of the case: English

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

([1]) OJ C 51, 23.2.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 11 May 2009 — Schopphoven v Commission

(Case F-48/09)

(2009/C 205/88)

Language of the case: French

Parties

Applicant: Nikolaus Schopphoven (Zemmer, Germany) (represented by: S. Rodrigues, C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of EPSO's decision not to include the applicant on the reserve list for open competition EPSO/AD/117/08.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the European Personnel Selection Office (EPSO) not to include the applicant's name on the reserve list for competition EPSO/AD/117/08 and, so far as necessary, EPSO's decisions rejecting the requests for reexamination made by the applicant;

— annul the reserve list for competition EPSO/AD/117/08;

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

Action brought on 19 May 2009 — Petrilli v Commission

(Case F-51/09)

(2009/C 205/89)

Language of the case: French

Parties

Applicant: Alessandro Petrilli (Grottammare, Italy) (represented by: J.-L. Lodomez, J. Lodomez, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision concerning the fixing of the applicant's main place of residence.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 19 February 2009 by which the appointing authority refused to fix the applicant's main residence in Italy;

— order the Commission to pay, on the sums due by virtue of the retroactive application of the correction coefficient for Italy on his pension, the resettlement allowance and the doubling of the family allowance, from 1 July 2007, interest on the basis of the rate fixed by the European Central Bank for its principal refinancing operations applicable for the period in question, increased by two points;

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

Action brought on 4 June 2009 — Marcuccio v Commission

(Case F-56/09)

(2009/C 205/90)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the Commission's decision to reject the applicant's request seeking, first, compensation for the damage suffered as a result of the fact that Commission staff entered his official lodgings in Luanda on 8 April 2002 and, second, an order that copies of the photographs taken on that occasion be provided and that all documentation relating to that event be destroyed.

Form of order sought

— declare that there is no legal basis for or, in the alternative, annul the decision rejecting the request of 24 April 2008;

— in so far as necessary, declare that there is no legal basis for or, in the alternative, annul the note of 11 September 2008;

— in so far as necessary, declare that there is no legal basis for or, in the alternative, annul the act rejecting the complaint of 3 November 2008;

— confirm that, on 8 April 2002, Commission staff entered the applicant's lodgings, took photographs and made a record of certain items, and confirm and declare that such acts are unlawful;

— order the Commission to provide the applicant in writing with a list of each individual item of documentation that is relevant to the above acts;

— order the Commission to arrange for the documentation, including the photographs, to be notified to the applicant in writing;

— order the Commission to arrange for the physical destruction of the documentation and to notify the applicant of that destruction;

— order the Commission to pay to the applicant by way of compensation for the damage thereby arising the sum of EUR 225 000 or such greater or lesser sum as the Tribunal may consider fair and just, being: (a) EUR 100 000 for the damage arising as a result of the unlawful entering of his lodgings; (b) EUR 100 000 for the damage arising as a result of photographs being taken unlawfully; (c) EUR 25 000 for the damage arising as a result of the unlawful act of taking a record of certain items forming part of the applicant's personal effects;

— order the Commission to pay to the applicant, with effect from the date following that on which the request of 24 April 2008 was received by the Commission until actual payment of the sum of EUR 225 000, interest on that sum at the rate of 10 % per annum, with annual capitalisation;

— order the Commission to pay to the applicant by way of compensation for the damage suffered by the applicant resulting from the failure to provide the list of documentation, with effect from tomorrow until the day on which the list of documentation is provided to the applicant, the sum of EUR 100 per day, or such greater or lesser sum as the Tribunal may consider fair and just, to be paid on the first day of the month following delivery of judgment in this case as regards the sums already accrued in respect of the period between tomorrow and the last day of the month in which judgment is delivered in this case and on the first day of each month following that in which the judgment is delivered in respect of rights accrued during the previous month;

— order the Commission to pay to the applicant, by way of compensation for the damage suffered by the applicant resulting from the failure physically to destroy the documentation, with effect from tomorrow until the day on which the documentation is physically destroyed, the sum of EUR 100 per day, or such greater or lesser sum as the Tribunal may consider fair and just, to be paid on the first day of the month following delivery of judgment in this case as regards the sums already accrued in respect of the period between tomorrow and the last day of the month in which judgment is delivered in this case and on the first day of each month following that in which the judgment is delivered in respect of rights accrued during the previous month;

— order the Commission to repay to the applicant all costs, fees and other expenses incurred in the proceedings, including those relating to the preparation of an expert's report;

— order the Commission to bear the costs relating to the preparation of the report of any expert it may instruct.

Action brought on 13 June 2009 — De Nicola v EIB

(Case F-59/09)

(2009/C 205/91)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

First, annulment of the measure adopted by the Appeals Committee on 14 November 2008 or the amendment of that measure in so far as it attributes to the applicant, instead of to his lawyer, the objection made to the three members of the committee. Second, annulment of the promotions decided upon on 29 April 2008, in so far as the applicant was not considered for promotion, and all related measures. Lastly, a declaration that the applicant was the victim of mobbing and an order that the defendant desist from such activity.

Form of order sought

— Annul the measure of the Appeals Committee and, in any event, amend it in so far as it attributes to Mr De Nicola (instead of to his lawyer) the objection made to the three members of the committee and in so far as it states that the grounds of the objection were 'nothing more than a simple challenge to the decision of 14 December 2007', rather than the result of the admissions and abandonment of his claims which those three members wrongly attributed to Mr De Nicola;

— annul the promotions of 29 April 2008 on the basis that they were decided upon without the applicant being considered for promotion, and all related, consequent and prior measures, including the assessment for 2007 and, if appropriate, declare that the restrictions imposed by the instructions given by the HR Directorate are unlawful;

— declare that the applicant was the victim of mobbing and, accordingly,

— order the EIB to desist from the mobbing and to pay compensation for the consequent personal, material and non-material damage suffered by the applicant and to pay the costs of the proceedings together with interest and monetary revaluation of the sums awarded.

Action brought on 24 June 2009 — Birkhoff v Commission

(Case F-60/09)

(2009/C 205/92)

Language of the case: Italian

Parties

Applicant: Gerhard Birkhoff (Weitnau, Germany) (represented by: C. Inzillo, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's request seeking the extension of the application of Article 2(5) of Annex VII of the Staff Regulations for the benefit of his daughter with effect from 1 January 2009 and an order that the Commission pay the sums due under that provision with effect from 1 January 2009.

Form of order sought

— Declare to be unlawful and, accordingly, annul the decision of the appointing authority of 2 April 2009 in so far as it is unlawful and manifestly unfounded in fact and in law, and any subsequent act and/or decision taken prior to that decision, which is connected or consequential to it, and in particular the decision of 14 November 2008 issued by PMO4;

— order the Commission to pay in full the sums not paid to the applicant since 1 January 2009, such sums to take account of indexation, together with interest;

— order the defendant to pay the costs.

Action brought on 26 June 2009 — Donati v ECB

(Case F-63/09)

(2009/C 205/93)

Language of the case: French

Parties

Applicant: Paola Donati (Frankfurt on Main, Germany) (represented by: L. Levi, M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the ECB's decision not to take further action on the claims relating to alleged psychological harassment suffered by the applicant, and compensation for the non-material harm suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the Board of Directors of 16 December 2008 in so far as it involves a threat and an attempt to intimidate the applicant;

— annul the decision of the Board of Directors of 16 December 2008 in so far as it does not contain a decision on the result of the administrative investigation and on the final outcome of the applicant's complaint; in the alternative, annul the Board of Director's decision of 16 December 2008 in so far as it contains an 'implied' decision to take no further action on the applicant's complaint and not to adopt subsequent measures, in particular not to open disciplinary proceedings;

— annul, so far as is necessary, the decision of 16 April 2008 rejecting the applicant's 'special appeal';

— order the defendant to pay compensation for the non-material harm suffered, assessed on equitable principles at EUR 10 000;

— order the European Central Bank to pay the costs.

Action brought on 9 July 2009 — Saracco v ECB

(Case F-66/09)

(2009/C 205/94)

Language of the case: French

Parties

Applicant: Roberta Saracco (Arona, Italy) (represented by: F. Parrat, lawyer)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the ECB's decision refusing to extend the applicant's leave on personal grounds.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision to refuse to allow the applicant to take leave on personal grounds from 1 November 2008;

— so far as necessary, annul the decisions refusing revision and rejecting the complaint;

— order the European Central Bank to pay the costs.

CORRIGENDA

Corrigendum to the notice to the Official Journal in Case T-159/09

(Official Journal of the European Union C 153 of 4 July 2009, p. 44)

(2009/C 205/95)

The notice to the OJ in Case T-159/09 *Biofrescos* v *Commission* is to be read as follows:

'Action brought on 21 April 2009 — Biofrescos — Comércio de Produtos Alimentares Lda v Commission of the European Communities

(Case T-159/09)

(2009/C 153/86)

Language of the case: Portuguese

Parties

Applicant: Biofrescos — Comércio de Produtos Alimentares Lda (Linda-a-Velha, Portugal) (represented by: A. Magalhães e Menezes, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

— Annul Commission Decision C (2009) 72 final of 16 January 2009 rejecting the applicant's request for remission of import duties in the sum of EUR 41 271,09 and ordering that that amount be entered into the accounts *a posteriori*.

Pleas in law and main arguments

Between September 2003 and February 2005, the applicant imported a number of consignments of frozen prawns from Indonesia, for which it sought remission of import duties pursuant to Articles 220(2)(b), 236 and 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. ([1])

The applicant submits that the Commission infringed, at the very least, those provisions in so far as: first, it made no observations on any of the arguments put forward by the applicant in its request for remission of import duties; secondly, the reasons given by the Commission were inadequate, misleading and incomprehensible; thirdly, it misinterpreted the error made by the Indonesian authorities themselves; fourthly and last, the Commission deemed to be proved facts which are not actually proved, the burden of proving which fell, subsequently, to the bodies involved in the procedure and not the applicant.

([1]) OJ 1992 L 97, p. 38.'

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