ISSN 1725-2423

Official Journal of the European Union

C 11

English edition

Information and Notices

Volume 53

16 January 2010

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Price: EUR 4

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE

(2010/C 11/01)

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

OJ C 312, 19.12.2009

Past publications

OJ C 297, 5.12.2009

OJ C 282, 21.11.2009

OJ C 267, 7.11.2009

OJ C 256, 24.10.2009

OJ C 244, 10.10.2009

OJ C 233, 26.9.2009

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 12 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-199/07) [1]

(Failure of a Member State to fulfil obligations — Public procurement — Directive 93/38/EEC — Contract notice — Consultancy project — Criteria for automatic exclusion — Qualitative selection and award criteria)

(2010/C 11/02)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: D. Tsagkaraki, acting as Agent, and by K. Christodoulou, dikigoros)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4(2), 31(1) and (2) and 34(1)(a) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) and of Articles 12 and 49 EC — Selection of candidates for a restricted or negotiated procedure — Criteria for exclusion

Operative part of the judgment

The Court:

1. *Declares that, by reason, firstly, of the exclusion, by virtue of Section III, point 2.1.3(b), second paragraph, of the contract notice in question issued by ERGA OSE on 16 October 2003, numbered 2003/S 205-185214 and 2003/S 206-186119, of foreign consultancy firms or consultants who had submitted an expression of interest in ERGA OSE tendering procedures in the six months preceding the date of their expression of interest in the current competition and who had declared qualifications corresponding to certificate categories different from those now required and, secondly, of the failure to distinguish in Section IV, point 2, of that notice between qualitative selection criteria and award criteria for the contract in question, the Hellenic Republic has failed to fulfil its obligations under Articles 4(2) and 34(1)(a) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications.*

2. *Dismisses the remainder of the application.*

3. *Orders the Commission of the European Communities and the Hellenic Republic to bear their own costs.*

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[1] OJ C 197, 2.8.2008.

Judgment of the Court (Third Chamber) of 12 November 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-154/08) [1]

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — Article 2 and Article 4(1), (2) and (5) — Harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — Taxable persons — Activities or operations carried out by 'registradores de la propiedad' (land registrars) acting as settlement agents in charge of settlement offices of a mortgage district — Economic activities — Activity carried out independently — Public-law bodies carrying out activities in connection with their public duties — Infringement of Community law attributable to a national court)

(2010/C 11/03)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2 and 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Taxable persons — Activities or operations carried out by 'registradores de la propiedad'

Operative part of the judgment

The Court:

1. *Declares that, by considering that the services supplied to an Autonomous Community by 'registradores de la propiedad' acting as settlement agents in charge of a settlement office of a mortgage district ('oficina liquidadora de distrito hipotecario') are not subject to value added tax, the Kingdom of Spain has failed to fulfil its obligations under Article 2 and Article 4(1) and (2) 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;*

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

([1]) OJ C 171, 05.07.2008.

Judgment of the Court (Second Chamber) of 12 November 2009 (reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland)) — TeliaSonera Finland Oyj v iMEZ Ab

(Case C-192/08) ([1])

(Telecommunications sector — Electronic communications — Directive 2002/19/EC — Article 4(1) — Networks and services — Interconnexion agreements between telecommunications undertakings — Obligation to negotiate in good faith — Definition of 'operator of public communications networks' — Articles 5 and 8 — Powers of the national regulatory authorities — Undertaking without significant market power)

(2010/C 11/04)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: TeliaSonera Finland Oyj

Intervening parties: iMEZ Ab

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 4(1), 5 and 8 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7) — National legislation requiring every telecommunications operator to negotiate on interconnection with other telecommunications operators — Extent of the obligation to negotiate and requirements which may be imposed by the national regulatory authority

Operative part of the judgment

1. *Article 4(1) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the 'Access Directive'), read in conjunction with recitals 5, 6, 8 and 19 in its preamble and with Articles 5 and 8 thereof, precludes national legislation such as the Communications Market Law (Viestintämarkkinalaki) of 23 May 2003 in so far as it does not restrict the possibility of relying on the obligation to negotiate on the interconnection of networks solely to operators of public communications networks. It is for the national court to determine whether, having regard to the status and the nature of the operators concerned in the main proceedings, they may be classified as operators of public communications networks.*

2. *A national regulatory authority may take the view that the obligation to negotiate an interconnection has been breached where an undertaking which does not have significant market power proposes interconnection to another undertaking under unilateral conditions likely to hinder the emergence of a competitive market at the retail level where those conditions prevent the clients of the second undertaking from benefiting from its services.*

3. *A national regulatory authority may require an undertaking which does not have significant market power but which controls access to end-users to negotiate in good faith with another undertaking for either interconnection of the two networks concerned if the undertaking which requests such access must be classified as an operator of public communications networks, or interoperability of SMS and MMS message services if that undertaking is not covered by that classification.*

([1]) OJ C 197, 02.08.2008.

Judgment of the Court (Fourth Chamber) of 12 November 2009 (reference for a preliminary ruling from the Bundessozialgericht, Germany) — Christian Grimme v Deutsche Angestellten-Krankenkasse

(Case C-351/08) [1]

(Freedom of movement for persons — Member of the managing board of a company limited by shares governed by Swiss law, director of a branch in Germany — Compulsory membership of the German pension insurance scheme — Exemption from that obligation for members of managing boards of companies limited by shares governed by German law)

(2010/C 11/05)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Applicant: Christian Grimme

Defendant: Deutsche Angestellten-Krankenkasse

Intervener in support of the defendant: Deutsche Rentenversicherung Bund, Bundesagentur für Arbeit, BGl Bertil Grimme AG Insurance Brokers

Re:

Reference for a preliminary ruling — Bundessozialgericht — Interpretation of Articles 1, 5, 7 and 16 of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, and of Articles 12, 17, 18 and 19 of Annex I to that agreement (OJ L 114 of 30.04.2002, p. 6) — National legislation requiring a member of a managing board of a company limited by shares governed by Swiss law who manages in Germany a branch of that company to be insured in the German statutory pension insurance scheme, whilst exempting members of managing boards of companies limited by shares governed by German law from that obligation

Operative part of the judgment

The provisions of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999 and, in particular, Articles 1, 5, 7 and 16 thereof as well as Articles 12, and 17 to 19 of Annex I thereto, do not preclude the legislation of a Member State from requiring a person, who is a national of that Member State and employed in the territory thereof to join the statutory pension insurance scheme of that Member State, despite the fact that that person is a member of the managing board of a company limited by shares governed by Swiss law when members of the managing board of a company limited by shares governed by the law of that Member State are not obliged to join that insurance scheme.

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[1] OJ C 272, 25.10.2008.

Judgment of the Court (Sixth Chamber) of 12 November 2009 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland)) — Elektrownia Pątnów II sp. z o.o. v Dyrektor Izby Skarbowej w Poznaniu

(Case C-441/08) [1]

(Indirect taxes on the raising of capital — Loans taken up by a capital company before the accession of the Member State to the European Union — Liability to capital duty under national legislation — Conversion of the loans into shares after accession of the Member State to the European Union — Capital duty payable on that transaction increasing the capital — Immediate application of the new rules)

(2010/C 11/06)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Elektrownia Pątnów II sp. z o.o.

Respondent: Dyrektor Izby Skarbowej w Poznaniu

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny (Poland) — Interpretation of Article 4(1)(c), the second indent of Article 5(3) and Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) — Loans taken up by a capital company and subjected to capital duty under national legislation before the Member State's accession to the European Union — Imposition of capital duty on an increase in capital resulting from the conversion of the loans into shares in the company after the Member State's accession to the European Union

Operative part of the judgment

The second indent of Article 5(3) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, requires that, in determining the amount of capital duty chargeable on an increase in a company's capital arising from the conversion into shares — following the Republic of Poland's accession to the European Union — of loans taken up by that company prior to that accession, account be taken of the previous taxation of those loans on the basis of the national law in force at the material time.

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Sixth Chamber) of 12 November 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-495/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of projects on the environment — Obligation to give reasons for a decision not to make a project subject to an assessment)

(2010/C 11/07)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver and J.-B. Laignelot, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: L. Seeboruth and H. Walker, Agents, and by J. Maurici, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Requirement to give reasons for a decision not to make a project subject to an assessment

Operative part of the judgment

The Court:

1. *Declares that, by failing to make applications for Review of Mineral Planning lodged in Wales prior to 15 November 2000 subject to the requirements of Articles 2(1) and 4(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, 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 32, 7.2.2009.

Judgment of the Court (Fourth Chamber) of 12 November 2009 — Le Carbone-Lorraine SA v Commission of the European Communities

(Case C-554/08 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Article 81 EC and Article 53 of the EEA Agreement — Market for electrical and mechanical carbon and graphite products — Article 15(2) of Regulation No 17 — Setting the amount of the fine — Gravity of the infringement — Cooperation during the administrative procedure — Principle of the individual nature of penalties — Equal treatment — Principle of proportionality)

(2010/C 11/08)

Language of the case: French

Parties

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

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and E. Gippini Fournier, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 8 October 2008 in Case T-73/04 *Carbone-Lorraine* v *Commission*, in which the Court dismissed the application brought by the appellant for the annulment of Commission Decision 2004/420/EC of 3 December 2003 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement concerning an agreement in the market for electrical and mechanical carbon and graphite products, and, in the alternative, annulment or reduction of the fine imposed on the appellant — Breach of the principle of the individual nature of penalties — Method for setting the amount of the fine imposed — Constant and close cooperation during the administrative procedure — Principles of proportionality and of equal treatment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Le Carbone-Lorraine SA to pay the costs.*

(1) OJ C 44 of 21.02.2009

Judgment of the Court (Fourth Chamber) of 12 November 2009 — SGL Carbon AG v Commission of the European Communities

(Case C-564/08 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Article 81 EC and Article 53 of the EEA Agreement — Market for electrical and mechanical carbon and graphite products — Article 15(2) of Regulation No 17 — Guidelines on the method of setting fines — Turnover and share of the relevant market — Value of 'captive' use — Principle of equal treatment — Principle of proportionality)

(2010/C 11/09)

Language of the case: German

Parties

Appellant: SGL Carbon (represented by: M. Klusmann, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and W. Mölls, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 8 October 2008 in Case T-68/04 *SGL Carbon* v *Commission*, in which the Court of First Instance dismissed the application brought by the appellant for the annulment of Commission Decision 2004/420/EC of 3 December 2003 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement concerning an agreement in the market for electrical and mechanical carbon and graphite products and, in the alternative, an application for the reduction of the fine imposed on the appellant — Failure to take into consideration, by classifying it as a new complaint that is inadmissible, the appellant's argument concerning the taking into account of the value of the captive use in calculating the turnover and market shares of the undertakings concerned — Infringement of the principles of proportionality and equal treatment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 69 of 21.03.2009

Judgment of the Court (Sixth Chamber) of 12 November 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-7/09) (1)

(Failure of a Member State to fulfil obligations — Directive 2006/86/EC — Traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells — Failure to transpose within the prescribed periods)

(2010/C 11/10)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and J. Sénéchal, acting as Agents)

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

Re:

Failure of a Member State to fulfil its obligations — Failure to have adopted or communicated, within the prescribed time-limit, the measures necessary to comply with Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells (OJ 2006 L 294, p. 32)

Operative part of the judgment

The Court:

1. *declares that, by not adopting within the period prescribed in the first subparagraph of Article 11(1) of Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells all the laws, regulations and administrative provisions necessary to comply with that directive, 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 69, 21.03.2009.

Judgment of the Court (Seventh Chamber) of 12 November 2009 — Commission of the European Communities v Italian Republic

(Case C-12/09) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/17/EC — Technical requirements for the donation, procurement and testing of human tissues and cells — Failure to transpose within the prescribed period)

(2010/C 11/11)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and S. Mortoni, acting as Agents)

Defendant: Italian Republic (represented by: I. Bruni, acting as Agent, F. Arena, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells (OJ 2006 L 38, p. 40)

Operative part of the judgment

The Court:

1. *declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 7(1) of Directive 2006/17;*

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

[1] OJ C 55, 07.03.2009.

Order of the Court (Seventh Chamber) of 3 September 2009 (reference for a preliminary ruling from the Audiencia Provincial de La Coruña — Spain) — Lubricantes y Carburantes Galaicos, S.L. v GALP Energía España SAU

(Case C-506/07) [1]

(The first subparagraph of Article 104(3) of the Rules of Procedure — Competition — Agreements, decisions and concerted practices — Article 81 EC — Exclusive supply contract for motor vehicle and other fuel between a supplier and a service station operator — Exemption — Agreement of minor importance — Regulation (EEC) No 1984/83 — Article 12(2) — Regulation (EC) No 2790/1999 — Articles 4(a) and 5(a) — Duration of the exclusive rights — Fixing of the retail price)

(2010/C 11/12)

Language of the case: Spanish

Referring court

Audiencia Provincial de La Coruña

Parties to the main proceedings

Applicant: Lubricantes y Carburantes Galaicos, S.L.

Defendant: GALP Energía España SAU

Re:

Reference for a preliminary ruling — Audiencia Provincial de La Coruña — Interpretation of Article 81(1)(a) EC, the eighth recital in the preamble to, and Articles 10 and 12(1)(c) and 12(2) of, Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5) and Articles 4(a) and 5 of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21) — Exclusive distribution agreement for motor vehicle and other fuel between a supplier and a service station operator — Service station built by the supplier under a surface right granted by the reseller for a period of 25 years over a piece of the land and granted to the reseller to use for the same period of time

Operative part

1. *A contract, such as the one at issue in the main proceedings, which provides for the creation of a right in rem, called a 'surface right', in favour of a supplier of petroleum products for a period of 25 years and authorises the latter to build a service*

station and to let that service station to the owner of the land for the same period as the duration of that right, and which contains clauses relating to the fixing of the retail price of goods and/or an exclusive purchasing obligation or a non-compete clause whose duration of application exceeds the time limitations laid down in Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article [81](3) of the Treaty to categories of exclusive purchasing agreements, as amended by Commission Regulation (EC) No 1582/97 of 30 July 1997 and by Commission Regulation (EC) No 270/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, does not fall within the prohibition laid down in Article 81(1)EC provided that it is not likely to affect trade between the Member States and that it does not aim to significantly restrict competition or have that effect. It is the task of the national court to determine whether that is the case by taking account, inter alia, of the economic and legal context within which that contract is situated.

2. *Article 12(2) of Regulation No 1984/83, as amended by Regulation No 1582/97, must be interpreted as not precluding, for the purposes of the implementation of the derogation set out therein, the duration of an exclusive rights agreement from exceeding the time limitations laid down in that regulation, where the owner of a plot of land has granted to a supplier a surface right of a period of 25 years and the latter is required to build a service station to be let to the owner of the land so that he can operate that service station for the same period as the duration of that right.*

3. *Article 5(a) of Regulation No 2790/1999 must be interpreted as precluding, for the purposes of the implementation of the derogation set out therein, the duration of an exclusive rights agreement from exceeding the time limitations laid down in that regulation, where the owner of a plot of land has granted to a supplier a surface right of a period of 25 years and the latter is required to build a service station to be let to the owner of the land so that he can operate that service station for the same period as the duration of that right.*

4. *Contractual clauses relating to the retail price of goods, such as the clauses at issue in the main proceedings, are eligible for the block exemptions under Regulation No 1984/83, as amended by Regulation No 1582/97, and Regulation No 2790/1999 where the supplier restricts himself to imposing a maximum sale price or to recommending a sale price and where, therefore, it is genuinely possible for the reseller to determine that retail price. On the other hand, such clauses are ineligible for those exemptions where they lead, directly or by indirect or concealed means, to the fixing of a retail price or the imposition of a minimum sale price by the supplier. It is for the national court to determine whether such obligations constrain the reseller, taking account of all of the contractual obligations in their economic and legal context, and of the conduct of the parties to the main proceedings.*

([1]) OJ C 37, 09.02.2008.

Order of the Court (Fifth Chamber) of 17 September 2009 (references for a preliminary ruling from the Oberlandesgericht Naumburg, Germany) — Investitionsbank Sachsen-Anhalt — Anstalt der Norddeutschen Landesbank — Girozentrale v Bezirksrevisorin beim Landgericht Magdeburg für die Landeskasse des Landes Sachsen-Anhalt

(Joined Cases C-404/08 and C-409/08) ([1])

(Reference for a preliminary ruling — Manifest inadmissibility)

(2010/C 11/13)

Language of the case: German

Referring court

Oberlandesgericht Naumburg, Germany

Parties to the main proceedings

Applicants: Investitionsbank Sachsen-Anhalt — Anstalt der Norddeutschen Landesbank — Girozentrale

Defendant: Bezirksrevisorin beim Landgericht Magdeburg für die Landeskasse des Landes Sachsen-Anhalt

Re:

Reference for a preliminary ruling — Oberlandesgericht Naumburg — Interpretation of Article 86 EC, in conjunction with Article 81(1)(a) and (d) and 81(2) EC — National rules granting exemption from court fees to an investment bank established by the Land

Operative part

The references for a preliminary ruling from the Oberlandesgericht Naumburg made by decisions of 1 September 2008 and 2 September 2008 are manifestly inadmissible.

([1]) OJ C 327 of 20.12.2008.

Order of the Court of 23 September 2009 — Complejo Agrícola, SA v Commission of the European Communities, Kingdom of Spain

(Case C-415/08 P) [1]

(Appeal — Protection of habitats — List of sites of Community importance for the Mediterranean biogeographical region — Commission Decision — Action for annulment brought by natural or legal persons — Admissibility — Appeal clearly unfounded)

(2010/C 11/14)

Language of the case: Spanish

Parties

Appellant: Complejo Agrícola, SA (represented by: A. Menéndez Menéndez and G. Yanguas Montero, abogados)

Other parties to the proceedings: Commission of the European Communities (represented by: D. Recchia and A. Alcover San Pedro, agents), Kingdom of Spain (represented by: F. Díez Moreno, agent)

Re:

Appeal brought against the order of the Court of First Instance (First Chamber) of 14 July 2008 in Case T-345/06 *Complejo Agrícola* v *Commission*, in which the Court of First Instance dismissed as inadmissible the application for partial annulment of Article 1 of Annex 1 of Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Acebuchales de la Campiña sur de Cádiz', which includes a farm belonging to the applicant, to be a site of Community importance for the Mediterranean biogeographical region

Operative part of the order

1. *The appeal is dismissed.*

2. *Complejo Agrícola S.A. is ordered to bear its own costs.*

3. *The Kingdom of Spain is ordered to bear its own costs.*

[1] OJ C 313 of 06.12.2008

Order of the Court of 23 September 2009 — Calebus, SA v Commission of the European Communities, Kingdom of Spain

(Case C-421/08 P) [1]

(Appeal — Protection of habitats — List of sites of Community importance for the Mediterranean biogeographical region — Commission Decision — Action for annulment brought by natural or legal persons — Admissibility — Appeal clearly unfounded)

(2010/C 11/15)

Language of the case: Spanish

Parties

Appellant: Calebus, SA (represented by: R. Bocanegra Sierra, abogado)

Other parties to the proceedings: Commission of the European Communities (represented by: D. Recchia and A. Alcover San Pedro, agents), Kingdom of Spain (represented by: F. Díez Moreno, agent)

Re:

Appeal brought against the order of the Court of First Instance (First Chamber) of 14 July 2008 in Case T-366/06 *Calebus* v *Commission*, in which the Court of First Instance dismissed as inadmissible the application for partial annulment of Article 1 of Annex 1 of Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Ramblas de Gergal, Tabernas y Sur de Sierra Alhamilla', which includes land belonging to the applicant, to be a site of Community importance for the Mediterranean biogeographical region

Operative part of the order

1. *The appeal is dismissed.*

2. *Calebus SA is ordered to bear its own costs.*

3. *The Kingdom of Spain is ordered to bear its own costs.*

[1] OJ C 55 of 07.03.2009

Order of the Court (Eighth Chamber) of 24 September 2009 — Alcon Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), *Acri.Tec AG Gesellschaft für ophthalmologische Produkte

(Case C-481/08 P) ([1])

(Appeals — Community trade mark — Word mark BioVisc — Opposition filed by the proprietor of Community and international word marks PROVISC and DUOVISC — Rejection of the opposition by the Board of Appeal of OHIM)

(2010/C 11/16)

Language of the case: English

Parties

Appellant: Alcon Inc. (represented by: M. Graf, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by A. Folliard-Monguiral, acting as Agent), *Acri.Tec AG Gesellschaft für ophthalmologische Produkte (represented by: H. Förster, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) in Case T-106/07 *Alcon* v *OHIM and *Acri.Tec* by which the Court of First Instance dismissed an action for annulment brought by the proprietor of the Community and international word marks 'PROVISC' and 'DUOVISC' for goods in Class 5 against Decision R 660/2006-2 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 February 2005 annulling the decision of the Opposition Division which refused registration of the word mark 'BioVisc' for goods in Class 5 in the context of the opposition filed by the applicant

Operative part of the order

1. *The appeal is dismissed.*

2. *Alcon Inc. is ordered to pay the costs.*

([1]) OJ C 19, 24.1.2009.

Order of the Court of 24 September 2009 — Município de Gondomar v Commission of the European Communities

(Case C-501/08 P) ([1])

(Appeal — Cohesion Fund — Regulation (EC) No 1164/94 — Cancellation of Community financial assistance — Action for annulment — Admissibility — Measures of direct and individual concern to the applicant)

(2010/C 11/17)

Language of the case: Portuguese

Parties

Appellant: Município de Gondomar (represented by: J.L. da Cruz Vilaça and L. Pinto Monteiro, advogados)

Other party to the proceedings: Commission of the European Communities (represented by: P. Guerra e Andrade and B. Conte, Agents)

Re:

Appeal brought against the order of the Court of First Instance (Fourth Chamber) of 10 September 2008 in Case T-324/06 *Município de Gondomar* v *Commission* in which the Court of First Instance declared inadmissible the action for annulment of Commission Decision C(2006) 3782 of 16 August 2006 on the cancellation of the financial assistance granted by the Cohesion Fund for Project No 95/10/61/017 — Redevelopment of Greater Oporto/South — Gondomar subsystem

Operative part of the order

1. *The appeal is dismissed.*

2. *The Município de Gondomar shall pay the costs.*

([1]) OJ C 19, 24.01.2009.

Order of the Court (Fifth Chamber) of 24 September 2009 — HUP Uslugi Polska sp. z o.o., (formerly HP Temporärpersonalgesellschaft mbH) v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Manpower Inc.

(Case C-520/08 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(b), (c), (d) and (g) — Application for a declaration of invalidity — Community word mark I.T.@MANPOWER)

(2010/C 11/18)

Language of the case: English

Parties

Appellant: HUP Uslugi Polska sp. z o.o., (formerly HP Temporärpersonalgesellschaft mbH) (represented by: represented by M. Ciresa, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: A. Folliard-Monguiral, acting as Agent), Manpower Inc. (represented by: V. Marsland, Solicitor, and A. Bryson, Barrister)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 24 September 2008 in Case T-248/05 *HUP Uslugi Polska* v *OHIM — Manpower* (*I.T.@MANPOWER*), by which the Court of First Instance dismissed an action for annulment brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 5 April 2005 (Case R 124/2004–4), which in turn dismissed the action brought against the decision of the Cancellation Division which had dismissed an application for a declaration of invalidity of Community word mark 'I.T.@MANPOWER' for goods and services in Classes 9, 16, 35, 38, 41 and 42 — Trade mark with no descriptive character

Operative part of the order

1. *The appeal is dismissed.*

2. *HUP Uslugi Polska sp. z o.o. shall pay the costs.*

([1]) OJ C 55, 7.3.2009.

Order of the Court of 1 October 2009 — Agrar-Invest-Tatschl GmbH v Commission of the European Communities

(Case C-552/08P P) ([1])

(Appeal — Customs Code — Article 220(2)(b) — Post-clearance recovery of import duties — Waiver of subsequent entry in the accounts of import duties — Notice to importers — Good faith)

(2010/C 11/19)

Language of the case: German

Parties

Appellant: Agrar-Invest-Tatschl GmbH (represented by: O. Wenzlaff, Rechtsanwält)

Other party to the proceedings: Commission of the European Communities (represented by: S. Schønberg, agent and B. Wägenbaur, Rechtsanwält)

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) of 8 October 2008 in Case T-51/07 *Agrar-Invest-Tatschl* v *Commission*, by which the Court dismissed the action for partial annulment of Commission Decision C (2006) 5789 final of 4 December 2006 finding that post-clearance recovery of a part of the import duty not demanded from the applicant in respect of the import of sugar from Croatia should be effected — Good faith of the person liable to duty precluded if the Commission has published a notice to importers — Incorrect assessment of the effect which the subsequent confirmation of the authenticity and accuracy of the certificates of origin by the customs authorities of the State of export has on the criterion of good faith

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Agrar-Invest-Tatschl GmbH to pay the costs.*

([1]) OJ C 55, 7.3.2009.

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands), lodged on 29 July 2009 — Criminal proceedings against X

(Case C-297/09)

(2010/C 11/20)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Party to the main proceedings

Respondent: X

Questions referred

1. Does a situation in which a person who is a citizen of the European Union, and against whom there are grave presumptions that the main purpose of his stay in a Member State of the European Community other than that of which he is a national is to engage in criminal activities, come within the scope or area of application of the EC Treaty, in particular of the provisions of Articles 12 EC, 18 EC, 43 EC et seq. and 49 EC et seq?

2. If the answer to Question 1 is in the affirmative in respect of Article18 EC:

   (a) Should a provision such as that contained in Article 67(2) of the Netherlands Code of Criminal Procedure, in so far as it makes possible the pre-trial detention of persons who come within the scope of Article 18 EC but who have a fixed place of abode or residence in a Member State other than the Netherlands, be regarded as constituting a restriction of the right to move and reside freely within the meaning of that provision?

   (b) If that is the case, does that provision, in so far as it makes possible the pre-trial detention of citizens of the European Union who have a fixed place of abode or residence in a Member State other than the Netherlands, given the importance of the effective tracing of suspects, prosecution and dispensation of justice, constitute an acceptable justification based on objective considerations in the public interest which are unconnected to the person concerned and are proportionate to the legitimate aim pursued by the national law?

3. If the answer to Question 1 is in the affirmative in respect of Article 49 EC et seq.: should a provision such as that contained in Article 67(2) of the Netherlands Code of Criminal Procedure, in so far as it makes possible the pre-trial detention of nationals of a Member State who have a fixed place of abode or residence in a Member State other than the Netherlands, be regarded as a restriction of the freedom to provide services within the meaning of Article 49 EC et seq. in that it involves discrimination based on the fact that the provider of the services does not have a fixed place of abode or residence in the country where the services are provided but does have one in another Member State of the EC?

4. If the answer to either Question 2 or Question 3 is in the negative: should a provision such as that contained in Article 67(2) of the Netherlands Code of Criminal Procedure, in so far as it makes possible the pre-trial detention of nationals of a Member State who have a fixed place of abode or residence in a Member State other than the Netherlands, be regarded as a form of discrimination on grounds of nationality, as prohibited under Article 12 EC (general prohibition of discrimination within the scope of application of the EC Treaty), Article 43 EC et seq. (prohibition of discrimination on the basis of nationality in relation to the freedom of establishment) and Article 49 EC et seq. (prohibition of discrimination on the basis of nationality in relation to freedom to provide services)?

5. In so far as the answer to either Question 3 or Question 4 is in the affirmative: should a provision such as that contained in Article 67(2) of the Netherlands Code of Criminal Procedure, in so far as it makes possible the pre-trial detention of [nationals of] a Member State who have a fixed place of residence or abode in a Member State other than the Netherlands, given the importance of the effective tracing of suspects, prosecution and dispensation of justice, be regarded as legally valid on grounds of public policy, public security or public health within the terms of Articles 45 EC to 48 EC and Article 55 EC?

Reference for a preliminary ruling from the Centrale Raad van Beroep lodged on 27 August 2009 — J A van Delft and others v College voor zorgverzekering

(Case C-345/09)

(2010/C 11/21)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: J A van Delft and others

Defendant: College voor zorgverzekering

Questions referred

1. Should Articles 28, 28a and 33 of Regulation No 1408/71 [1], the provisions of sections 1(a) and (b) of Part R of Annex VI to Regulation No 1408/71, and Article 29 of Regulation No 574/72 [2] be interpreted as meaning that a national provision such as Article 69 of the Zvw [Zorgverzekeringswet] is incompatible therewith in so far as a pensioner who in principle has entitlements under Articles 28 and 28a of Regulation No 1408/71 is obliged to report to the Cvz [College voor Zorgverzekering], and a contribution must be deducted from that person's pension even if no registration has taken place under Article 29 of Regulation No 574/09?

2. Should Article 39 EC or Article 18 EC be interpreted as meaning that a national provision such as Article 69 of the Zvw is incompatible therewith in so far as a citizen of the EU who in principle has entitlements under Articles 28 and 28a of Regulation No 1408/71 is obliged to report to the Cvz, and a contribution must be deducted from that citizen's pension even if no registration has taken place under Article 29 of Regulation 574/09?

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 323, 13.12.1996, p. 38)

(2) Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 323, 13.12.1996, p. 38)

Reference for a preliminary ruling from the Baranya Megyei Bíróság (Hungary) lodged on 14 September 2009 — Pannon Gép Centrum Kft. v APEH Központi Hivatal Hatósági Főosztály Dél-dunántúli Kihelyezett Hatósági Osztály

(Case C-368/09)

(2010/C 11/22)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: Pannon Gép Centrum Kft.

Defendant: APEH Központi Hivatal Hatósági Főosztály Dél-dunántúli Kihelyezett Hatósági Osztály

Questions referred

1. Do the provisions of national law contained in Article 13(1)(16) of the általános forgalmi adóról szóló 1992. évi LXXIV. törvény (Law LXXIV of 1992 on turnover tax), in force at the material time when the disputed invoices were issued, or in Article 1/E(1) of Order 24/1995 (XI.22) of the Hungarian Ministry of Finance, specifically the provision in Article 13(1)(16)(f) of the Law on turnover tax, comply with the features of invoices, and the concept of an invoice, laid down in Article 2(b) of Directive 2001/115/EC (1) amending Directive 77/388/EEC (2) ('the Sixth Directive') with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax? In the event that the first question is answered in the affirmative,

2. Is a Member State's practice which consists of penalising formal defects in invoices intended to be used as a basis for the right to deduct by denying that right contrary to Article 17(1), Article 18(1)(a) or Article 22(3)(a) and (b) of the Sixth Directive?

3. In order to be able to exercise the right to deduct, is it sufficient to fulfil the obligations laid down in Article 22(3)(b) of the Sixth Directive, or is it possible to exercise the right to deduct and accept the invoice as a reliable document only if, at the same time, all the details required under Directive 2002/115/EC are provided and all the obligations laid down in Directive 2002/115/EC are fulfilled?

(1) Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ 2002 L 15, p. 24).

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

Reference for a preliminary ruling from the Baranya Megyei Bíróság (Hungary) lodged on 5 October 2009 — Uszodaépítő Kft. v APEH Központi Hivatal Hatósági Főosztály

(Case C-392/09)

(2010/C 11/23)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: Uszodaépítő Kft.

Defendant: APEH Központi Hivatal Hatósági Főosztály

Questions referred

1. Is a provision of a law of a Member State, which entered into force on 1 January 2008, after the right to deduct had arisen, and which, for the purposes of the deduction of VAT paid and declared in relation to supplies of goods or services made in the 2007 financial year, requires the amendment of the content of invoices and the submission of a supplementary declaration, compatible with Articles 17 and 20 of the Sixth Directive? ([1])

2. Is the measure laid down by Paragraph 269(1) of the new VAT Law, according to which, if the requirements set out in the previous question are complied with, rights and obligations must be determined and applied in accordance with the provisions of that Law, even where they arose before the entry into force thereof, within the limitation period, compatible with the general principles of Community law, and, in particular, is it objectively justifiable, reasonable, proportionate and consistent with the principle of legal certainty?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ 1997 L 145, p. 1.

Reference for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court) (Czech Republic) lodged on 5 October 2009 — Bezpečnostní softwarová asociace (Security software association) v Ministerstvo kultury ČR (Ministry of Culture of the Czech Republic)

(Case C-393/09)

(2010/C 11/24)

Language of the case: Czech

Referring court

Nejvyšší správní soud (Supreme Administrative Court) (Czech Republic)

Parties to the main proceedings

Applicant: Bezpečnostní softwarová asociace (Security software association)

Defendant: Ministerstvo kultury ČR (Ministry of Culture of the Czech Republic)

Questions referred

1. Should Article 1(2) of Council Directive 91/250/EEC ([1]) of 14 May 1991 on the legal protection of computer programs be interpreted as meaning that, for the purposes of the copyright protection of a computer program as a work under that directive, the phrase 'the expression in any form of a computer program' also includes the graphic user interface of the computer program or part thereof?

2. If the answer to the first question is in the affirmative, does television broadcasting, whereby the public is enabled to have sensory perception of the graphic user interface of a computer program or part thereof, albeit without the possibility of actively exercising control over that program, constitute making a work or part thereof available to the public within the meaning of Article 3(1) of European Parliament and Council Directive 2001/29/EC ([2]) of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society?

([1]) Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).

([2]) Corrigendum to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Appeal brought on 3 October 2009 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the order of the Court of First Instance (Fourth Chamber) delivered on 2 July 2009 in Case T-279/06: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Banque centrale européenne BCE

(Case C-401/09 P)

(2010/C 11/25)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis and M. Dermitzakis, Δικηγόροι)

Other party to the proceedings: European Central Bank

Form of order sought

The applicant claims that the Court should:

— Set aside the decision of the Court of First Instance;

— Annul the decision of the European Central Bank to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— Order ECB to pay the applicant's legal and other costs and expenses incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The appellant submits that the defendant's objection of inadmissibility, submitted together with the defence, should have been declared inadmissible due to the fact that it does not comply with article 114 of the rules of procedure of the CFI which expressly provides that such an objection must be submitted 'by a separate document'. The appellant also submits that, by accepting the objection of inadmissibility and failing to comment on the appellant's arguments with respect to the objection, the CFI infringed article 36 of the Statute of the Court of Justice.

In the appellant's view the CFI was wrong when it held that European Dynamics, because its bid was unacceptable, had no legal interest in seeking review of the decision of the contracting authority. The appellant also argues that the CFI erred by considering that it was necessary for the appellant to obtain an Arbeitnehmerüberlassungsgenehmigung (AÜG) in order to offer its services lawfully.

Finally the appellant submits that the CFI failed to apply the relevant legal provisions concerning the duty of the contracting authority to provide reasons for its decision.

Action brought on 20 October 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-404/09)

(2010/C 11/26)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: F. Castillo de la Torre, D. Recchia and J.-B. Laignelot, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that,

(a) that, by giving consent to the opencast mines 'Fonfría', 'Nueva Julia' and 'Los Ladrones' but failing to subject that consent to an assessment in order to identify, describe and assess in an appropriate manner the direct, indirect and cumulative effects of the existing opencast mining projects, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC [1] of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EEC.

(b) that, from 2000, the date of classification of the 'Alto Sil' as a bird protection area:

— by having given consent to the opencast mines 'Nueva Julia' and 'Los Ladrones' but failing to subject that consent to an appropriate assessment of the possible effects of those projects; and in any event failing to comply with the conditions under which the execution of a project is permitted, in spite of the risk which those projects represented for the capercaillie species which is one of the natural assets which justified the classification of the 'Alto Sil' bird protection area and in the absence of alternative solutions, namely for imperative reasons of overriding public interest and only after having notified the Commission of the necessary compensatory measures to ensure that the coherence of the Natura 2000 network is protected.

— and by having failed to adopt the necessary measures to prevent the deterioration of the habitats of that species, and to prevent the disturbance of that species, which was the reason for the designation of that area as a bird protection area, caused by the 'Feixolín', 'Salguero-Prégame-Valdesegadas' 'Fonfría' 'Ampliación de Feixolín' and 'Nueva Julia' mines;

the Kingdom of Spain has failed to fulfil its obligations in relation to the 'Alto Sil' bird protection area under Article 6(2) (3) and (4) in conjunction with Article 7 of Directive 92/43/EEC [2]

(c) that, from January 1998,

— by failing in relation to the mining operations at the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría' and 'Nueva Julia' mines to adopt the necessary measures to safeguard the ecological interest which the proposed 'Alto Sil' site had at national level,

— the Kingdom of Spain has failed to fulfil its obligations in relation to the proposed 'Alto Sil' site, pursuant to the interpretation of the Court of Justice in Case C 117/03 Dragaggi [2005] ECR I 167 and Case C 244/05 Bund Naturschutz in Bayern [2006] ECR I 8445, and

(d) that, from December 2004

— by permitting opencast mining (in the case of the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría' and 'Nueva Julia' mines) likely to have a significant impact on the natural assets which determined the designation of the 'Alto Sil' area as a site of Community interest but failing to make an appropriate assessment of the possible impact of those mines, and in any event failing to comply with the conditions under which the execution of those projects would be permitted, in spite of the risk which they represented to the natural assets which justified the designation of the 'Alto Sil' and in the absence of alternative solutions, namely solely for imperative reasons of overriding public interest and only after having notified the Commission of the necessary compensatory measures to ensure that the coherence of the Natura 2000 network is protected;

— and by having omitted in relation to the above opencast mining to adopt the necessary measures to prevent the deterioration of natural habitats and the habitats of species, and the disturbances of species caused by the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría', 'Nueva Julia' and 'Ampliación de Feixolín' mines;

the Kingdom of Spain has failed to fulfil its obligations in relation to the 'Alto Sil' site of community interest under Article 6(2) (3) and (4) of Directive 92/43/EEC;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission became aware of the existence of various opencast coal mines, developed by the Empresa Minero Siderúrgica de Ponferrada (MSP), likely to affect the natural assets of the area proposed as the 'Alto Sil' site of Community interest (ES0000210), situated in the province of León in the northeast of the Autonomous Community of Castilla y León. Reports confirmed not only the existence at the same time of several open cast mines for the extraction of coal, but also that the opencast mining was to continue by means of further mines to which consent had been given or was about to be given.

As regards Directive 85/337/EEC, the Commission considers that, as regards the three mines at issue, no account was taken of the possible indirect, cumulative or synergistic effects on the most vulnerable species.

The Commission considers that, having regard to the nature of the projects at issue, their proximity and their lasting effects over time, the description of the significant effects of those projects on the environment, pursuant to what is laid down in Annex IV to Directive 85/337/EEC ought necessarily to cover *'the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary. effects of the project*'.

As regards Directive 92/43, in relation to habitats, the species referred to by the application are mainly the capercaillie and the brown bear. The Commission considers that the consequences of the mines on those species cannot be assessed solely in terms of direct destruction of the critical areas for those species, but that account must be taken of the greater fragmentation, degradation and destruction of habitats which are potentially suitable for reconquest by those species and of the increased disturbance caused to those species, those being matters which have not been taken into account. Further there is the additional risk of a definite barrier effect as a result of the movement and fragmentation of populations.

In brief, the Commission considers that the mines at issue worsen the factors considered to be causing the decline of those species and that therefore the authorities are not entitled to conclude that the mining activities at issue have no significant effects on those species.

Consequently, the Commission considers that there has been no assessment of the possible impact on the capercaillie and brown bear species which can be considered appropriate, within the meaning of Article 6(3). The Commission considers that if such an assessment had taken place, the conclusion would have to have been, at the least, that there was not the certainty which the case-law requires that there were no significant effects for those species stemming from the projects to which consent had been given. That means that the authorities were entitled to give consent to those opencast mining projects solely after they were satisfied that the conditions of Article 6(4)were met; in other words, in the absence of alternatives, including the 'zero alternative', after they had identified the existence of imperative reasons of overriding public interest to justify the application of the exception to the rule contained in that article and after, as appropriate, they had determined the necessary compensatory measures.

([1]) OJ 1985 L 175, p. 40

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

Action brought on 22 October 2009 — Commission of the European Communities v Hellenic Republic

(Case C-407/09)

(2010/C 11/27)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Kontou-Durande and A.-M. Rouchaud-Joët)

Defendant: Hellenic Republic

Form of order sought

— declare that, by having failed to take the necessary measures to comply with the judgment delivered by the Court of Justice on 18 July 2007 in Case C-26/07, the Hellenic Republic has failed to fulfil its obligations under Article 228(1) of the EC Treaty;

— order the Hellenic Republic to pay to the Commission, into the account 'European Community own resources', a proposed penalty payment in the sum of EUR 72 532,80 for each day of delay in taking the measures necessary to comply with the judgment delivered in Case C-26/07, from the day on which judgment is delivered in the present case until the day on which the judgment in Case C-26/07 has been complied with;

— order the Hellenic Republic to pay to the Commission, into the account 'European Community own resources', the daily lump sum of EUR 10 512 for each day of delay from the day on which judgment was delivered in Case C-26/07 until the day on which judgment is delivered in the present case, or the date on which the measures necessary to comply with the judgment in Case C-26/07 are taken if that occurs earlier;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In the present case, the Hellenic Republic has not yet adopted the legislative measures necessary for transposing Directive 2004/80/EC into Greek law.

It is therefore clear that the Hellenic Republic has not yet taken the measures required in order to comply with the judgment of the Court of Justice of 18 July 2007 in Case C-26/07 *Commission* v *Greece*.

Under the second sentence of the second subparagraph of Article 228(2) of the EC Treaty, the Commission is to specify in its application the amount of the lump sum and/or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In the instance in point, the Commission has decided to propose to the Court a penalty payment and a lump sum.

The Commission, acting on the basis of the principles and the methods of calculation set out in the Communication of 13 December 2005, has regard to three fundamental criteria when determining the proposed amount: (a) the seriousness of the infringement; (b) the duration of the infringement; and (c) the need to ensure that the penalty will be a deterrent.

Analysis of the application of those criteria in the present case leads to the conclusion that the duration of the infringement and its effects on private and public interests are significant and justify imposition of the financial penalties proposed.

As is apparent from the Commission's report relating to implementation of the directive, all the Member States apart from Greece have transposed the directive into national law and provide the protection required by the directive.

The failure to transpose the directive into Greek law obstructs achievement of the fundamental objective of freedom of movement for persons in a uniform area of freedom, security and justice. The effects on interests of a general and individual nature are therefore very significant.

Reference for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 27 October 2009 — José Maria Ambrósio Lavrador, Maria Cândida Olival Ferreira Bonifácio v Companhia de Seguros Fidelidade — Mundial SA

(Case C-409/09)

(2010/C 11/28)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellants: José Maria Ambrósio Lavrador, Maria Cândida Olival Ferreira Bonifácio

Respondent: Companhia de Seguros Fidelidade — Mundial SA

Question referred

Are the provisions of Article 1 of the Third Motor Insurance Directive [1] to be interpreted as meaning that, in the event of a road-traffic accident … Portuguese civil law — and in particular Articles 503(1), 504, 505 and 570 of the Civil Code — may not exclude or limit the right to compensation of a child, himself a victim of the accident, on the sole ground that that child was partly, or even exclusively, responsible for the loss caused?

[1] Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33)

Reference for a preliminary ruling from Court of Appeal (Civil Division) (England and Wales) made on 28 October 2009 — Generics (UK) Ltd v Synaptech Inc

(Case C-427/09)

(2010/C 11/29)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Generics (UK) Ltd

Defendant: Synaptech Inc

Questions referred

1. For the purposes of Article 13(1) of Council Regulation (EEC) No 1768/92 [1], is the 'first authorisation to place the product on the market in the Community' the first authorisation to place the product on the market in the Community which was issued in accordance with Council Directive 65/65/EEC [2] (now replaced with Directive 2001/83/EC [3]) or will any authorisation that enables the product to be placed on the market in the Community or EEA suffice?

2. If, for the purposes of Article 13(1) of Council Regulation (EEC) No 1768/92, an 'authorisation to place the product on the market in the Community' must have been issued in accordance with Directive 65/65/EEC (now replaced with Directive 2001/83/EC), is an authorisation that was granted in 1963 in Austria in accordance with the national legislation in force at that time (which did not comply with the requirements of Directive 65/65/EEC) and that was never amended to comply with Directive 65/65/EEC and was ultimately withdrawn in 2001 to be treated as an authorisation granted in accordance with Directive 65/65/EEC for that purpose?

[1] Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products
OJ L 182, p. 1

[2] Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products
OJ 22, p. 369

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

Reference for a preliminary ruling from Supreme Court of the United Kingdom made on 5 November 2009 — Shirley McCarthy v Secretary of State for the Home Department

(Case C-434/09)

(2010/C 11/30)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Shirley McCarthy

Defendant: Secretary of State for the Home Department

Questions referred

1. Is a person of dual Irish and United Kingdom nationality who has resided in the United Kingdom for her entire life a 'beneficiary' within the meaning of Article 3 of Directive 2004/38/EC [1] of the European Parliament and of the Council ('the Directive')?

2. Has such a person 'resided legally' within the host Member State for the purpose of Article 16 of the Directive in circumstances where she was unable to satisfy the requirements of Article 7 of Directive 2004/38/EC?

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

Order of the President of the Court of 11 August 2009 (reference for a preliminary ruling from the Cour d'Appel de Bruxelles (Belgium)) — AXA Belgium SA v État Belge, Administration de la TVA, de l'enregistrement et des domains (État Belge), Administration de l'inspection spéciale des impôts, inspection de Mons 3 (État Belge)

(Case C-168/07) (1)

(2010/C 11/31)

Language of the case: French

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

(1) OJ C 129, 9.6.2007.

Order of the President of the Court of 25 August 2009 — Commission of the European Communities v Republic of Poland

(Case C-193/07) (1)

(2010/C 11/32)

Language of the case: Polish

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

(1) OJ C 199, 25.8.2007.

Order of the President of the Court of 17 September 2009 — Commission of the European Communities v Republic of Poland

(Case C-309/08) (1)

(2010/C 11/33)

Language of the case: Polish

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

(1) OJ C 247, 27.9.2008.

Order of the President of the Court of 17 September 2009 — Commission of the European Communities v Hellenic Republic

(Case C-357/08) (1)

(2010/C 11/34)

Language of the case: Greek

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

(1) OJ C 247, 27.9.2008.

Order of the President of the Fifth Chamber of the Court of 23 September 2009 — Commission of the European Communities v Portuguese Republic

(Case C-397/08) (1)

(2010/C 11/35)

Language of the case: Portuguese

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

(1) OJ C 272, 25.10.2008.

Order of the President of the Court of 4 September 2009 — Commission of the European Communities v Portuguese Republic

(Case C-531/08) [1]

(2010/C 11/36)

Language of the case: Portuguese

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

[1] OJ C 19, 24.1.2009.

Order of the President of the Court of 14 September 2009 — Commission of the European Communities v Republic of Poland

(Case C-174/09) [1]

(2010/C 11/37)

Language of the case: Polish

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

[1] OJ C 167, 18.7.2009.

GENERAL COURT

Judgment of the Court of First Instance (Sixth Chamber) of 18 November 2009 — Scheucher-Fleisch and Others v Commission

(Case T-375/04) [1]

(State aid — Agriculture — State aid for quality programmes in the agricultural foodstuffs sector in Austria — Decision not to raise objections — Action for annulment — Standing as party concerned — Safeguarding procedural rights — Admissibility — Serious difficulties — Guidelines for State aid for advertising)

(2010/C 11/38)

Language of the case: German

Parties

Applicants: Scheucher-Fleisch GmbH (Ungerdorf, Austria); Tauernfleisch Vertriebs GmbH (Flattach, Austria); Wech-Kärntner Truthahnverarbeitung GmbH (Glanegg, Austria); Wech-Geflügel GmbH (Sankt Andrä, Austria) and Johann Zsifkovics (Vienna, Austria) (represented by: J. Hofer and T. Humer, lawyers)

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

Re:

Application for annulment of Commission Decision C(2004) 2037 final of 30 June 2004 on State aid NN 34A/2000 concerning the quality programmes and labels AMA-Biozeichen and AMA-Gütesiegel in Austria

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C (2004) 2037 final of 30 June 2004 on State aid NN 34A/2000 concerning the quality programmes and labels AMA Biozeichen and AMA Gütesiegel in Austria;*

2. *Orders the Commission of the European Communities to bear its own costs and to pay those incurred by Scheucher-Fleisch GmbH, Tauernfleisch Vertriebs GmbH, Wech-Kärntner Truthahnverarbeitung GmbH, Wech-Geflügel GmbH and Johann Zsifkovics.*

[1] OJ C 300, 4.12.2004.

Judgment of the Court of First Instance of 17 November 2009 — MTZ Polyfilms v Council of the European Union

(Case T-143/06) [1]

(Dumping — Imports of polyethylene terephthalate film originating in India — Regulation terminating an interim review — Minimum import price undertakings — Determination of the export price — Application of a methodology different from that used in the initial investigation — Choice of legal basis — Article 2(8) and (9) and Article 11(3) and (9) of Regulation (EC) No 384/96)

(2010/C 11/39)

Language of the case: English

Parties

Applicant: MTZ Polyfilms Ltd (Mumbai, India) (represented by: P. De Baere, lawyer)

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

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

Re:

Annulment of Council Regulation (EC) No 366/2006 of 27 February 2006 amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EC) No 366/2006 of 27 February 2006 amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India, to the extent that it imposes an anti-dumping duty on MTZ Polyfilms Ltd;*

2. *Orders the Council of the European Union to bear its own costs and to pay those of MTZ Polyfilms and orders the Commission of the European Communities to bear its own costs.*

[1] OJ C 178, 29.7.2006.

Judgment of the Court of First Instance of 19 November 2009 — Torresan v OHIM — Klosterbrauerei Weissenohe (CANNABIS)

(Case T-234/06) [1]

(Community trade mark — Invalidity proceedings — Community word mark CANNABIS — Absolute ground for refusal — Descriptive character — Articles 7(1)(c) and 51(1)(a) of Regulation (EC) No 40/94 (now Articles 7(1)(c) and 52(1)(a) of Regulation (EC) No 207/2009))

(2010/C 11/40)

Language of the case: Italian

Parties

Applicant: Giampietro Torresan (Rothenburg, Switzerland) (represented by: G. Recher, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and O. Montalto, agents)

Other party/parties to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Klosterbrauerei Weissenohe GmbH & Co. KG (Weissonohe, Germany) (represented by: A. Masetti Zannini de Concina, M. Bucarelli and R. Cartella, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 June 2006 (Case R 517/2005-2) relating to invalidity proceedings between Klosterbrauerei Weissenohe GmbH & Co. KG and Giampietro Torresan.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Giampietro Torresan to pay the costs.*

[1] OJ C 261, 28.10.2006.

Judgment of the Court of First Instance of 19 November 2009 — Agencja Wydawnicza Technopol v OHIM (1000)

(Case T-298/06) [1]

(Community trade mark — Application for Community word mark 1000 — 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))

(2010/C 11/41)

Language of the case: English

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: V. von Bomhard, A. Renck and T. Dolde, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 August 2006 (Case R 447/2006-4), relating to the application for registration of the word mark 1000 as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs.*

[1] OJ C 310, 16.12.2006.

Judgment of the Court of First Instance of 19 November 2009 — Agencja Wydawnicza Technopol v OHIM (350, 250 and 150)

(Joined Cases T-64/07 to T-66/07) [1]

(Community trade mark — Applications for Community word marks 350, 250 and 150 — Absolute grounds 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))

(2010/C 11/42)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: D. Rzążewska, lawyer)

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

Re:

Three actions brought against the decisions of the Fourth Board of Appeal of OHIM of 21 December 2006 (Cases R 1033/2006-4, R 1034/2006-4 and R 1035/2006-4) concerning applications for registration of word marks 350, 250 and 150 as Community trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 19 November 2009 — Agencja Wydawnicza Technopol v OHIM (222, 333 and 555)

(Joined Cases T-200/07 to T-202/07) ([1])

(Community trade mark — Applications for Community word marks 222, 333 and 555 — 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))

(2010/C 11/43)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: D. Rzążewska, lawyer)

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

Re:

Three actions brought against the decisions of the Fourth Board of Appeal of OHIM of 22 March 2007 (Cases R 1276/2006-4, R 1277/2006-4 and R 1278/2006-4), concerning the applications for registration of the word marks 222, 333 and 555 as Community trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court of First Instance of 19 November 2009 — Denka International v Commission

(Case T-334/07) ([1])

(Plant-protection products — Active substance dichlorvos — Non-inclusion in Annex I to Directive 91/414/EEC — Evaluation procedure — Opinion of an EFSA Scientific Panel — Plea of illegality — Article 20 of Regulation (EC) No 1490/2002 — Submission of new studies and data during the evaluation procedure — Article 8 of Regulation (EC) No 451/2000 — Article 28(1) of Regulation (EC) No 178/2002 — Legitimate expectations — Proportionality — Equal treatment — Principle of sound administration — Rights of the defence — Principle of subsidiarity — Article 95(3) EC and Articles 4(1) and 5(1) of Directive 91/414)

(2010/C 11/44)

Language of the case: English

Parties

Applicant: Denka International BV (Barneveld, Netherlands) (represented by: C. Mereu and K. Van Maldegem, lawyers)

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

Re:

Application for annulment of Commission Decision 2007/387/EC of 6 June 2007 concerning the non-inclusion of dichlorvos in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2007 L 145, p. 16)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Denka International BV to bear its own costs and to pay those of the Commission of the European Communities.*

([1]) OJ C 269, 10.11.2007.

Judgment of the Court of First Instance of 25 November 2009 — Germany v Commission

(Case T-376/07) [1]

(State aid — Aid to small and medium-sized enterprises — Decision requiring information to be provided concerning two State aid schemes — Commission's monitoring powers under the fourth sentence of Article 9(2) of Regulation (EC) No 70/2001)

(2010/C 11/45)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, J. Möller and B. Klein, Agents)

Defendant: Commission of the European Communities (represented by: K. Gross and B. Martenczuk, Agents)

Re:

Annulment of Commission Decision C (2007) 3226 of 18 July 2007 requiring information to be provided concerning two State aid schemes coming under Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles [87 EC] and [88 EC] to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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[1] OJ C 297, 8.12.2007.

Judgment of the Court of First Instance of 19 November 2009 — Agencja Wydawnicza Technopol v OHIM (100 and 300)

(Joined Cases T-425/07 and T-426/07) [1]

(Community trade mark — Applications for Community figurative marks 100 and 300 — Statement as to the scope of protection — Article 38(2) of Regulation (EC) No 40/94 (now Article 37(2) of Regulation (EC) No 207/2009) — Lack of distinctive character)

(2010/C 11/46)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: D. Rzążewska, lawyer)

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

Re:

Two actions brought against the decisions of the Fourth Board of Appeal of OHIM of 3 September 2007 (Cases R 1274/2006-4 and R 1275/2006-4), concerning the applications for registration of the figurative marks 100 and 300 as Community trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs.*

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[1] OJ C 22, 26.1.2008.

Judgment of the Court of First Instance of 12 November 2009 — Spa Monopole v OHIM — De Francesco Import (SpagO)

(Case T-438/07) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark SpagO — Earlier national word mark SPA — Relative ground for refusal — No damage to reputation — Article 8(5) of Regulation (EC) No 40/94 (now Article 8(5) of Regulation (EC) No 207/2009))

(2010/C 11/47)

Language of the case: German

Parties

Applicant: Spa Monopole, compagnie fermière de Spa SA/NV, (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu, É. De Gryse, D. Moreau, J. Pagenberg, A. von Mühlendahl and S. Abel, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: De Francesco Import GmbH, (Nuremberg, Germany) (represented by: D. Terheggen and H. Lindner, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 September 2007 (Case R 1285/2006-2), relating to opposition proceedings between De Francesco Import GmbH and Spa Monopole, compagnie fermière de Spa SA/NV.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *orders Spa Monopole, compagnie fermière de Spa SA/NV to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 19 November 2009 — Michail v Commission

(Case T-49/08 P) ([1])

(Appeal — Cross-appeal — Staff case — Officials — Staff Report — Career Development Report — 2003 Assessment period — Award of a merit mark in the absence of tasks to be carried out — Non-material loss — Duty of the Civil Service Tribunal to state reasons)

(2010/C 11/48)

Language of the case: Greek

Parties

Appellant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents, and E. Bourtzalas, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 22 November 2007 in Case F-67/05 *Michail* v *Commission*, not yet published in the ECR, seeking the setting aside of that judgment.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Second Chamber) of 22 November 2007 in Case F-67/05 Michail v Commission, not yet published in the ECR;*

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

3. *Orders that the costs be reserved.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court of First Instance of 19 November 2009 — Michail v Commission

(Case T-50/08 P) ([1])

(Appeal — Staff case — Officials — Staff Report — Career Development Report — 2004 Assessment period — Duty of the Civil Service Tribunal to state reasons)

(2010/C 11/49)

Language of the case: Greek

Parties

Appellant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents, and E. Bourtzalas, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 22 November 2007 in Case F-34/06 *Michail* v *Commission*, not yet published in the ECR, seeking the setting aside of that judgment.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Christos Michail to bear his own costs and to pay those incurred by the Commission of the European Communities in the context of the present instance.*

([1]) OJ C 128, 24.5.2008.

Judgment of the Court of First Instance of 19 November 2009 — Clearwire Corporation v OHIM (CLEARWIFI)

(Case T-399/08) [1]

(Community trade mark — International registration designating the European Community — Word mark CLEARWIFI — 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))

(2010/C 11/50)

Language of the case: English

Parties

Applicant: Clearwire Corporation (Kirkland, Washington (United States)) (represented by: G. Konrad, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 June 2008 (R 706/2008-1) concerning the international registration, designating the European Community, of the sign CLEARWIFI.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Clearwire Corp. to pay the costs.*

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[1] OJ C 301, 22.11.2008.

Judgment of the Court of First Instance of 17 November 2009 — Apollo Group v OHIM (THINKING AHEAD)

(Case T-473/08) [1]

(Community trade mark — Application for Community word mark THINKING AHEAD — 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))

(2010/C 11/51)

Language of the case: English

Parties

Applicant: Apollo Group Inc. (Phoenix, Arizona, United States) (represented by: A. Link and A. Jaeger-Lenz, lawyers)

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

Re:

Action against the decision of the Second Board of Appeal of OHIM of 14 August 2008 (Case R 728/2008-2), concerning an application for registration of the word sign THINKING AHEAD as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Apollo Group, Inc. to pay the costs.*

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[1] OJ C 6, 10.1.2009.

Order of the Court of First Instance of 20 October 2009 — Lebard v Commission

(Case T-89/06) [1]

(Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2010/C 11/52)

Language of the case: French

Parties

Applicant: Daniel Lebard (Brussels, Belgium) (represented by: M. de Guillenchmidt, lawyer)

Defendant: Commission of the European Communities (represented by: É. Gippini Fournier and F. Amato and, subsequently, M. Gippini Fournier, agents)

Re:

Inter alia, an application for annulment of the decisions of the Commission rejecting, first, the request for a review as to whether the company Aventis had complied with the commitments entered into in connection with the Commission's decision of 9 August 1999 in Case IV/M.1378 — Hoechst/Rhône-Poulenc, and, second, the application for withdrawal of the Commission's decision of 13 July 1999 in Case IV/M.1517 — Rhodia/Donau Chemie/Albright & Wilson.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Daniel Lebard shall bear his own costs as well as the costs incurred by the Commission of the European Communities.*

3. *There is no need to adjudicate on the application for leave to intervene submitted by Valauret SA.*

([1]) OJ C 131, 3.6.2006.

Order of the Court of First Instance of 10 November 2009 — Tiralongo v Commission

(Case T-180/08 P) ([1])

(Appeal — Staff cases — Temporary staff — Non-extension of a fixed-term contract — Action for damages — Cause of the damage — Obligation to state reasons on the part of the Civil Service Tribunal)

(2010/C 11/53)

Language of the case: Italian

Parties

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

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and D. Martin, acting as Agents, assisted by S. Corongiu, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 6 March 2008 in Case F-55/07 *Tiralongo* v *Commission* (not yet published in the ECR), seeking the annulment of that order

Operative part of the order

1. *Dismisses the appeal;*

2. *Orders Mr Giuseppe Tiralongo to bear his own costs and to pay those incurred by the Commission of the European Communities.*

([1]) OJ C 171, 5.7.2008.

Action brought on 5 October 2009 — Evropaïki Dynamiki v Commission

(Case T-409/09)

(2010/C 11/54)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— order the Commission to pay to the applicant the amount of EUR 2 000 000, corresponding to the gross profit of the applicant (50 % of the contract value);

— order the Commission to pay the amount of EUR 100 000 corresponding to the damage suffered because of the missed opportunity to execute contract;

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

Pleas in law and main arguments

In the present case, the applicant is bringing an action for non-contractual liability arising from the damages it claims to have incurred as a result of the Commission's decision of 15 September 2004 to reject the applicant's bid submitted in response to a call for an open tender FISH/2004/02 for the provision of computer and related services linked to the information systems of the Directorate — General for Fisheries ([1]) and to award the contract to the successful contractor. In its judgment of 10 September 2008 ([2]) the Court of First Instance found that, when adopting the said decision the Commission, has failed to fulfil its obligation under Article 100 of the Financial Regulation ([3]) and Article 149 of the Implementing Rules to state reasons. The Court did not rule on the other pleas in law relied on by the applicant.

The applicant states in support of its contentions that through the above judgment the Court recognized that the evaluation committee confused award and selection criteria and valuated wrongly the tender of the applicant rejecting it unfoundedly.

Furthermore, the applicant raises additional irregularities in the above tendering procedure which were submitted in Case T-465/04 that were not examined and commented by the Court. The applicant argues that the Commission infringed the principle of non-discrimination and free competition and the principle of good administration and diligence and that it committed evident errors of appreciation. It claims that in such circumstances, the infringement of Community law establishes a sufficiently serious breach of law.

The applicant submits that since the Court annulled the Commission decision after the contract awarded based on the annulled decision was fully executed, the applicant requests compensation for the non awarding of the said contract as well as for loss of opportunity.

(1) OJ 2004/S 73 — 061407.
(2) Case T-465/04, *Evropaïki Dynamiki* v *Commission*, ECR 2008, p. II-00154.
(3) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

Action brought on 19 October 2009 — DEI v Commission

(Case T-421/09)

(2010/C 11/55)

Language of the case: Greek

Parties

Applicant: Dimosia Epikhirisi Ilektrismou A.E. (Public Power Corporation) (Athens, Greece) (represented by: P. Anestis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

On 5 March 2008 the Commission adopted Decision C(2008) 824 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Dimosia Epikhirisi Ilektrismou A.E. for the extraction of lignite, by which the Commission found that the Hellenic Republic had infringed Article 86(1) EC, in conjunction with Article 82 EC, to the extent that it granted and maintained preferential rights in favour of the applicant for the exploitation of lignite in Greece, thereby creating inequality of opportunity between economic operators as regards access to primary fuels for the generation of electricity and enabling the applicant to maintain or reinforce its dominant position on the Greek wholesale electricity market.

The applicant challenged that decision by bringing an action for annulment before the Court of First Instance of the European Communities, which was registered as Case T-169/08 and is pending.

The present action is for annulment, pursuant to the fourth paragraph of Article 230 EC, of Commission Decision C(2009) 6244 of 4 August 2009 ('the contested decision') 'establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite'.

Under the first plea for annulment, the applicant submits that the Commission erred in law and manifestly misappraised the facts because (i) it defined the relevant markets incorrectly, failing to take into account that in respect of the generation of electricity extracted lignite also faces competition from other fuels, such as natural gas, which constitute substitutes for lignite and, therefore, belong to the same market and (ii) it assessed incorrectly the geographical extent of the lignite supply market in Greece for the generation of electricity; therefore, the market for lignite supply extends to the broader region of the Balkans.

Under the second plea for annulment, the applicant contends that the contested decision is vitiated by an error of law and manifest misappraisal of the facts in relation to the need to impose corrective measures. First, the Commission erred because it did not take account, when determining the corrective measures, of the legal arguments and the factual material that is included in the administrative procedure and in the annulment proceedings concerning the decision of March 2008. Second, the Commission incorrectly rejected the important new information submitted by DEI regarding the further opening of the wholesale electricity supply market, because it allegedly did not amount to significant new facts. Third, the contested decision is based on an incorrect calculation of the quantities of lignite that must be given to competitors in order to correct the alleged infringement.

Under the third plea for annulment, the applicant submits that the contested decision does not comply with the rules regarding the stating of reasons, but simply repeats in summary form some of the applicant's arguments during the administrative procedure without, however, answering them. Similarly, the ground in the decision relating to the geographical extent of the lignite market does not enable the addressee of the decision to understand the defendant's final conclusions on that point. Lastly, in the applicant's submission, the decision does not state reasons as to why 40 % is considered to be the necessary proportion of known exploitable lignite reserves that must be made available to competitors of DEI.

Finally, under the fourth plea for annulment, the applicant maintains that the contested decision infringes the principles of freedom of contract and of proportionality. In so far as the decision prohibits persons who will in the future acquire by tender procedures exploitation rights in respect of the deposits in the areas of Drama, Elassona, Vegora and Vevi from selling quantities of extracted lignite to DEI, it automatically restricts excessively the contractual freedom both of the applicant and of the third parties. Furthermore, in view of significant developments that demonstrate the gradual opening of the Greek electricity market, the exclusion of DEI from tender procedures for the grant of all new lignite rights and the unjustified restriction of its business activity constitute unnecessary measures and are disproportionate to the alleged infringement.

Action brought on 21 October 2009 — Bayerische Asphalt-Mischwerke v OHIM — Koninklijke BAM Groep (bam)

(Case T-426/09)

(2010/C 11/56)

Language in which the application was lodged: English

Parties

Applicant: Bayerische Asphaltmischwerke GmbH & Co. KG für Straßenbaustoffe (Hofolding, Germany) (represented by: R. Kunze, lawyer and Solicitor, and G. Würtenberger, lawyer)

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

Other party to the proceedings before the Board of Appeal: Koninklijke BAM Groep NV (Bunnik, The Netherlands)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 August 2009 in case R 1005/2008-2, in so far as the opposition was rejected with respect to "non-metallic rigid piping for building; transportable structures; monuments, not of metal; building construction; repairs; repair and maintenance";

— Grant the opposition against the Community trade mark concerned also for "non-metallic rigid piping for building; transportable structures; monuments, not of metal; building construction; repairs; repair and maintenance";

— 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 "bam", for goods and services in classes 6, 19, 37 and 42

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

Mark or sign cited: German trade mark registration of the figurative mark "bam", for goods in classes 7 and 19

Decision of the Opposition Division: Allowed the opposition partially

Decision of the Board of Appeal: Annulled partially the decision of the Opposition Division

Pleas in law: Infringement of Articles 8(1)(b) Council Regulation No 207/2009 as the Board of Appeal failed to conclude that there was similarity between the goods and services covered by the Community trade mark concerned, on one hand, and the goods covered by the trade mark cited in the opposition proceedings, on the other hand; misuse of power as the Board of Appeal acted *ultra vires*; infringement of Article 75 of Council Regulation No 207/2009 as the Board of Appeal failed to deal, in a comprehensive manner, with the applicant's arguments set forth in the appeal substantiation; infringement of Article 63(1) of Council Regulation No 207/2009 as the Board of Appeal erred in limiting the scope of protection of the Community trade mark concerned and, thus, wrongly failed to take into account all relevant factors.

Action brought on 22 October 2009 — Berenschot Groep v Commission

(Case T-428/09)

(2010/C 11/57)

Language of the case: English

Parties

Applicant: Berenschot Groep BV (Utrecht, Netherlands) (represented by: B. O'Connor, solicitor)

Defendant: Commission of the European Communities

Form of order sought

— declare the application admissible;

— annul unreasoned decision of the Commission of 11 August 2009 not to rank the tender submitted by the applicant as one of the seven most economically advantageous tenders and in consequence no to retain the consortium led by the applicant in respect of the service tender procedure "Multiple Framework contract to recruit short-term services in the exclusive interest of third countries benefiting from European Commission External Aid";

— enquire into the conduct of the tender and the exercise of the vigilance in relation to tenderers suspected of fraud;

— annul the decision of 21 October 2009;

— make any additional order which the Court considers necessary;

— order the Commission to pay the costs.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the defendant's decision not to retain the bid it submitted as a part of consortium in response to a call for an open tender (EuropAid/127054/C/SER/multi) for service provision for "Multiple Framework contract to recruit short-term services in the exclusive interest of third countries benefiting from European Commission External Aid" [1]. Furthermore, the applicant seeks annulment of the Commission decision of 21 October 2009 granting partial access to the evaluation reports regarding the said tender procedure.

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

First, it submits that the evaluation committee did not assess properly the experts included in the applicant's tender. In its view, the evaluation committee made a manifest error of assessment by marking the experts of the consortium led by the applicant unreasonably. Furthermore, the applicant argues that the evaluation committee and the Commission did not provide any explanation on the grading system for individual curriculum vita nor did they explain why the applicant's experts have scored so poorly. If the evaluation committee used no objective criteria when making its assessments, the Commission has not ensured that the principles of equal treatment of the tenderers, transparency, fair competition and good administration have been complied with. The evaluation report provided by the Commission on 21 October 2009 did not remedy the lack of information, as it was limited to the presentation of the final scores obtained by the applicant.

Second, the applicant claims that the Commission infringed Article 7(1) of Regulation 1049/2001 [2] in that it did not respond to the applicant's request to access the documents in the time-limits set by this article. It also contends that the Commission infringed the principle of good administration, as the evaluation report has not been provided timely enough to enable the applicant to properly exercise its rights under Article 230 EC.

Third, the applicant submits that the Commission has not complied with its obligations under Article 94 of the financial regulation [3] and under Decision 2008/969 [4] in that it did not take steps to protect the integrity of the Community's budget by not excluding the tenderers suspected of fraud from the award of the contract in question.

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[1] OJ 2008/S 90-121428

[2] 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

[3] 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)

[4] Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ L 2008 344, p. 125)

Action brought on 22 October 2009 — GL2006 Europe v Commission and OLAF

(Case T-435/09)

(2010/C 11/58)

Language of the case: English

Parties

Applicant: GL2006 Europe Ltd (Birmingham, United Kingdom) (represented by: M. Gardenal and E. Belinguier-Raiz, lawyers)

Defendants: Commission of the European Communities and European Anti-Fraud Office (OLAF)

Form of order sought

— declare that the on-the-spot check carried out by the Commission in December 2008, the draft audit report and the final audit report issued respectively on 19 December 2008 and 25 March 2009 by the Commission, as well as the final decision of the Commission contained in the letter of 10 July 2009, which foresees the termination of two projects in which GL2006 Europe Ltd was involved, and the debit notes of 7 August 2009 which provide that GL2006 Europe Ltd has to repay a total sum of EUR 2 258 456,31 to the Commission are unlawful, null and void;

— in the alternative and/or in addition, establish that the Commission's substantive allegations are not justified;

— declare that the Commission on-the-spot check, audit reports and final decision cannot affect the validity of the EC contracts in which GL2006 Europe Ltd was involved;

— declare that these contracts are valid;

— order the Commission to pay all the costs.

Pleas in law and main arguments

By the present application based on the arbitration clause, the applicant contests the lawfulness of the Commission decision of 10 July 2009 terminating, following the OLAF's audit report, two contracts concluded with the applicant in the framework of the community programmes for research and technological development. The applicant contests as well the lawfulness of the debit notes issued by the Commission on 6 August 2009, following the same OLAF's audit report, recovering the advance payments made by the Commission for twelve projects in which the applicant was involved and submitted to investigation.

The applicant puts forward the following arguments in support of its claims.

First, it claims that the on-the-spot check carried out by the Commission was irregular for the following reasons: there was no prior notification; its duration was insufficient with the respect to the seriousness of the final decision; the consideration of the essential elements was not sufficient; the Commission infringed the privacy of the applicant; there was an error regarding the legal basis as the written record of the check mentioned a no longer in force regulation.

Second, the applicant contends that the audit report present serious irregularities such as lack of appropriate motivation since it was taken on the grounds of an incomplete on-the-spot check, or lack of relation between the analysis and the conclusions reached by the final report which led to violation of the applicant's fundamental rights such as presumption of the innocence.

Third, the applicant claims that the Commission's final decision lacks of clarity regarding the sanction since it foresees the termination of two contracts while the relative debit notes are related to twelve contracts. It also submits that this final decision was not regularly notified to the applicant.

Furthermore, the applicant submits the claims regarding the substantial arguments given by the Commission in order to terminate the contracts and to claim the reimbursement of the sums conferred to the applicant. The applicant contends that this arguments put forward by the Commission in its decision are groundless and they reach the opposite conclusions to the ones issued by the audit report for 2007.

Action brought on 29 October 2009 — Dufour v ECB

(Case T-436/09)

(2010/C 11/59)

Language of the case: French

Parties

Applicant: Julien Dufour (Jolivet, France) (represented by: I. Schoenacker Rossi, lawyer)

Defendant: European Central Bank

Form of order sought

— Annul the confirmatory refusal sent by the Board of Directors of the European Central Bank to Mr Dufour by letter dated 2 September 2009 regarding the databases which made possible the compilation of reports on staff recruitment and mobility;

— Consequently, order the European Central Bank to give to Mr Dufour all the databases which made possible the compilation of reports on staff recruitment and mobility;

— Order the European Central Bank to pay the sum of EUR 5 000 in damages in view of the harm suffered by the applicant;

— Order the European Central Bank to pay the costs in their entirety.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the European Central Bank's decision of 2 September 2009 refusing to grant him access to the databases which made possible the compilation of reports on staff recruitment and mobility from 1999 to 2009 and which he had requested in the course of preparing his doctoral thesis, and an order for damages because of the delay in the writing of his thesis.

In support of his action, the applicant submits that the statement of reasons for the refusal to grant him access to the documents in question is unlawful because it relies on exceptions which are unsubstantiated and not provided for by Decision ECB/2004/3 of the European Central Bank of 4 March 2004 on public access to European Central Bank documents [1], which was adopted with a view to the implementation of Regulation 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 [2], and is based on the incorrect assumption that the fact that the databases are in an unprinted electronic form means that they are not 'documents'. Lastly, the European Central Bank is not entitled to rely on, as against the applicant, the difficulties encountered in making the documents available.

[1] OJ 2004 L 80, p. 42.
[2] OJ 2001 L 145, p. 43.

Action brought on 19 October 2009 — Oyster Cosmetics v OHIM — Kadabell (OYSTER COSMETICS)

(Case T-437/09)

(2010/C 11/60)

Language in which the application was lodged: English

Parties

Applicant: Oyster Cosmetics SpA (Castiglione delle Stiviere, Italy) (represented by: A. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kadabell GmbH & Co. KG (Lenzkirch, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 August 2009 in case R 1367/2008-1;

— Order the adverse parties to bear the costs of the present proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "OYSTER COSMETICS", for goods in class 3

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

Mark or sign cited: Community trade mark registration of the figurative mark "KADUS OYSTRA AUTO STOP PROTECTION" for goods in class 3

Decision of the Opposition Division: Allowed the opposition partially

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned.

Action brought on 23 October 2009 — Purvis v Parliament

(Case T-439/09)

(2010/C 11/61)

Language of the case: French

Parties

Applicant: John Robert Purvis (Saint Andrews, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Parliament

Form of order sought

— Declare that the decisions of the Bureau of the Parliament of 9 March and 1 April 2009 are unlawful in so far as they amend the additional pension scheme and abolish the special methods of payment of the additional pension to Members or former Members of the Parliament who voluntarily joined that optional pension scheme;

— Annul the Parliament's decision of 7 August 2009, which refused the applicant 25 % of his pension in the form of a lump sum;

— Order the Parliament to pay the costs.

Pleas in law and main arguments

The action has been brought against the Parliament's decision of 7 August 2009, which was taken to implement the rules on the additional (voluntary) pension scheme in Annex VIII to the Rules governing the payment of expenses and allowances to Members of the European Parliament, as amended by the Parliament's decision of 9 March 2009, and which dismissed the applicant's application for payment, in part (25 %) in the form of a lump sum and in part in the form of an annuity, of his additional pension as from August 2009.

In support of his action, the applicant relies as regards the substance of the case on four pleas in law alleging:

— Infringement of the applicant's acquired rights and of the principle of the protection of legitimate expectations;

— Infringement of the general principles of equal treatment and of proportionality;

— Breach of Article 29 of the Rules governing the payment of expenses and allowances to Members of the European Parliament which provides that the Quaestors and the Secretary-General are responsible for monitoring the interpretation and the strict application of those rules;

— Breach of good faith in the implementation of contracts and nullity of purely enabling clauses.

Action brought on 4 November 2009 — Agriconsulting Europe v Commission

(Case T-443/09)

(2010/C 11/62)

Language of the case: Italian

Parties

Applicant: Agriconsulting Europe SA (Brussels, Belgium) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision.

— Order the Commission to pay compensation for the damage suffered.

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

Pleas in law and main arguments

The applicant in the present action is a leading management consultancy providing technical advisory services for international development projects. It is bringing an action against the Commission's decision in connection with the award of Lot No 11 in contract notice EuropeAid/127054/C/SER/multi (OJ S 128 of 4 July 2008) not to include among the six economically most advantageous bids that submitted by the consortium of which the applicant was the leading participant and to award that lot to other tenderers.

The applicant puts forward the following pleas in support of its application for annulment:

— distortion of the evidence and the factual circumstances. The contested decision rejected the applicant's bid on the basis that the 'declarations of exclusivity' of three experts in its bid were also to be found in other bids and it was therefore necessary to exclude them from the evaluation. That conclusion is vitiated in so far as it failed to take account of the experts' statements denying that some of those declarations had any value, on the one hand, or actually claiming that they were false, on the other;

— misinterpretation of the consequences to be drawn from the non-compliance of the 'declarations of exclusivity' and infringement of the principle of legal certainty, in so far as the defendant imposed the penalty laid down for cases in which more than one declaration of exclusivity is signed on all the tenders, without considering the role and responsibilities of the company or the expert;

— infringement of legal requirements, of the principle of sound administration and the principal of proportionality, in so far as the defendant failed to exercise the power conferred on it to request clarification where there is some ambiguity concerning some aspect of the tender before confirming that errors exist which may affect the validity of a tender.

The applicant, which also submits that there has been infringement of the obligation to state reasons, seeks, in addition, compensation for the damage suffered on grounds of non-contractual liability for unlawful acts or, in the alternative, for lawful acts.

Action brought on 29 October 2009 — La City v OHIM — Bücheler and Ewert

(Case T-444/09)

(2010/C 11/63)

Language in which the application was lodged: French

Parties

Applicant: La City (La Courneuve, France) (represented by: S. Bénoliel-Claux, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Andreas Bücheler and Konstanze Ewert (Engelskirchen, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 5 August 2009 in Case R 233/2008-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Andreas Bücheler and Konstanze Ewert

Community trade mark concerned: the word mark 'citydogs' for goods in Classes 16, 18 and 25 (Application No 4 692 381)

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

Mark or sign cited in opposition: the French word mark 'CITY' for goods in Classes 9, 14, 18 and 25; the opposition is against registration in Classes 18 and 25

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: annulment of the contested decision and dismissal of the opposition

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) owing to the absence of likelihood of confusion of the marks at issue

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Action brought on 6 November 2009 — Simba Toys v OHIM — Seven Towns (Three-dimensional representation of a cubic toy)

(Case T-450/09)

(2010/C 11/64)

Language in which the application was lodged: English

Parties

Applicant: Simba Toys GmbH & Co. KG (Fürth, Germany) (represented by: O. Ruhl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Seven Towns Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 September 2009 in case R 1526/2008-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs incurred in the appeal proceedings and those incurred before the Court.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A three-dimensional representation of a cubic toy for goods in class 28

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

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

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b),(c) and (e) of Council Regulation 207/2009, as the Board of Appeal wrongly assessed the absolute grounds for refusal presented by the applicant; Infringement of Article 75 of Council Regulation No 207/2009 as the Board of Appeal failed to state reasons why it denied the ground for revocation under Article 7(1)(c) of the said regulation; Infringement of Article 76(1) of Council Regulation No 207/2009 as the Board of Appeal failed to identify fully the features of the trade mark subject of the application for a declaration of invalidity and failed to take into account certain features of such trade mark.

Appeal brought on 11 November 2009 by Eckehard Rosenbaum against the judgment of the Civil Service Tribunal delivered on 10 September 2009 in Case F-9/08 Rosenbaum v Commission

(Case T-452/02 P)

(2010/C 11/65)

Language of the case: German

Parties

Appellant: Eckehard Rosenbaum (Bonn, Germany) (represented by H.-J. Rüber, lawyer)

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

Form of order sought by the appellant

— set aside the judgment delivered on 10 September 2009 by the Civil Service Tribunal in the case of *Rosenbaum* v *Commission*;

— set aside the Commission's grading decision of 13 February 2007;

— require the Commission to grade the appellant in a manner which is non-discriminatory and consistent with his professional experience, and to take all further necessary measures resulting from the judgment;

— order the Commission to pay all costs relating to the dispute.

Pleas in law and main arguments

The appeal has been brought against the judgment of the Civil Service Tribunal of 10 September 2009 in Case F-9/08 *Rosenbaum* v *Commission*, by which the action brought by the present appellant was dismissed.

In support of his appeal, the appellant first of all submits that the Civil Service Tribunal conducted an incomplete examination of the first plea in law. The Civil Service Tribunal, the appellant continues, also erred in law in rejecting the other three pleas as these, in contrast to the view taken by the Tribunal, were appropriate for the purpose of setting aside the contested measure. In conclusion, the appellant expresses the view that the lack of higher-quality selection procedures has a bearing on the issue of the legality of the contested decision and that the rejection of the evidence adduced in this connection is for that reason unlawful.

Action brought on 13 November 2009 — Westfälisch-Lippischer Sparkassen- und Giroverband v Commission

(Case T-457/09)

(2010/C 11/66)

Language of the case: German

Parties

Applicant: Westfälisch-Lippischer Sparkassen- und Giroverband (Münster, Germany) (represented by: A. Rosenfeld and I. Liebach, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 3900 final corr. of 12 May 2009 on the State aid C 43/2008 (ex N 390/2008) implemented by Germany for the restructuring of WestLB AG;

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

Pleas in law and main arguments

The applicant has brought an action for the annulment of Commission Decision C(2009) 3900 final corr. of 12 May 2009 on the State aid C 43/2008 (ex N 390/2008) implemented by Germany for the restructuring of WestLB AG. In that decision, the Commission took the position that, subject to a number of conditions, the notified aid in the form of a guarantee of EUR 5 billion is compatible with the common market.

In support of its application for annulment the applicant, one of the owners of WestLB AG, submits the following pleas in law:

— Infringement of the principle of collegiality enshrined in Article 219 EC, since the contested decision was not taken by the Commission as the materially competent body, but by the Commissioner for Competition;

— infringement of Article 87(1) EC, since the Commission did not examine whether competition would be distorted;

— errors in the application of the second alternative in Article 87(3)(b) EC, since the contested decision wrongly interpreted the facts as well as the content and normative structure of that provision; failed to undertake the mandatory review of proportionality and the mandatory balancing test, or undertook them in a manner that was inadequate; contained several errors of assessment and of judgment and imposed disproportionate conditions;

— infringed the principle of proportionality;

— infringed the principle of equal treatment, since the contested decision treats WestLB AG and its owners differently compared to other decisions adopted prior to the financial crisis and other decisions adopted during the present financial crisis, without objectively justified reasons being provided for that difference in treatment;

— infringement of Article 295 EC, since the condition requiring the present owners to sell their shares interferes with the property rights of the owners of WestLB AG as guaranteed and protected by Germany;

— infringement of Article 7(4) of Regulation (EC) No 659/1999, [1] which does not provide a substantive and sufficiently definite legal basis for such interference;

— infringement of the obligation to provide reasons under Article 253 EC.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 13 November 2009 — Slovak Telekom v Commission

(Case T-458/09)

(2010/C 11/67)

Language of the case: English

Parties

Applicant: Slovak Telekom a.s. (Bratislava, Slovak Republic) (represented by: M. Maier, L. Kjølbye and D. Geradin, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of Commission decision C(2009) 6840 of 3 September 2009 ordering it, in accordance with Articles 18(3) and 24(1) of Council Regulation 1/2003 [1] to provide the information in the framework of the Case COMP/39523 — Slovak Telekom relating to a proceeding under Article 82 EC and imposing the periodic penalties in case of non compliance with the decision.

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

First, the applicant argues that the contested decision is in breach of Article 18(3) of Regulation 1/2003 regarding the information covering a period that predates the Slovak Republic's accession to the EU. In the applicant's opinion, prior to this date the Commission did not have power to apply the EC law to conduct engaged in within the territory of the Slovak Republic; as a consequence, it is not entitled to use its power of investigation enshrined in this article to obtain information pertaining to that same period.

Second, applicant claims that the contested decision infringes the principle of procedural fairness enshrined in Article 41(1) of the Charter of Fundamental Rights. The Commission's investigation into the applicant's conduct during a period where EC law was not applicable and it was under no obligation to comply with these rules may be prejudicial to the applicant.

Third, the applicant contends that the contested decision infringes the principle of proportionality as reflected in Article 18(3) of Regulation 1/2003, according to which the Commission is empowered to require undertakings to provide all necessary information. In this regard, the applicant claims that the Commission failed to establish the required link between the requested pre-accession information and the allegedly illegal conduct after 1 May 2004. As a result, in the applicant's opinion, information or documents pertaining to the pre-accession period are not necessary in order to enable the Commission to assess whether the applicant's post-accession conduct complies with the EC law.

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

Action brought on 17 November 2009 –Storck v OHIM — RAI (Radiotelevisione)

(Case T-462/09)

(2010/C 11/68)

Language in which the application was lodged: German

Parties

Applicant: August Storck KG (Berlin, Germany) (represented by: I. Rohr, P. Goldenbaum and T. Melchert, 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: Radiotelevisione italiana SpA (RAI)(Rome, Italy)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 8 September 2009 in Case R 1779/2008 4;

— order OHIM to pay the costs;

— should there be an intervener in the proceedings, order the intervener to bear its own costs.

Pleas in law and main arguments

Applicant for a Community trade mark: August Storck KG

Community trade mark concerned: the word mark "Ragolizia" for good in Class 30 (Application No 5 201 835)

Proprietor of the mark or sign cited in the opposition proceedings: Radiotelevisione italiana SpA (RAI)

Mark or sign cited in opposition: Community trade mark No 4 771 762 "FAVOLIZIA"

Decision of the Opposition Division: Upheld the opposition and rejected the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 (1), as there is no likelihood of confusion of the opposing trade marks

(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 20 November 2009 — Herm. Sprenger v OHIM — Kieffer Sattlerwarenfabrik (form of a stirrup)

(Case T-463/09)

(2010/C 11/69)

Language in which the application was lodged: German

Parties

Applicant: Herm. Sprenger GmbH & Co. KG (Iserlohn, Germany) (represented by: V. Schiller, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Georg Kieffer Sattlerwarenfabrik GmbH (Munich, Germany)

Form of order sought

— set aside the decision delivered on 4 September 2009 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Appeal Proceedings R 1614/2008-4;

— dismiss the application brought by the company Georg Kieffer Sattlerwarenfabrik GmbH for a declaration that the applicant's Community trade mark No 1 599 620 is invalid;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the three-dimensional Community trade mark No 1 599 620 for goods in Class 6

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Georg Kieffer Sattlerwarenfabrik GmbH

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

Decision of the Board of Appeal: annulment of the decision of the Cancellation Division and declaration that the Community trade mark in issue is invalid

Pleas in law:

— Breach of Article 52(1)(a), in conjunction with Article 7(1), of Regulation (EC) No 207/2009 [1] on the ground of an incorrect finding that the mark is devoid of any original distinctive character;

— Breach of Article 52(1)(a) and 52(2), in conjunction with Article 7(3), of Regulation (EC) No 207/2009 on the ground that it was wrongly assumed that the disputed mark had not acquired distinctive character through use;

— Breach of the first clause of Article 76(1) of Regulation No 207/2009 in that the relevant facts were not examined in the requisite manner;

— Breach of Article 83 of Regulation No 207/2009 in respect of the rights of the defence;

— Breach of Article 77(1) of Regulation No 207/2009 in that the Board of Appeal ought to have acceded to the applicant's alternative request for oral proceedings;

— Breach of the EC Treaty in respect of the basic right to equitable proceedings.

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

Order of the Court of First Instance (Fifth Chamber) of 30 October 2009 — Nestlé v OHIM — Quick (QUICKY)

(Case T-74/04) [1]

(2010/C 11/70)

Language of the case: French

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

[1] OJ C 94, 17.4.2004.

Order of the Court of First Instance of 13 November 2009 — Lumenis v OHIM (FACES)

(Case T-301/07) [1]

(2010/C 11/71)

Language of the case: English

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

[1] OJ C 247, 20.10.2007.

Order of the Court of First Instance (Third Chamber) of 16 November 2009 — Tipik v Commission

(Case T-252/08) [1]

(2010/C 11/72)

Language of the case: French

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

[1] OJ C 209, 15.8.2008.

Order of the Court of First Instance of 17 November 2009 — STIM d'Orbigny v Commission

(Case T-559/08) [1]

(2010/C 11/73)

Language of the case: French

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

[1] OJ C 44, 21.2.2009.

Order of the Court of First Instance of 27 October 2009 — Bactria and Gutknecht v Commission

(Case T-561/08) [1]

(2010/C 11/74)

Language of the case: English

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

[1] OJ C 55, 7.3.2009.

Order of the Court of First Instance of 12 November 2009 — Mannatech v OHIM (BOUNCEBACK)

(Case T-263/09) [1]

(2010/C 11/75)

Language of the case: English

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

[1] OJ C 205, 29.8.2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 5 October 2009 — V v European Parliament

(Case F-46/09)

(2010/C 11/76)

Language of the case: French

Parties

Applicant: V (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

First, annulment of the medical opinion of physical unfitness of 18 December 2008 and, second, annulment of the decision of 19 December 2008 to withdraw the offer of employment previously made to the applicant.

Form of order sought

— Annul the decision of 19 December 2008 by the Director of Administrative Management of Personnel withdrawing, on the ground of unfitness for employment, the offer of employment as a member of the contractual staff within the Secretariat General made to the applicant on 10 December 2008

— Annul the medical opinion of physical unfitness of 18 December 2008 issued by the medical officer of the Parliament since that medical officer concluded that the applicant was physically unfit without even having carried out a clinical examination of the applicant and relying solely on the decision of unfitness for employment taken by the medical officer of the European Commission in 2006 which was then improperly confirmed by a medical committee, further to the application for the annulment of that Commission decision by the applicant — those decisions being challenged before the Civil Service Tribunal in the pending Case F-33/08;

— As a consequence of those annulments, organise a real medical examination for employment with the Parliament which will not be discriminatory and re-open the post to be offered to the applicant at the DG Communication of the European Parliament;

— Award compensation for the pecuniary and non-pecuniary damage suffered by the applicant, provisionally and fairly estimated at EUR 70 000 (with the addition of default interest to be calculated at the rates set by the European Central Bank for main refinancing transactions, plus two points, from 18 December 2008), subject to increase or reduction in the course of the proceedings;

— Order the defendant to pay the costs.

Action brought on 21 October 2009 — W v Commission

(Case F-86/09)

(2010/C 11/77)

Language of the case: French

Parties

Applicant: W (Brussels, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision not to grant the household allowance to the applicant.

Form of order sought

— Annul the decision of the Office for the administration and payment of individual entitlements of 5 March 2009 not to grant the household allowance to the applicant;

— annul the rejection of the complaint brought by the applicant on 2 April 2009, recorded as No R/149/09 under Article 90(2) of the Staff Regulations, issued by the Director General of DG Admin as appointing authority and dated 17 July 2009;

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

Action brought on 4 November 2009 — Ernotte v Commission

(Case F-90/09)

(2010/C 11/78)

Language of the case: French

Parties

Applicant: Frédéric Ernotte (Brussels, Belgium) (represented by: L. Defalque, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Action for an order against the Commission to make good the material and non-material loss which the applicant suffered as a result of the procedure for handling his case concerning the recognition of the accidental origin of the infarct which he suffered.

Form of order sought

— order the Commission to pay to the applicant the sum of EUR 96 579 175 (increased by default interest calculated using the base rate fixed by the European Central Bank for its main refinancing operations increased by two percentage points, from 1 January 2006) as compensation for the material loss he suffered as a result of the off-handedness and the unreasonable period in which the Commission handled its case concerning the recognition of the accidental origin of the infarct which he suffered on 28 August 2002;

— award damages for the non-material loss suffered by the applicant assessed provisionally ex aequo et bono at EUR 5 000, subject to that figure being increased or decreased in the course of the proceedings;

— order the European Commission to pay the costs.

Action brought on 30 October 2009 — Marcuccio v Commission

(Case F-91/09)

(2010/C 11/79)

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 rejecting the applicant's request for compensation for damage suffered as a result of a letter by which the Commission asked a doctor to carry out a medical examination in order to assess the applicant's actual fitness for work.

Form of order sought

— Declare that there is no legal basis for or, in the alternative, annul the decision, which was in fact an implied decision, by which the Commission rejected the request of 9 September 2008;

— in so far as necessary, declare that there is no legal basis for or, in the alternative, annul the act, in whatever form, by which the Commission rejected the complaint of 16 March 2009 against the decision rejecting the request of 9 September 2008;

— in so far as necessary, declare that there is no legal basis for or, in the alternative, annul note ADMIN.B.2/MB/ks/D(09) 16349 of 30 June 2009;

— in so far as necessary, confirm that a Commission official: (a) sent or arranged to be sent to the Direttore A.S.L. Le 2 — Maglie the note of 9 December 2003 concerning 'Medical examination in Tricase (Le)'; (b) asked him to arrange for the applicant to have a medical examination; (c) informed him that, by reason of an extended period of illness (more than 365 days), a procedure had been initiated (Invalidity Committee) to assess whether or not the applicant was fit for work; (d) expressed to him his opinion, which was wholly unfounded, that the applicant 'had employed numerous delaying tactics in order to stall the convening of the Invalidity Committee, all of which were rejected by the competent department of the European Commission as lacking in justification'; (e) informed him that the applicant 'has been invited to attend a medical examination in Brussels on Monday 8 December 2003'; (f) gave him the name of the person appointed to represent the institution on the Invalidity Committee; (g) informed him that, by 9 December 2003, 'no medical certificate ha[d] been sent by fax to the Commission's Medical Service'; (h) expressed to him his opinion, which was wholly unfounded, that the applicant should have sent a medical certificate by fax to the Commission's Medical Service to justify his failure to attend the medical examination which should have taken place in Brussels on 8 December 2003; (i) attached two documents to the note of 9 December 2003, the first relating to the alleged referral of the applicant's case to the Invalidity Committee and the second summoning the applicant to attend a medical examination;

— in so far as necessary, confirm and declare that each of the acts giving rise to the damage in question is unlawful, in particular as regards the cumulative effect of those acts;

— order the defendant to pay to the applicant by way of compensation for the damage thereby arising the sum of EUR 300 000, or such greater or lesser sum as the Tribunal may consider fair and just;

— order the defendant to pay to the applicant, with effect from the date following that on which the request of 24 September 2008 was received by the Commission until actual payment, the sum of EUR 300 000 and interest on that sum at the rate of 10 % per annum, with annual capitalisation;

— order the defendant to pay all costs, fees and other expenses incurred in the proceedings.

Action brought on 6 November 2009 — U v Parliament

(Case F-92/09)

(2010/C 11/80)

Language of the case: French

Parties

Applicant: U (Luxembourg, Luxembourg) (represented by: F. Moyse and A. Salerno, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision of the Parliament to dismiss the applicant and compensation for the non-material loss suffered.

Form of order sought

— annul the decision of the appointing authority of 6 July 2009 whereby the appointing authority decided to dismiss the applicant with effect on 1 September 2009;

— award compensation for the non-material loss suffered, quantified, subject to any amendment in the course of the proceedings, in the sum of EUR 15 000;

— order the European Parliament to pay the costs.

Action brought on 9 November 2009 — Nikolchov v Commission

(Case F-94/09)

(2010/C 11/81)

Language of the case: French

Parties

Applicant: Vladimir Nikolchov (Brussels, Belgium) (represented by: B. Lemal, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of 29 July 2009 of the appointing authority refusing to grant daily allowances to the applicant, following his recruitment as a probationary official on 16 January 2009.

Form of order sought

— declare that this action is formally admissible;

— declare that an infringement occurred of Annex VII to the Staff Regulations and Article 10 of Annex VII to the Staff Regulations and of declare that there has been an infringement of the Commission decision of 15 April 2004 adopting the General implementing provisions for giving effect to Article 7(3) thereof;

— consequently, order the annulment of the decision of the appointing authority (No R/9/09) of 29 July 2009 dismissing the applicant's complaint seeking the grant of daily allowances on the basis of his second entry into service, in accordance with the second indent of Article 10(2)(b) of Annex VII to the Staff Regulations;

— order the defendant to pay the applicant unpaid daily allowance totalling EUR 10 979,43, or any other amount fixed by the Tribunal, in addition to default interest from the date of bringing the complaint until the date of payment;

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

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