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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE

(2010/C 37/01)

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

OJ C 24, 30.1.2010

Past publications

OJ C 11, 16.1.2010

OJ C 312, 19.12.2009

OJ C 297, 5.12.2009

OJ C 282, 21.11.2009

OJ C 267, 7.11.2009

OJ C 256, 24.10.2009

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 9 November 2009 — Bogusław Juliusz Dankowski v Dyrektor Izby Skarbowej w Łodzi

(Case C-438/09)

(2010/C 37/02)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Bogusław Juliusz Dankowski

Defendant: Dyrektor Izby Skarbowej w Łodzi

Questions referred

1. Do the rules of the common system of VAT, in particular Article 17(6) of the Sixth VAT Directive (Directive 77/388/EEC), [1] preclude legislation of a Member State under which a taxable person does not acquire the right to deduct input tax arising from a VAT invoice issued by a person who is not entered on the register of taxable persons for the purpose of tax on goods and services?

2. Is it relevant to the answer to the first question that:

   (a) there is no doubt that the transactions indicated on the VAT invoice are subject to VAT and that they have actually been carried out;

   (b) the invoice contained all the details required under Community legislation;

   (c) a restriction on the taxable person's right to deduct input tax arising from an invoice issued by an unregistered person operated in national law prior to the date on which the Republic of Poland acceded to the Community?

3. Does the answer to the first question depend on additional criteria being satisfied (for example, proof that the taxable person acted in good faith)?

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

Reference for a preliminary ruling from the Sąd Najwyższy (Republic of Poland), lodged on 11 November 2009 — Zakład Ubezpieczeń Społecznych v Stanisława Tomaszewska

(Case C-440/09)

(2010/C 37/03)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Zakład Ubezpieczeń Społecznych

Respondent: Stanisława Tomaszewska

Question referred

Is Article 45(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), in conjunction with Article 15(1)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1972 (I), p. 159), to be interpreted as meaning that the competent institution of a Member State is required — on establishing that a worker has failed to satisfy the condition of having completed in that Member State a period of insurance which is sufficient under the law of that State for acquisition of entitlement to a retirement pension — to take account of a period of insurance completed in another Member State in such a way that it must recalculate the period of insurance on which acquisition of entitlement depends by applying the rules arising from national law and treating the period completed in the other Member State as a period completed in its own State, or must it add the period completed in the other Member State to the national period calculated previously on the basis of the rules in question?

Reference for a preliminary ruling from the Niedersächsisches Finanzgericht (Germany) lodged on 19 November 2009 — Ulrich Schröder v Finanzamt Hameln

(Case C-450/09)

(2010/C 37/04)

Language of the case: German

Referring court

Niedersächsisches Finanzgericht

Parties to the main proceedings

Applicant: Ulrich Schröder

Defendant: Finanzamt Hameln

Question referred

The following question is referred, pursuant to Article 234(3) EC, for a preliminary ruling:

Is a situation where a relative with domestically limited tax liability, unlike a person with unlimited tax liability, may not deduct from his total income, as special expenditure, annuities paid in connection with income from letting or leasing, contrary to Articles 56 and 12 EC?

Reference for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 23 November 2009 — Claude Chartry v État belge

(Case C-457/09)

(2010/C 37/05)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Claude Chartry

Defendant: État belge

Question referred

'Do Article 6 [EU] and Article 234 [EC] preclude national legislation, such as the Law of 12 July 2009 amending Article 26 of the Law [on the Constitutional Court], from requiring the national court to make a reference to the Constitutional Court for a preliminary ruling, if it finds that a citizen taxpayer has been deprived of the effective judicial protection guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated into Community law, by another national law, [namely] Article 49 of the Law … of 9 July 2004, without that national court being able to ensure immediately the direct [effect] of Community law [in the] proceedings before it and without being able also to carry out a review of its compliance with the Convention where the Constitutional Court has recognised the compatibility of the national legislation with the fundamental rights guaranteed by Title II of the [Belgian] Constitution?'

Appeal brought on 23 November 2009 by The Wellcome Foundation Ltd against the judgment of the Court of First Instance (Seventh Chamber) delivered on 23 September 2009 in Case T-493/07: The Wellcome Foundation Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-461/09 P)

(2010/C 37/06)

Language of the case: English

Parties

Appellant: The Wellcome Foundation Ltd (represented by: R. Gilbey, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Serono Genetics Institute S.A.

Form of order sought

The appellant claims that the Court should:

— Find that, on confirming the contested decision of the Board of appeal, the Court of First Instance violated the legal requirements of Article 8-1-b CTMR ([1]) and 52-1-a CTMR

— Annul the contested judgment confriming the Board of Appeal decision in that it rejected to annul all of OHIM's and the CFI's decisions on costs, and to order OHIM to pay costs.

Pleas in law and main arguments

The appellant submits that, based on the facts of the case as appear on the trade mark registers and as produced before OHIM, the CFI considered, without legal basis, the relevant public as having a high level of attentiveness.

The appellant submits that the CFI refused to take into account evidence produced by the appellant, which evidence, being mere amplification of arguments and evidence already produced before OHIM, should have been admissible.

The appellant submits that in describing the degree of similarity between the goods, the CFI used terminology that is vague and inconsistent, thus failing to provide precise, accurate and consistent reasons for the judgment n this issue.

The appellant submits that, on the basis of the facts before it, the CFI applied incorrect, incomplete and flawed legal tests to reach the conclusion that the Board of Appeal was correct in its finding that the level of similarity between the goods was low.

The appellant submits that the CFI, on the basis of the facts before it, failed to apply the correct test for global comparison of the signs, in reaching the conclusion that the level of similarity between the signs is low.

Finally the appellant submits that, having applied legally incorrect, incomplete or flawed tests for defining the relevant public, evaluating the degree of similarity of goods, and evaluating the degree of similarity between the signs, the CFI based its finding on likelihood of confusion, on incorrect, incomplete or flawed legal criteria.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-465/09 P)

(2010/C 37/07)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Comunidad Autónoma del País Vasco — Goberierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the present appeal to be admissible and well founded;

— set aside the judgment under appeal;

— uphold the application at first instance;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. The CFI erred in law in its reasoning in the judgment under appeal relating to the fact that Case T-32/01 has become devoid of subject-matter.

2. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999 ([1]), required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

3. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was to be carried out within the framework of the procedure laid down for existing aid.

4. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

5. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which prove that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

6. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Álava — Diputación Foral de Álava against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-466/09 P)

(2010/C 37/08)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Álava — Diputación Foral de Álava (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Comunidad Autónoma del País Vasco — Goberierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the present appeal to be admissible and well founded;

— set aside the judgment under appeal;

— uphold the application at first instance;

— alternatively, refer the case back to the Court of First Instance and order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. The CFI erred in law in its reasoning in the judgment under appeal relating to the fact that Case T-30/01 has become devoid of subject-matter.

2. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999 ([1]), required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

3. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was to be carried out within the framework of the procedure laid down for existing aid.

4. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

5. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

6. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/01 to T-88/01 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-467/09 P)

(2010/C 37/09)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Álava — Diputación Foral de Álava, Comunidad Autónoma del País Vasco — Goberierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— uphold the application at first instance;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. The CFI erred in law in its reasoning in the judgment under appeal relating to the fact that Case T-31/01 has become devoid of subject-matter.

2. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999 ([1]), required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

3. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was to be carried out within the framework of the procedure laid down for existing aid.

4. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

5. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

6. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-468/09 P)

(2010/C 37/10)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Comunidad Autónoma del País Vasco — Goberierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the annulment Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999 ([1]), required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

2. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was to be carried out within the framework of the procedure laid down for existing aid.

3. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

4. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

5. The CFI erred in law by confirming the finding that the tax measure at issue, adopted in 1993, constituted operating aid, by applying the definition of investment aid laid down in the directives on regional aid of 1998. The CFI breached the principle of legal certainty and, in particular, the principle of non-retroactivity.

6. The CFI erred in law as regards the concept of 'relevant information' for the preliminary examination of a tax system in the field of State aid which led the CFI to hold that the duration of the preliminary procedure was not unreasonable.

7. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable period of time for a preliminary examination procedure with respect to the tax measure at issue, and by holding, that therefore there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of legal certainty.

8. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable for a preliminary examination procedure for the tax measure at issue and by holding, therefore, that there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of sound administration.

9. The CFI erred in law by holding that, in the instant case, there are no exceptional circumstances which justify the legitimate expectation that the tax measure at issue is lawful, which could preclude the recovery of the aid, in accordance with Article 14(1) of Regulation No 659/1999. The decision was also misinterpreted.

10. The CFI erred in law by holding that, in this case, there was no infringement of the principle of equal treatment which could preclude recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999.

11. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Álava — Diputación Foral de Álava against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/01 to T-88/01 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-469/09 P)

(2010/C 37/11)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Álava — Diputación Foral de Álava (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999 [1], required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

2. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was to be carried out within the framework of the procedure laid down for existing aid.

3. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

4. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

5. The CFI erred in law by confirming the finding that the tax measure at issue, adopted in 1993, constituted operating aid, by applying the definition of investment aid laid down in the directives on regional aid of 1998. The CFI breached the principle of legal certainty and, in particular, the principle of non-retroactivity.

6. The CFI erred in law as regards the concept of 'relevant information' for the preliminary examination of a tax system in the field of State aid which led the CFI to hold that the length of the preliminary procedure was not unreasonable.

7. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable period of time for a preliminary examination procedure with respect to the tax measure at issue, and by holding, that therefore there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of legal certainty.

8. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable for a preliminary examination procedure for the tax measure at issue and by holding, therefore, that there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of sound administration.

9. The CFI erred in law by holding that, in the instant case, there are no exceptional circumstances which justify the legitimate expectation that the tax measure at issue was lawful which could preclude the recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999. The decision was also misinterpreted.

10. The CFI erred in law by holding that, in this case, there was no infringement of the principle of equal treatment which could preclude recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999.

11. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

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

Appeal brought on 26 November 2009 by Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/01 to T-88/01 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-470/09 P)

(2010/C 37/12)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Álava — Diputación Foral de Álava, Comunidad Autónoma del País Vasco — Goberierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999, required the existence of an express decision by Commission decision to that effect (addressed to the Member State).

2. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was carried out within the framework of the procedure laid down for existing aid.

3. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.

4. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.

5. The CFI erred in law by confirming the finding that the tax measure at issue, adopted in 1993, constituted operating aid, by applying the definition of investment aid laid down in the directives on regional aid of 1998. The CFI breached the principle of legal certainty and, in particular, the principle of non-retroactivity.

6. The CFI erred in law as regards the concept of 'relevant information' for the preliminary examination of a tax system in the field of State aid which led the CFI to hold that the duration of the preliminary procedure was not unreasonable.

7. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable period of time for a preliminary examination procedure with respect to the tax measure at issue, and by holding, that therefore there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of legal certainty.

8. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable for a preliminary examination procedure for the tax measure at issue and by holding, therefore, that there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of sound administration.

9. The CFI erred in law by holding that, in the instant case, there are no exceptional circumstances which justify the legitimate expectation that the tax measure at issue is lawful, which could preclude the recovery of the aid, in accordance with Article 14(1) of Regulation No 659/1999. The decision was also misinterpreted.

10. The CFI erred in law by holding that, in this case, there was no infringement of the principle of equal treatment which could preclude recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999.

11. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

Appeal brought on 26 November 2009 by Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-471/09 P)

(2010/C 37/13)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya

(represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude the recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) as regards the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision. The Court of First Instance erred in law by failing to comply with the procedural rules relating to the assessment of evidence in that it disregarded the substantive content of documents submitted for the purposes of the written procedure.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with Article 14(1) of Regulation No 659/1999 with respect to the principle of proportionality which precludes the recovery of investment aid that does not exceed the limit for regional aid.

The CFI has breached the general principle of proportionality by not finding that the Commission breached that principle by requiring the recovery of all the amounts granted in accordance with the tax credit of 45 % of the investments rather than only the amounts which exceeded the maximum limit for regional aid in the Basque Country.

3. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure.

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

([2]) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Appeal brought on 26 November 2009 by Territorio Histórico de Álava — Diputación Foral de Álava against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-472/09 P)

(2010/C 37/14)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Álava — Diputación Foral de Álava (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja, to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision. The Court of First Instance erred in law by failing to comply with the procedural rules relating to the assessment of evidence by disregarding the substantive content of documents submitted for the purposes of the written procedure.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

   By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

   The CFI erred in law by holding that the Commission's position with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the pleadings, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with Article 14(1) of Regulation No 659/1999 with respect to the principle of proportionality that precludes the recovery of investment aid which does not exceed the limit for regional aid.

   The CFI has breached the general principle of proportionality by not finding that the Commission breached that principle by demanding the recovery of all the amounts granted in accordance with the tax credit of 45 % of the investments rather than only the amounts which exceeded the maximum limit for regional aid in the Basque Country.

3. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

   The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure.

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

([2]) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Appeal brought on 26 November 2009 by Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-473/09 P)

(2010/C 37/15)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Álava — Diputación Foral de Álava, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the present appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja, to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision. The Court of First Instance erred in law by failing to comply with the procedural rules relating to the assessment of evidence by disregarding the substantive content of documents submitted for the purposes of the written procedure.

Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with Article 14(1) of Regulation No 659/1999 with respect to the principle of proportionality that precludes the recovery of investment aid which does not exceed the limit for regional aid.

The CFI has breached the general principle of proportionality by not finding that the Commission breached that principle by demanding the recovery of all the amounts granted in accordance with the tax credit of 45 % of the investments rather than only the amounts which exceeded the maximum limit for regional aid in the Basque Country.

3. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

   The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure.

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

(2) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Appeal brought on 26 November 2009 by Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-474/09 P)

(2010/C 37/16)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the present appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja, to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 (1) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 (2), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure in 1996.

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

(2) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Appeal brought on 26 November 2009 by Territorio Histórico de Álava — Diputación Foral de Álava against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-475/09 P)

(2010/C 37/17)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Álava — Diputación Foral de Álava (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

   By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

   The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

   The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure in 1996.

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

([2]) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Appeal brought on 26 November 2009 by Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-476/09 P)

(2010/C 37/18)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Goberierno Vasco, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Álava — Diputación Foral de Álava, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámera Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

— declare the present appeal to be admissible and well founded;

— set aside the judgment under appeal;

— grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;

— alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;

— order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude an order to recover the aid in accordance with Article 14(1) of Regulation No 659/1999 ([1]) which relates to the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision.

   Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337 ([2]), nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.

   By holding that the measures at issue in Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02 are not analogous to the tax measure at issue for technical tax reasons and the because of amount of the subsidy, the CFI has distorted the issues between the parties, has disregarded the rule that the parties should be heard and has clearly misinterpreted the case-law specifically relating to the duty to state reasons.

   The CFI erred in law by holding that the Commission's attitude with respect to the tax exemption and/or the 1993 tax credit — which, as is clear from the from the case file, has not been assessed by the CFI, contrary to the Rules of Procedure — does not constitute an exceptional circumstance which could have justified some kind of legitimate expectation that the tax measure was lawful which would have precluded the recovery of the aid under Article 14(1) of Regulation on the ground that it would be contrary to the principle of the protection of legitimate expectations.

2. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

   The CFI, by failing to order the disclosure of the evidence requested, has infringed the fundamental right to a fair trial to which the applicant is entitled, by refusing to assess evidence which is essential to the applicant's case thereby infringing its rights of defence, since its application was dismissed on the ground that it had not proved what it specifically sought to establish with the evidence which was not produced: if not the Commission's final position with respect to the complaint of 1994 against the tax rules of 1993 (including a tax credit), which are measures which are essentially the same as the contested measure, which rejected that complaint, then at least the attitude of the Commission which would constitute an exceptional circumstance in so far as its conduct gave rise to a legitimate expectation that the 1993 tax measures were lawful, which led to the adoption of the contested tax measure in 1996.

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

([2]) Commission Decision of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 25 November 2009 — Charles Defossez v Christian Wiart, liquidator of Sotimon SARL, Office national de l'emploi, CGEA de Lille

(Case C-477/09)

(2010/C 37/19)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Applicant: Charles Defossez

Defendant: Christian Wiart, liquidator of Sotimon SARL; Office national de l'emploi (fonds de fermeture d'entreprises); CGEA de Lille

Question referred

Is the reference to the Court of Justice of the European Communities for a ruling on whether Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, [1] as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, [2] which provides, in paragraph 1 thereof, that when an undertaking with activities in the territories of at least two Member States is in a state of insolvency, the institution responsible for meeting employees' outstanding claims is to be that in the Member State in whose territory they work or habitually work and, in paragraph 2 thereof, that the extent of employees' rights is to be determined by the law governing the competent guarantee institution, is to be interpreted as designating the competent institution to the exclusion of any other, or whether, having regard to the purpose of the Directive, which is to strengthen the rights of workers exercising their right to freedom of movement, and to the first paragraph of Article 9 of the Directive, under which the Directive is not to affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees, it is to be interpreted as not depriving the employee of the right to take advantage, in the place of that institution's guarantee, of a more favourable guarantee from the institution with which his employer is insured and to which it makes contributions under national law?

[1] OJ L 283, p. 23.
[2] OJ L 270, p. 10.

Reference for a preliminary ruling from the Audiencia Provincial de Tarragona (Spain) lodged on 30 November 2009 — Criminal proceedings against Magatte Gueye

(Case C-483/09)

(2010/C 37/20)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties to the main proceedings

Defendant: Magatte Gueye

Other parties: Ministerio Fiscal and Eva Caldes

Questions referred

1. Should the right of the victim to be understood, referred to in recital (8) of the preamble to the Framework Decision, [1] be interpreted as meaning that the State authorities responsible for the prosecution and punishment of conduct which has an identifiable victim have a positive obligation to allow the victim to express her assessment, thoughts and opinion on the direct effects on her life which may be caused by the imposition of penalties on the offender with whom she has a family relationship or a strong emotional relationship?

2. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the duty of States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?

3. Should Article 2 of the Framework Decision 2001/220/JHA be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?

4. Should Article 8 of the Framework Decision 2001/220/JHA providing that States are to guarantee a suitable level of protection for victims be interpreted as permitting the general and mandatory imposition of injunctions to stay away from the victim or orders prohibiting communication as ancillary penalties in all cases in which a person is a victim of crimes committed within the family, in the light of the specific characteristics of those offences, or, on the other hand, does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case-by-case basis, of the suitable level of protection having regard to the competing interests?

5. Should Article 10 of the Framework Decision 2001/220/JHA be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to crimes committed within the family, in the light of the specific characteristics of those crimes or, on the other hand, should mediation also be permitted in proceedings of that kind, assessing the competing interests on a case-by-case basis?

[1] Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001, L 82, p. 1)

Reference for a preliminary ruling from the Tribunal da Relação do Porto lodged on 30 November 2009 — Manuel Carvalho Ferreira Santos v Companhia Europeia de Seguros, S.A.

(Case C-484/09)

(2010/C 37/21)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Appellant: Manuel Carvalho Ferreira Santos

Respondent: Companhia Europeia de Seguros S.A.

Question referred

In a motor vehicle collision in which none of the drivers is liable for the accident on the basis of fault, and which has caused personal injury and material loss to one of the drivers (the injured party claiming compensation), is it contrary to Community law, in particular Article 3(1) of the First Directive (Directive 72/166/EEC), ([1]) Article 2(1) of the Second Directive (84/5/EEC) ([2]) and Article 1 of the Third Directive (90/232/EEC), ([3]) as those provisions have been interpreted by the Court of Justice of the European Communities, for it to be possible to apportion liability for risk (Article 506(1) and (2) of the Portuguese Civil Code) with a direct impact on the amount of compensation to be awarded to the injured party for the material and non-material loss resulting from the personal injuries suffered (since that apportionment of liability for risk will entail a commensurate reduction in the amount of compensation)?

([1]) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360).

([2]) Second Council Directive 84/5/EEC of 30 December 1983 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 1984 L 8, p. 17).

([3]) 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 the Finanzgericht Hamburg (Germany), lodged on 1 December 2009 — Viamex Agrar Handels GmbH v Hauptzollamt Hamburg-Jonas

(Case C-485/09)

(2010/C 37/22)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Viamex Agrar Handels GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Does point 48(5) of Chapter VII of the Annex to Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, ([1]) in the version of Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628/EEC on the protection of animals during transport, ([2]) apply to rail transport?

2. In situations in which the breach of Directive 91/628/EEC has not resulted in the death of the animals, are courts generally under an obligation to examine whether the competent authority of the Member State applied Article 5(3) of Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport ([3]) in a manner consistent with the principle of proportionality?

([1]) OJ 1991 L 340, p. 17.
([2]) OJ 1995 L 148, p. 52.
([3]) OJ 1998 L 82, p. 19.

Reference for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 30 November 2009 — Vandoorne NV v Belgische Staat

(Case C-489/09)

(2010/C 37/23)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Appellant: Vandoorne NV

Respondent: Belgische Staat

Question referred

Is Belgian law, in particular Article 58(1), in conjunction with Article 77(1)(7), of the Value Added Tax Code (Wetboek van de belasting over de toegevoegde waarde), compatible or incompatible with Article 27 of Sixth Council Directive 77/388/EEC, ([1]) which allows the Member States to adopt simplification measures, and/or with Article 11.C(1) of that directive, which grants a right to a refund of value added tax (VAT) in the case of total or partial non-payment, by reason of the fact that such national law (1) lays down a simplified procedure for charging VAT on supplies of manufactured tobacco products by imposing a single charge at source; and (2) does not give persons liable to tax at the various intermediary stages of the chain of supply who have borne VAT on those products a right to a refund of VAT on account of the total or partial loss of the purchase price?

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

Action brought on 30 November 2009 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-490/09)

(2010/C 37/24)

Language of the case: French

Parties

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

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— Declare that, by maintaining in force, in their current wording, Paragraph 24 of the Social Security Code which precludes the reimbursement of the costs of medical analyses carried out in another Member State by providing for those analyses to be reimbursed only by a paying third party, and Article 12 of the statutes of the Union des Caisses de Maladie (Union of Sickness funds) which subjects the reimbursement of medical analyses carried out in another Member State to full compliance with the dispensing conditions provided for by Luxembourg national conventions, the Grand-Duchy of Luxembourg has to fulfil its obligations under Article [49] EC Treaty;

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

Pleas in law and main arguments

By its action, the European Commission claims that by maintaining in force the laws which preclude the reimbursement of medical analyses and medical laboratory tests carried out in other Member States, or which subject such reimbursement to full compliance with the dispensing conditions provided for by Luxembourg legislation, the defendant infringed the principle of the freedom to provide services set out in Article 49 EC.

The applicant observes, by way of example, that the national authorities reimburse the costs of analysis and testing only where they are carried out within a separate laboratory which fully complies with the provisions of Luxembourg law. However, in certain Member States, such analyses are not carried out in a laboratory, but by the doctors themselves.

According to the Commission, the restrictions at issue cannot be justified by an overriding requirement in the general interest and neither do they represent an essential and proportionate measure to achieve the aim of the protection of public health.

Action brought on 1 December 2009 — European Commission v Portuguese Republic

(Case C-493/09)

(2010/C 37/25)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: R. Lyal and M. Afonso, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by taxing the dividends obtained by non-resident pension funds at a rate higher than the dividends obtained by pension funds resident in Portuguese territory, the Portuguese Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the EEA Agreement.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under the provisions of the Portuguese Estatuto dos Benefícios Fiscais (Tax Relief Regulations) and the Código do Imposto sobre o Rendimento das Pessoas Colectivas (the Corporation Tax Code), the dividends paid to pension funds set up and operating in accordance with the Portuguese legislation are wholly exempt from the imposto sobre o rendimento das pessoas colectivas (corporation tax). By contrast, the dividends paid to non-resident pension funds are subject to corporation tax at a rate of between 10 % and 20 %, depending on whether there is a bilateral agreement between Portugal and the State of residence and the terms thereof. That corporation tax is collected by being withheld at source.

The detrimental difference in treatment by the Portuguese tax legislation of the non-resident pension funds makes the investment by those funds in Portuguese companies less profitable and attractive. The tax rules referred to therefore constitute a restriction prohibited by Article 63 TFEU and by Article 40 of the EEA Agreement.

The discriminatory treatment of non-resident pension funds, which has harmful consequences on the competitiveness of the financial markets of the European Union and on the revenue from the investments made by the pension funds, cannot be justified by any of the grounds put forward by the Portuguese Republic.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 2 December 2009 — Nokia Corporation v Her Majesty's Commissioners of Revenue and Customs

(Case C-495/09)

(2010/C 37/26)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Nokia Corporation

Defendant: Her Majesty's Commissioners of Revenue and Customs

Question referred

Are non-Community goods bearing a Community trade mark which are subject to customs supervision in a Member State and in transit from a non-Member State to another non-Member State capable of constituting 'counterfeit goods' within the meaning of Article 2(1)(a) of Regulation 1383/2003/EC [1] if there is no evidence to suggest that those goods will be put ton the market in the EC, either in conformity with a customs procedure or by means of an illicit diversion.

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[1] Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
OJ L 196, p. 7

Action brought on 2 December 2009 — European Commission v Hellenic Republic

(Case C-500/09)

(2010/C 37/27)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and D. Triantafillou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by continuing to apply Ministerial Decision A1/44351/3608 of 12 October 2005, the Hellenic Republic is in breach of its obligations under Directive 97/67/EC [1] (as amended), as they result in particular from Article 9(1) and (2);

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Hellenic Republic is hindering the liberalisation of postal services, the objective of Directive 97/67, which provides in that connection for the grant of general authorisations and individual licences in an open manner and without discrimination.

The Greek legislation requires of authorised carriers, when licences are issued for postal transport vehicles, that they should themselves be postal undertakings entered in the appropriate register as holders of a general authorisation. That necessitates radical restructuring of postal networks and makes it impossible for the principal undertakings to employ franchisees, unless they opt to convert themselves into undertakings leasing vehicles with the costs that that implies.

Moreover, the Greek legislation allows the transport of heavy loads only by certain commercial vehicles, reserved to a regulated profession, which prevents other undertakings from providing the same service.

The Hellenic Republic has not submitted sufficient justification for those restrictions.

([1]) OJ L 15 of 21.1.1998, p. 14.

Reference for a preliminary ruling from Upper Tribunal (Administrative Appeals Chamber) (United Kingdom) made on 4 December 2009 — Lucy Stewart v Secretary of State for Work and Pensions

(Case C-503/09)

(2010/C 37/28)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Applicant: Lucy Stewart

Defendant: Secretary of State for Work and Pensions

Questions referred

1. Is a benefit with the characteristics of short-term incapacity benefit in youth a sickness benefit or an invalidity benefit for the purposes of Regulation 1408/71 ([1])?

2. If the answer to question 1 is that such a benefit is to be treated as a sickness benefit:

   (a) Is a person, such as the claimant's mother, who has definitively ceased all employed or self-employed activity by virtue of retirement nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity, or do Articles 27 to 34 (pensioners) contain the applicable rules?

   (b) Is a person, such as the claimant's father, who has not undertaken an employed or selfemployed activity since 2001, nevertheless an 'employed person' for the purposes of Article 19 by reason of their former employed or self-employed activity?

   (c) Is a claimant to be treated as a 'pensioner' for the purposes of Article 28 by virtue of the award of a benefit acquired pursuant to Article 95b of Regulation 1408/71, notwithstanding the facts that: (i) the claimant in question has never been an employed person under Article l (a) of Regulation 1408/71; (ii) the claimant has not reached state retirement age; and (iii) the claimant only comes within the personal scope of Regulation 1408/71 as a family member?

   (d) Where a pensioner falls within Article 28 of Regulation 1408/71, can a family member of that pensioner who has at all times resided with and in the same State as the pensioner claim, pursuant to Article 28.1, as read with Article 29, a cash sickness benefit from the competent institution determined by Article 28.2 where such benefit is (if due) payable to the family member (and not payable to the pensioner)?

   (e) If applicable (by reason of the answers to (a) to (d) above), is the application of a condition of national social security law limiting the initial acquisition of entitlement to a sickness benefit to those having completed a requisite period of past presence within the competent Member State within a defined prior period compatible with the provisions of Articles 19 and/or 28 of Regulation 1408/71?

3. If the answer to question 1 is that such a benefit is to be treated as an invalidity benefit, does the wording in Article 10 of Regulation 1408/71 referring to benefits 'acquired under the legislation of one or more Member States' mean that Member States remain entitled under Regulation l408/71 to set conditions of initial acquisition to such invalidity benefits that are based upon residence in the Member State or upon demonstration of requisite periods of past presence in the Member State, such that a claimant cannot first claim entitlement to such benefit from another Member State?

(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 149, p. 2

Action brought on 9 December 2009 — European Commission v French Republic

(Case C-510/09)

(2010/C 37/29)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Patakia and G. Zavvos, acting as Agents)

Defendant: French Republic

Form of order sought

— Declare that, by not notifying at the planning stage the decree of 13 March 2006 concerning the use of unprepared blends of products referred to in Paragraph L.253-1 of the Rural Code in the context of the procedure provided for by Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of 20 July 1998 (1), the French Republic has failed to fulfil its obligations under Article 8(1) of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the European Commission complains that the defendant did not notify it, before its adoption, of the ministerial decree at issue concerning the use of unprepared blends of phytopharmaceutical products with an agricultural value, although that decree clearly constitutes a technical rule within the meaning of Directive 98/34 and which should, on that ground, have been notified to it at the planning stage since it is not covered by the derogation under Article 10 of that directive.

According to the Commission, the defendant acknowledged the relevance of that infringement since, following the receipt of the reasoned opinion, the French authorities notified the Commission of a draft decree repealing the ministerial decree at issue and reproducing its substance. However, at the date the present action was brought, that draft decree had still not been adopted by the French authorities or, in any event, the Commission had still not been informed thereof.

(1) Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

Appeal brought on 4 December 2009 by Dongguan Nanzha Leco Stationery Mfg. Co., Ltd against the judgment of the Court of First Instance (Seventh Chamber) delivered on 23 September 2009 in Case T-296/06: Dongguan Nanzha Leco Stationery Mfg. Co., Ltd v Council of the European Union

(Case C-511/09 P)

(2010/C 37/30)

Language of the case: English

Parties

Appellant: Dongguan Nanzha Leco Stationery Mfg. Co., Ltd (represented by: P. Bentley QC)

Other parties to the proceedings: Council of the European Union, European Commission, IML Industria Meccanica Lombarda Srl

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance of 23 September 2009 in Case T-296/06, Dongguan Nanzha Leco Stationery Mfg., Co., Ltd. v Council of the European Union, in so far as it rejects the Appellant's first part of its first plea at first instance;

— annul Council Regulation (EC) No 1136/2006 ([1]) in so far as it imposes an anti-dumping duty on LAMs produced by the Appellant in excess of the amount of duty that would be payable if the contested adjustment to the export price had not been made; and

— order the Council to bear the costs of the present proceedings including the proceedings at first instance

Pleas in law and main arguments

The appellant submits that the contested judgment fails to give the correct legal effect to the notion of normal value as defined by Article 2(7)(a) of Council Regulation (EEC) No 384/96 ([2]), as amended, on the protection against dumped imports from countries not members of the European Community. As a result, the contested judgment draws the erroneous conclusion that the analogue normal value determined in accordance with that provision necessarily corresponds to the point where the relevant products leave the production line in China, even though the contested judgment itself finds that SG&A for both domestic and export sales are incurred not by the company in China, but by related companies in a market economy country, Hong Kong. This erroneous conclusion leads the contested judgment to infringe Article 2(10) of Council Regulation (EEC) No 384/96, as amended, by upholding the Institutions' adjustment to the export price consisting in a deduction of the SG&A and profits of the related companies in Hong Kong.

([1]) Council Regulation (EC) No 1136/2006 of 24 July 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of lever arch mechanisms originating in the People's Republic of China
OJ L205 p.1
([2]) OJ L56, p.1

Action brought on 10 December 2009 — European Commission v Hellenic Republic

(Case C-512/09)

(2010/C 37/31)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: I. Dimitriou and A. Margelis, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/66/EC ([1]) of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, or in any event by failing to communicate the measures concerned to the Commission, the Hellenic Republic has failed to fill its obligations under Article 26(1) of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2006/66/EC into national law expired on 26 September 2008.

([1]) OJ L 266 of 26.9.2006, p. 1.

Action brought on 11 December 2009 — European Commission v Kingdom of Belgium

(Case C-513/09)

(2010/C 37/32)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC ([1]) and, in any event, by failing to inform the Commission of those provisions, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/66/EC expired on 26 September 2008. However, at the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not informed the Commission thereof.

([1]) OJ 2006 L 266, p. 1.

Action brought on 11 December 2009 — European Commission v Portuguese Republic

(Case C-518/09)

(2010/C 37/33)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: I.V. Rogalski and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that the Portuguese Republic has failed to fulfil its obligations under Article 56 TFEU:

  — by failing to make a distinction in its law between establishment and temporary provision of services as regards the real property activities of property brokerage firms and estate agents;

  — by making the property brokerage firms and estate agents of other Member States subject to the obligation to register fully with the Portuguese Institute of Construction and Real Property (InCI, I.P.) in order to provide services temporarily;

  — by making the property brokerage firms and estate agents of other Member States subject to the obligation to insure against possible professional liability on the terms provided for under Portuguese law;

  — by making the property brokerage firms of other Member States subject to the obligation to have positive own capital as provided for under Portuguese law;

  — by making the property brokerage firms and estate agents of other Member States subject to the full disciplinary control of the InCI, I.P.;

— Declare that the Portuguese Republic has failed to fulfil its obligations under Articles 49 TFEU and 56 TFEU by providing that, with the exception of property management services for third parties, property brokerage firms must carry out real property brokerage exclusively and estate agents must act exclusively as estate agents; and

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese system governing real property brokerage and estate agency places numerous restrictions on the freedom to provide services.

Whenever real property in Portugal is at issue, the property brokerage and estate agency activities of entities with their seat or actual domicile in other Member States are subject to Portuguese law.

Portuguese law lays down seven requirements for access to property brokerage activities, and four requirements for access to estate agency activities.

The licence requirements in relation to corporate structure are restrictive.

The requirement concerning professional qualification is also restrictive.

The Portuguese rules on property brokerage and estate agency have altered the traditional brokerage activity. Instead of brokerage, we have agency.

The obligation to obtain professional indemnity cover on the terms laid down by Portuguese law constitutes an unjustified restriction.

The requirement to have positive own capital, determined in accordance with the terms set out in the Portuguese national accounting system, constitutes a discriminatory restriction of the freedom to provide services.

Making property brokerage firms and estate agents subject to disciplinary control by the Portuguese Administration with regard to the provision of services, without taking into account the supervision of the service provider already carried out in its Member State of establishment, constitutes a restriction within the meaning of Article 56 TFEU.

The Portuguese rules which provide that estate agents must act exclusively as estate agents and property brokerage firms must carry out almost exclusively property brokerage constitute a restriction of freedom of establishment and freedom to provide services on a temporary basis.

The access requirements make no distinction, and allow no distinction to be made, between situations involving establishment and those involving the temporary provision of services.

The requirements for entry to the construction sector, as provided for under Portuguese law, are requirements relating to establishment. Portuguese law makes no distinction between establishment and the temporary provision of services.

The restrictions on the freedom to provide services and of establishment stemming from the Portuguese rules cannot be justified on grounds of public policy.

Although consumer protection may justify certain restrictions of the fundamental freedom to provide services and that of establishment, the restrictions in question are not proportionate.

The requirement to be established in Portugal in order to provide services, and the requirement to be licensed, which is intended to check whether the establishment requirements have been fulfilled, are not proportionate measures in relation to the freedom to provide services.

In particular, it is not reasonable to require the insurance policy to be approved in the host State.

It is not for reasons of solvency that Portuguese law lays down the requirement to have access to positive own capital.

It is disproportionate to make the service provider subject in full to the disciplinary control applicable to estate agents and property brokerage firms established in Portugal.

Appeal brought on 15 December 2009 by Arkema France SA against the judgment delivered by the Court of First Instance (Seventh Chamber) on 30 September 2009 in Case T-168/05 Arkema v Commission

(Case C-520/09 P)

(2010/C 37/34)

Language of the case: French

Parties

Appellant: Arkema France SA (represented by: M. Debroux, avocat)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the Court of First Instance of 30 September 2009 in Case T-168/05;

— Order the Commission to pay all costs.

Pleas in law and main arguments

The appellant submits four pleas in law in support of its appeal.

By its first plea, the appellant complains that the Court infringed the rules on the imputability of the anti-competitive practices of a subsidiary to its parent company. It submits in this respect that there is a contradiction in the very wording of the judgment under appeal since the Court holds, in that judgment, that the presumption that the parent company has decisive influence over its subsidiary is a simple presumption that may be rebutted by the parent company and/or the subsidiary adduce evidence showing that the subsidiary acts independently, while holding, at the same time, that the very role of a parent company is to ensure that the subsidiaries within a group of companies are run as one, in particular through budgetary control. That gives rise, *de jure*, to a non-rebuttable presumption that the parent company has decisive influence over its subsidiaries and, in the light of the Court's assertion to that effect, it is impossible for a subsidiary to prove that its conduct on the market is independent.

By its second plea, Arkema submits that there has been an infringement of the principle of non-discrimination resulting from the non-rebuttable nature of the presumption that the parent company has decisive influence over its subsidiaries since, because of that presumption, the members of a cartel are treated differently depending on whether they belong to a group of companies or not.

By its third plea, the appellant submits that the judgment under appeal infringes the principles of equal treatment and the right to a fair hearing in that, in response to the appellant's plea alleging that there has been an infringement of essential procedural requirements because of the failure to provide a statement of reasons, the Court examined only the arguments submitted by Elf Aquitaine, the parent company of Arkema, and not those submitted by the latter itself. Whilst it is true that the Court is not required to set out, in an exhaustive manner, all the arguments submitted by the parties to the dispute, the fact remains that the grounds of the judgment under appeal must, at least, put the appellant in a position to know precisely the reasoning that the Court has followed with respect to it.

By its fourth and last plea, Arkema claims, finally, that there has been an infringement of the principle of proportionality, in that its turnover was taken into account twice by the Commission when it determined the basis on which the fine was assessed, and that the Court committed an error when it confirmed that the Commission had no other choice if it wanted to apply the method for setting fines set out in the guidelines. In doing so, the Court bestowed on the Commission's guidelines an absolute binding force that they do not have. According to the appellant, such guidelines are more like rules of conduct giving an indication of the practice to be followed and not legal rules which the administration must follow under any circumstances.

Appeal brought on 15 December 2009 by Elf Aquitaine SA against the judgment delivered by the Court of First Instance (Seventh Chamber) on 30 September 2009 in Case T-174/05 Elf Aquitaine v Commission

(Case C-521/09 P)

(2010/C 37/35)

Language of the case: French

Parties

Appellant: Elf Aquitaine SA (represented by: E. Morgan de Rivery and S. Thibault-Liger, avocats)

Other party to the proceedings: European Commission

Form of order sought

— Principally:

  — Set aside, on the basis of Article 256 TFEU and Article 56 of Protocol (No 3) on the Statute of the Court of Justice of the European Union, the entire judgment of the Court of First Instance of 30 September 2009 in Case T-174/05 *Elf Aquitaine SA* v *Commission of the European Communities*;

  — grant the forms of order sought at first instance;

  — consequently, annul Articles 1(d), 2(c), 3 and 4(9) of Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81[EC] and Article 53 of the EEA Agreement (Case COMP/E-1/37.773 — MCAA);

— In the alternative, annul or reduce, on the basis of Article 261 TFEU, the fine of EUR 45 million imposed jointly and severally on Arkema SA and Elf Aquitaine by Article 2(c) of the above Commission decision, in the exercise of its unlimited jurisdiction on the basis of objective mistakes in the grounds and the reasoning of the Court's judgment in Case T-174/05, as described in the six pleas submitted in the present appeal:

— In any event, order the European Commission to pay all costs, including those incurred by Elf Aquitaine before the Court.

Pleas in law and main arguments

The appellant submits six pleas in law in support of its appeal.

By its first plea, the appellant submits that the Court erred in law when it did not draw all necessary consequences from the repressive nature of the sanctions in Article 101 TFEU [81 EC]. In particular, the appellants criticise that the Court excluded it unlawfully from the application of the principle of the presumption of innocence and the principle that penalties must be specific to the offender by imputing to the applicant responsibility for a breach committed by its subsidiary, even though the facts submitted by the appellant show, to the contrary, that it did not personally commit any breach and that it was even unaware, at the time it was occurring, that the contested breach was taking place.

By its second plea, Elf Aquitaine claims that there has been an infringement of the rights of the defence due to a wrong interpretation of the principles of equity and equality of arms. In the judgment under appeal, the Court held that the principle of equality of arms was respected in the present case since the appellant was given the opportunity to put its case properly during the administrative procedure and was informed for the

first time of the claims brought against it in the statement of objections. According to the appellant, that interpretation is wrong because it is tantamount to denying that there is a need to respect the rights of the defence of the appellant from the stage of the preliminary investigation onwards and fails to have regard also to the need for the Commission to conduct such an inquiry in an impartial manner — favourable to their case or otherwise — in respect of all persons suspected of having committed a breach.

By its third plea, the appellant claims that the Court committed several errors of law in respect of the obligation to provide a statement of reasons. Those errors concerned both the assessment of the wording and the strength of the statement of reasons that the Commission had to provide and the content of the judgment under appeal itself, which contained several contradictory statements.

By its fourth plea, Elf Aquitaine alleges that there has been an infringement of Article 263 TFEU [230 EC] in that the Court exceeded the limits of the power to review the legality of a decision its own assessment of whether a breach committed by a subsidiary can be imputed to its parent company for that in the Commission's decision, which was weak and summary.

By its fifth plea, which consists of four claims, the appellant criticises the Court's failure to apply the rules concerning the imputability of anti-competitive practices. Rather than confirm the presumption that a parent company is responsible for the actions of its subsidiary, the Court ought to have examined whether the Commission had adduced evidence that the appellant actually interfered in the management of its subsidiary.

By its sixth and last plea, the appellant finally submits, in the alternative, that if the Court's errors and infringement did not bring about the annulment of the Commission decision, they ought, at least, lead the Court to annul or reduce the fine imposed on it jointly and severally.

Reference for a preliminary ruling from the Tribunal administratif de Paris (France) lodged on 12 November 2009 — Ville de Lyon v Caisse des dépôts et consignations

(Case C-524/09)

(2010/C 37/36)

Language of the case: French

Referring court

Tribunal administratif de Paris

Parties to the main proceedings

Applicant: Ville de Lyon

Defendant: Caisse des dépôts et consignations

Questions referred

1. Is the supply or refusal to supply the information provided for in point 12 of Annex XVI to Regulation (EC) No 2216/2004 ([1]) the responsibility of the Central Administrator alone or the responsibility also of the administrator of the national registry?

2. If it is the responsibility of the administrator of the national registry, must that information be considered to be 'information on emissions into the environment' within the meaning of Article 4 of Directive 2003/4/EC, ([2]) against whose supply 'the confidentiality of commercial or industrial information' could not be invoked, or is the supply of that information governed by specific rules on confidentiality?

3. In the event that specific rules on confidentiality apply, is that information not to be supplied before a period of five years has elapsed or does that time-limit concern only the five-year allowance allocation period under Directive 2003/87/EC? ([3])

4. In the event that that five-year time-limit does apply, does Article 10 of Regulation No 2216/2004 allow a derogation from it and can a refusal to derogate from it be invoked, on the basis of that article, against a local authority requesting the supply of that information in order to negotiate an agreement on public service delegation in respect of urban heating?

([1]) Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ 2004 L 386, p. 1).

([2]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

([3]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 18 December 2009 — European Commission v Hellenic Republic

(Case C-534/09)

(2010/C 37/37)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M Patakia and A. Alcover San Pedro)

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits in accordance with Articles 6 and 8 or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) not later than 30 October 2007, without prejudice to specific Community legislation, the Hellenic Republic has failed to fulfil its obligations under Article 5(1) of Directive 2008/1/EC [1] of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

It follows from Article 5(1), in conjunction with Article 2(4), of Directive 2008/1 ('the IPPC Directive') that the Member States are obliged to ensure that their competent authorities see to it, by means of permits in accordance with Articles 6 and 8 or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of the directive not later than 30 October 2007.

According to the response of the Greek authorities to the Commission's reasoned opinion, roughly 47 % of existing installations operating in Greece (148 out of 317) do not have an IPPC permit. Consequently, the Hellenic Republic admits that it continues to allow a large number of IPPC installations to operate without appropriate permits being granted.

It should be noted that the Hellenic Republic has provided no justification or further explanation regarding the increase in the facilities in question, and no further development has been notified since the date upon which the abovementioned response to the reasoned opinion was sent.

[1] OJ L 24, 29.1.2008, p. 8.

GENERAL COURT

Judgment of the General Court of 17 December 2009 — Solvay v Commission

(Case T-57/01) ([1])

(Competition — Abuse of a dominant position — Market in soda ash in the Community (with the exception of the United Kingdom and Ireland) — Decision finding an infringement of Article 82 EC — Supply agreements for an excessively long period — Fidelity rebate — Expiry of limitation period applicable to Commission power to impose fines or sanctions — Reasonable time — Essential procedural requirements — Relevant geographic market — Existence of a dominant position — Abuse of a dominant position — Right of access to the file — Fine — Gravity and duration of the infringement — Aggravating circumstances — Repetition of infringement — Mitigating circumstances)

(2010/C 37/38)

Language of the case: French

Parties

Applicant: Solvay SA (Brussels, Belgium) (represented by: L. Simont, P.-A. Foriers, G. Block, F. Louis and A. Vallery, lawyers)

Defendant: European Commission (represented by: P. Oliver and J. Currall, Agents, assisted by N. Coutrelis, lawyer)

Re:

First, application for annulment of Commission Decision 2003/6/EC of 13 December 2000 relating to a proceeding pursuant to Article 82 [EC] (Case COMP/33.133 — C: Soda ash — Solvay) (OJ 2003 L 10, p. 10) and, in the alternative, application for annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Fixes the fine imposed on Solvay SA in Article 2 of Commission Decision 2003/6/EC of 13 December 2000 relating to a proceeding pursuant to Article 82 [EC] (Case COMP/33.133 — C: Soda ash — Solvay) at EUR 19 million;*

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

([1]) OJ C 161, 2.6.2001.

Judgment of the General Court of 17 December 2009 — Solvay v Commission

(Case T-58/01) ([1])

(Competition — Restrictive practices — Market in soda ash in the Community — Decision finding an infringement of Article 81 EC — Agreement guaranteeing to an undertaking a minimum tonnage of sales in a Member State and the purchase of sufficient quantities to achieve that minimum tonnage — Expiry of limitation period applicable to Commission power to impose fines or sanctions — Reasonable time — Essential procedural requirements — Effect on trade between Member States — Right of access to the file — Fine — Gravity and duration of the infringement — Aggravating and mitigating circumstances)

(2010/C 37/39)

Language of the case: French

Parties

Applicant: Solvay (Brussels, Belgium) (represented by: L. Simont, P.-A- Foriers, G. Block, F. Louis and A. Vallery, lawyers)

Defendant: European Commission (represented by: P. Oliver and J. Currall, Agents, assisted by N. Coutrelis, lawyer)

Re:

First, application for annulment of Commission Decision 2003/5/EC of 13 December 2000 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/33.133 — B: Soda ash — Solvay, CFK) (OJ 2003 L 10, p. 1) and, in the alternative, application for annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Commission Decision 2003/5/EC of 13 December 2000 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/33.133 — B: Soda ash — Solvay, CFK) to the extent that it finds that Solvay SA infringed the provisions of Article 81 EC in 1990;*

2. *Fixes the fine imposed on Solvay at EUR 2.25 million;*

3. *Dismisses the action as to the remainder.*

(1) OJ C 161, 2.6.2001.

Judgment of the General Court of 18 December 2009 — Arizmendi and Others v Council and Commission

(Joined Cases T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04 (1)**)**

(Non-contractual liability — Customs Union — Action for failure of a Member State to fulfil obligations — Reasoned Opinion — Abolition in French legislation of the monopoly of the profession of ship brokers — Sufficiently serious breach — Causal link)

(2010/C 37/40)

Language of the case: French

Parties

Applicants: Jean Arizmendi (Bayonne, France) and the 60 other applicants whose names appear in the annex to the judgment (represented in Case T-440/03 by: J.-F. Péricaud, P. Péricaud and M. Tournois and, in Cases T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04, by J.-F. Péricaud and M. Tournois, lawyers)

Defendants: Council of the European Union (represented initially by J.-P. Jacqué and M. Giorgi Fort, then by F. Florindo Gijón and M. Balta, Agents); and the European Commission (represented by: X. Lewis and, in Case T-121/04, by X. Lewis and B. Stromsky, Agents)

Intervener in support of the applicants in Case T-440/03: Chambre nationale des courtiers maritimes de France (National Chamber of French ship brokers), Paris, France (represented by: J.-F. Péricaud, lawyer)

Re:

Action for damages, brought under Article 235 EC and Article 288 EC, second paragraph, seeking compensation from the Community for the damage caused by the abolition of the monopoly of the French profession of ship brokers.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Mr Jean Arizmendi and the 60 other applicants whose names appear in the annex to bear their own costs and those of the Council of the European Union and the European Commission;*

3. *Orders the Chambre nationale des courtiers maritimes de France to bear its own costs;*

4. *Orders the Council and the Commission to bear their own costs incurred by the intervention of the Chambre nationale des courtiers maritimes de France.*

(1) OJ C 59, 6.3.2004.

Judgment of the General Court of 15 December 2009 — EDF v Commission

(Case T-156/04) (1)

(State aid — Aid granted by the French authorities to EDF — Decision declaring that aid incompatible with the common market and ordering its recovery — Procedural rights of the aid beneficiary — Effect on trade between Member States — Criterion of private investor)

(2010/C 37/41)

Language of the case: French

Parties

Applicant: Électricité de France (Paris, France) (represented by: M. Debroux, lawyer)

Defendant: European Commission (represented by: J. Buendía Sierra and C. Giolito, acting as Agents)

Intervener in support of the form of order sought by the applicant: French Republic (represented by: G. de Bergues and A.-L. Vendrolini, Agents)

Intervener in support of the form of order sought by the defendant: Iberdrola, SA (Bilbao, Spain) (represented by: J. Ruiz Calzado and É. Barbier de La Serre, lawyers)

Re:

Action for annulment of Articles 3 and 4 of the Commission's Decision on State aid granted to EDF and to the gas and electricity industry sectors (C 68/2002, N 504/2003 and C 25/2003), adopted on 16 December 2003.

Operative part of the judgment

The Court:

1. *Annuls articles 3 and 4 of the Commission's Decision on State aid granted to EDF and to the gas and electricity industry sectors (C 68/2002, N 504/2003 and C 25/2003), adopted on 16 December 2003;*

2. *Orders the European Commission to bear its own costs and to pay those of Électricité de France (EDF);*

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

4. *Orders Iberdrola, SA to bear its own costs.*

([1]) OJ C 179, 10.7.2004.

Judgment of the General Court of 10 December 2009 — Cofac v Commission

(Case T-158/07) ([1])

(ESF — Reduction in financial assistance — Training schemes — Rights of the defence — Right to be heard)

(2010/C 37/42)

Language of the case: Portuguese

Parties

Applicant: Cofac — Cooperativa de Formação e Animação Cultural, CRL (Lisbon, Portugal) (represented by: L. Gomes, J. Ortigão and C. Peixoto, lawyers)

Defendant: European Commission (represented by: P. Guerra e Andrade and A. Steiblytė, acting as Agents)

Re:

Action for annulment of Commission Decision D(2005) 13066 of 3 June 2005 reducing the amount of the financial assistance granted to the applicant by the European Social Fund (ESF) by Decision No C(88) 0831 of 29 April 1988 for training schemes (file No 880707 P1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cofac — Cooperativa de Formação e Animação Cultural, CRL to pay the costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the General Court of 10 December 2009 — Cofac v Commission

(Case T-159-07) ([1])

(ESF — Reduction of financial assistance — Training schemes — Rights of the defence — Right to a fair hearing)

(2010/C 37/43)

Language of the case: Portuguese

Parties

Applicant: Cofac — Cooperativa de Formação e Animação Cultural, CRL (Lisbon, Portugal) (represented by: L. Gomes, J. Ortigão and C. Peixoto, lawyers)

Defendant: European Commission (represented by: P. Guerra e Andrade and A. Steiblytė, Agents)

Re:

Annulment of Commission Decision D(2004) 24253 of 9 November 2004 reducing the amount of assistance granted to the applicant by the European Social Fund by Decision No C(87) 0860 of 30 April 1987 for training schemes (file No 870927 P1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cofac — Cooperativa de Formação e Animação Cultural, CRL to pay the costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the General Court of 11 December 2009 — Giannopoulos v Council

(Case T-436/07 P) [1]

(Appeal — Staff case — Officials — Recruitment — Classification in grade — Request for reclassification — Article 31(2) of the Staff Regulations)

(2010/C 37/44)

Language of the case: French

Parties

Appellant: Nikos Giannopoulos (Wezembeek-Oppem, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union (represented by: M. Bauer and I. Šulce, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 20 September 2007 in Case F-111/06 *Giannopoulos* v *Council*, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders Mr Nikos Giannopoulos and the Council of the European Union to bear their own costs in connection with the present instance.*

[1] OJ C 22, 26.1.2008.

Judgment of the General Court of 17 December 2009 — Notartel v OHIM — SAT.1 (R.U.N.)

(Case T-490/07) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark R.U.N. — Earlier Community and national word marks 'ran' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Obligation to state reasons — Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009) — Partial refusal of registration)

(2010/C 37/45)

Language of the case: Italian

Parties

Applicant: Notartel SpA — Società informatica del Notariato (Rome, Italy) (represented by: M. Bosshard and M. Balestriero, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: SAT.1 SatellitenFernsehen GmbH (Berlin, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 22 October 2007 (Case R 1267/2006-4) concerning opposition proceedings between SAT.1 Satelliten-Fernsehen GmbH and Notartel SpA — Società informatica del Notariato

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Notartel SpA — Società informatica del Notariato to pay the costs.*

[1] OJ C 64, 8.3.2008.

Judgment of the General Court of 15 December 2009 — Trubion Pharmaceuticals v OHIM — Merck (TRUBION)

(Case T-412/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark TRUBION — Earlier Community figurative mark TriBion Harmonis — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 37/46)

Language of the case: English

Parties

Applicant: Trubion Pharmaceuticals, Inc. (Seattle, Washington, United States) (represented by: C. Hertz-Eichenrode, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Merck KGaA (Darmstadt, Germany) (represented initially by M. Best and R. Freitag, and subsequently by M. Best and U. Pfleghar, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 July 2008 (Case R 1605/2007-2), relating to opposition proceedings between Trubion Pharmaceuticals, Inc. and Merck KGaA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Trubion Pharmaceuticals, Inc. to pay the costs.*

[1] OJ C 301, 22.11.2008.

Judgment of the General Court of 15 December 2009 — Media-Saturn v OHIM

(Case T-476/08) [1]

(Community trade mark — Application for figurative Community trade mark BEST BUY — 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 37/47)

Language of the case: German

Parties

Applicant: Media-Saturn-Holding GmbH (Ingolstadt, Germany) (represented initially by: K. Lewinsky; subsequently by: C.-R. Haarmann and E. Warnke, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 28 August 2008 (Case R 591/2008-4) concerning an application for registration of the figurative sign BEST BUY as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Media-Saturn-Holding GmbH to pay the costs.*

[1] OJ C 327, 20.12.2008.

Judgment of the General Court of 16 December 2009 — Giordano Enterprises v OHIM — Dias Magalhães & Filhos (GIORDANO)

(Case T-483/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark GIORDANO — Earlier national word mark GIORDANO — Relative ground for refusal — Likelihood of confusion — Partial refusal of registration — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 37/48)

Language of the case: English

Parties

Applicant: Giordano Enterprises Ltd (F.T. Labuan, Malaysia) (represented by: M. Nentwig, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: José Dias Magalhães & Filhos L[da] (Arrifana Vfr, Portugal) (represented by: J.M. João, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 28 July 2008 (Case R 1864/2007-2) relating to opposition proceedings between José Dias Magalhães & Filhos L[da] and Giordano Enterprises Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Giordano Enterprises Ltd. to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

[1] OJ C 19, 24.1.2009.

Order of the General Court of 15 December 2009 — Inet Hellas v Commission

(Case T-107/06) [1]

(Action for annulment — Implementation of the '.eu' top-level domain — Registration of the domain '.co' as a second-level domain — Non-actionable measure — Inadmissibility)

(2010/C 37/49)

Language of the case: Greek

Parties

Applicant: Inet Hellas Ilektroniki Ipiresia Pliroforion EPE (Inet Hellas) (Athens, Greece) (represented by: V. Chatzopoulos, lawyer)

Defendant: European Commission (represented by: G. Zavvos and E Montaguti, Agents)

Re:

Application for annulment of the decision supposedly contained in the Commission's letter of 31 January 2004 concerning the rejection by the body responsible for the organisation, administration and management of the '.eu' top-level domain of the applicant's request for registration of '.co' as a second-level domain.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Inet Hellas Ilektroniki Ipiresia Pliroforion EPE (Inet Hellas) is ordered to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 190, 12.8.2006.

Order of the General Court of 9 December 2009 — Deltalinqs and SVZ v Commission

(Case T-481/07) [1]

(State aid — System of aid granted by the Belgian authorities in support of inter-modal transport by inland waterways — Decision of the Commission not to object — Action for annulment brought by associations representing the interests of undertakings established in the port area of Rotterdam — Absence of any significant effect on a competitive position — Manifest inadmissibility)

(2010/C 37/50)

Language of the case: Dutch

Parties

Applicants: Deltalinqs (Rotterdam, Netherlands) and SVZ, Havenondernemersvereniging Rotterdam (Rotterdam) (represented by: M. Meulenbelt, lawyer)

Defendant: European Commission (represented by: G. Conte and S. Noë, acting as Agents)

Interveners in support of the form of order sought by the defendant: Vlaams Gewest (Brussels, Belgium) and Waterwegen en Zeekanaal NV (Willebroek, Belgium) (represented by: Y. van Gerven, lawyer)

Re:

Annulment of Commission Decision C (2007) 1939 final of 10 May 2007 not to object, following the preliminary examination procedure laid down in Article 88(3) EC, to the system of aid envisaged by the Vlaams Gewest (Flemish Region, Belgium) in support of inter-modal transport via inland waterways (State aid N 682/2006 — Belgium)

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Deltaqings and SVZ, Havenondernemersvereninging Rotterdam shall bear their own costs and those incurred by the Commission.*

3. *Vlaams Gewest and Waterwegen en Zeekanaal NV shall bear their own costs.*

[1] OJ C 64, 8.3.2008.

Order of the General Court of 16 December 2009 — Cattin v Commission

(Case T-194/08) [1]

(Non-contractual liability — EDF — List of exporters eligible to receive payment of debts owed to them by the Central African Republic — Not included on the list — Limitation period — Inadmissibility)

(2010/C 37/51)

Language of the case: French

Parties

Applicants: R. Cattin & Cie (Bimbo, Central African Republic); and Yves Cattin (Cadiz, Spain) (represented by: B. Wägenbaur, lawyer)

Defendant: European Commission (represented by: A. Bordes, Agent)

Re:

Action for damages seeking compensation for the loss allegedly suffered by the applicants following a Commission decision not to include them on the list of exporters eligible to receive payment, via funds of the European Development Fund (EDF), in respect of the debts owed to them by a State body of the Central African Republic

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *R. Cattin & Cie and Yves Cattin shall bear their own costs and pay those incurred by the European Commission.*

[1] OJ C 197, 2.8.2008.

Order of the General Court of 17 December 2009 — Nijs v Court of Auditors

(Case T-567/08 P) [1]

(Appeal — Civil service — Officials — Decision not to promote the applicant in the 2005 promotion year — Appeal partly inadmissible and partly unfounded)

(2010/C 37/52)

Language of the case: French

Parties

Appellant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Other party to the proceedings: Court of Auditors of the European Union (represented by: T. Kennedy, J.-M. Steiner and G. Corstens, Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 9 October 2008 in Case F-49/06 *Nijs* v *Court of Auditors*, not yet published in the ECR, and seeking to have that judgment set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Bart Nijs to bear his own costs and those incurred by the Court of Auditors of the European Union in the present proceedings.*

[1] OJ C 55, 7.3.2009.

Order of the President of the General Court of 17 December 2009 — Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case T-396/09 R)

(Interim measures — Obligation of the Member States to protect and improve ambient air quality — Exemption granted to a Member State — Commission's refusal to review — Application for suspension of operation of a measure and interim measures — Inadmissibility)

(2010/C 37/53)

Language of the case: Dutch

Parties

Applicants: Vereniging Milieudefensie (Amsterdam, Netherlands) and Stichting Stop Luchtverontreiniging Utrecht (Utrecht, Netherlands) (represented by: A. van den Biesen, lawyer)

Defendant: European Commission (represented by: P. Oliver, W. Roels and A. Alcover San Pedro, Agents)

Re:

Application (i) for suspension of operation of Decision C (2009) 6121 of 28 July 2009 declaring inadmissible the applicants' request for review by the Commission of its Decision C (2009) 2560 final of 7 April 2009 granting the Kingdom of the Netherlands a temporary exemption from its obligations in combating ambient air pollution; and (ii) for interim measures requiring the Kingdom of the Netherlands to comply with those obligations at the earliest opportunity.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 9 November 2009 — Escola Superior Agrária de Coimbra v Commission

(Case T-446/09)

(2010/C 37/54)

Language of the case: Portuguese

Parties

Applicant: Escola Superior Agrária de Coimbra (Bencanta, Portugal) (represented by: J. Pais do Amaral, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Commission Decision D(2009)224268 of 9 September 2009;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Lack of reasoning in relation to the requirement of reimbursement of the amount stipulated in point 8 of the letter of 12 August 2009.

Infringement of points 21.2 and 22 of the administrative framework provisions in relation to the other amounts, since a system was in place to record the time dedicated by each of the participants to the project, which indicated the name of the person and the time, in real time, which that person dedicated to the project.

Error of fact since the administration can act only if sure that the facts are correct. Mere doubt on the part of the administration as to whether the time recorded on the timesheets was actually dedicated to the project or not is not sufficient since the burden of proof is on the Commission.

Misassumption on the part of the Commission since there is no written obligation to adopt a specific type of system to record the duration of work carried out which is more rigorous than the recording of information on timesheets. Thus, while the contract is being executed and when it is no longer possible to alter the previous legitimate procedure for registering time dedicated to the project, namely by means of timesheets, the Commission cannot legitimately require more than what was originally stated and set out in the contract. In addition, it is inappropriate to make such an onerous demand that time dedicated to the project be recorded photographically.

The contested act infringes the principles of good faith, legitimate expectations, transparency, proportionality, and good and reasonable administration since the rules in place for recording time dedicated to the project are new, which is corroborated by the fact that those rules feature explicitly and clearly in subsequent versions of the program at issue.

Error in the assessment of the facts in so far as the size and the content of the refund ordered by the Commission is disproportionate to the content and nature of the alleged irregularities, given that it was not possible to attain the results reflected in being classed in tenth position out of 200 projects, without dedicating significantly more time to the project than actually paid for (once the refund ordered has been deducted).

Appeal brought on 9 November 2009 by Rinse van Arum against the judgment of the Civil Service Tribunal delivered on 10 September 2009 in Case F-139/07 van Arum v Parliament

(Case T-454/09 P)

(2010/C 37/55)

Language of the case: Dutch

Parties

Appellant: Rinse van Arum (Winksele, Belgium) (represented by W. van den Muijsenbergh, lawyer)

Other party to the proceedings: European Parliament

Form of order sought by the appellant

The appellant claims that the General Court should:

— declare the appeal and the pleas in law and complaints set out therein admissible; and

— set aside the judgment of the Civil Service Tribunal (Second Chamber) of 10 September 2009 in Case F-139/07; and

— rule itself on the case and set aside the decision establishing the appellant's staff report; and

— order the Parliament to pay the costs of the proceedings that the appellant had to incur at first and second instance.

Pleas in law and main arguments

The appellant puts forward the following pleas in support of his appeal:

— Breach of Articles 1 and 9 of the general rules for implementing Article 43 of the Staff Regulations and of Article 15(2) and 87(1) of the Conditions of employment of other servants of the European Communities and the provisions of the Guide to Staff Reports;

— Breach of Article 19 of the general implementing provisions and the duty to state reasons;

— Breach of the principle that the parties should be heard, of the equality of the parties and the rights of the defence;

— Breach of law in relation to the connection between the appraisal and the award of points, the rights of the defence and the principle of sound administration;

— Breach of Article 90 of the Staff Regulations of the European Communities ('the Staff Regulations') by the use of documents which were not in the case-file and breach of the principle that the parties should be heard, as well reversal of the burden of proof to the detriment of the appellant and breach of the duty to state reasons;

— Breach of the duty to have regard to the welfare of officials, owing to the fact that the final assessor negligently took into account incorrect elements, and breach of legal principles as regards the burden of proof;

— Incorrect application of the law, case-law and legal principles as regards Article 90 of the Staff Regulations, the duty to have regard to the welfare of officials, due care, sound administration and legal principles concerning evidence;

— Breach of law as a result of unintelligible findings by the Civil Service Tribunal and incorrect classification of facts, as well as breach of the duty to state reasons and the rules of sound administration;

— Incorrect assessment of facts.

Action brought on 27 November 2009 — McLoughney v OHIM — Kern (Powerball)

(Case T-484/09)

(2010/C 37/56)

Language in which the application was lodged: English

Parties

Applicant: Rory McLoughney (Thurles, Ireland) (represented by: J. M. Stratford-Lysandrides, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Ernst Kern (Zahling, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2009 in case R 1547/2006-4;

— Allow the opposition to the Community trade mark application No 3 164 779; and

— In the alternative, remit the opposition to the defendant for further consideration in accordance with the judgment of the Court.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'Powerball', for goods in classes 10, 25 and 28

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

Mark or sign cited: Non-registered mark 'POWERBALL', used in the course of trade in Ireland and the United Kingdom

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(3) and 73 of Council Regulation No 40/94 (which became Articles 8(3) and 75, respectively, of Council Regulation No 207/2009) and Rules 50(2) and 52(1) of Commission Regulation No 2868/95 [1], as the Board of Appeal failed to consider the opposition under Article 8(3) of Council Regulation No 40/94 and should have recognised that the applicant had the requisite authority to oppose the Community trade mark concerned; infringement of Articles 8(4) and 73 of Council Regulation No 40/94 (which became Article 8(4) and 75, respectively, of Council Regulation No 207/2009) and Rules 50(2) and 52(1) of Commission Regulation No 2868/95, as the Board of Appeal failed to consider the opposition under Article 8(4) of Council Regulation No 40/94 and should have recognised that the applicant was the proprietor of the earlier rights and that it had used the mark cited in the opposition in the course of trade.

[1] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 3 December 2009 — France v Commission

(Case T-485/09)

(2010/C 37/57)

Language of the case: French

Parties

Applicant: The French Republic (represented by: E. Belliard, G. de Bergues, B. Cabouat, and R. Loosli-Surrans, Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Decision 2009/726/EC of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its application, the French government requests the Court, under Article 263 of the TFEU, to annul Commission Decision 2009/726/EC of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed. [1]

The decision being challenged orders France to suspend the application of interim protection measures which it adopted following the publication of new scientific opinions about a risk of human exposure to classical scrapie due to the consumption of milk and milk products originating from infected herds of ovine and caprine animals in order to prohibit the introduction onto its territory, for the purposes of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed.

In support of its action, the applicant submits that the decision being challenged must be annulled on the grounds that it infringes the precautionary principle, as regards both risk assessment and risk management.

The applicant claims that the Commission infringed the precautionary principle at the risk assessment stage by ignoring the remaining scientific uncertainties over the risk of the transmission to humans of TSE other than BSE.

In the applicant's opinion, the Commission also infringed the precautionary principle at the risk management stage by failing to adopt any measure in order to restrict the risk of human exposure to classical scrapie.

[1] OJ 2009 L 258, p. 27

Action brought on 7 December 2009 — ReValue Immobilienberatung v OHIM (ReValue)

(Case T-487/09)

(2010/C 37/58)

Language in which the application was lodged: German

Parties

Applicant: ReValue Immobilienberatung GmbH (Berlin, Germany) (represented by S. Fischoeder and M. Schork, lawyers)

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

Form of order sought

— Annul the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Fourth Board of Appeal) of 7 October 2009 in Case R 531/2009-4;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark 'ReValue' for services in classes 35, 36, 42 and 45 (Application No 6 784 292)

Decision of the Examiner: registration rejected partially

Decision of the Board of Appeal: appeal dismissed

Pleas in law: infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 ([1]), on the grounds that the sign applied for is not descriptive in relation to the services in question and is not devoid of any distinctive character; infringement of Article 75 of Regulation No 207/2009, on the ground that the contested decision was not sufficiently reasoned in the necessary sections.

([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 4 December 2009 — Jager & Polacek v OHIM- RT Mediasolutions (REDTUBE)

(Case T-488/09)

(2010/C 37/59)

Language in which the application was lodged: German

Parties

Applicant: Jager & Polacek GmbH (Vienna, Austria) (represented by: A. Renck, V. von Bomhard, T. Dolde, lawyers)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: RT Mediasolutions s.r.o. (Brno, Czech Republic)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) No R 442/2009-4 of 29 September 2009;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: RT Mediasolutions s.r.o

Community trade mark concerned: the word mark 'REDTUBE' for goods and services in classes 9, 38 and 41 (Application No 6 096 309)

Proprietor of the mark or sign cited in the opposition proceedings: Jager & Polacek GmbH

Mark or sign cited in opposition: a non-registered trade mark 'Redtube'

Decision of the Opposition Division: The notice of opposition is deemed not to have been entered

Decision of the Board of Appeal: Rejection of the appeal

Pleas in law:

— Infringement of Article 8(2) of Regulation (EC) No 216/96 ([1]) in conjunction with Article 63(2) of Regulation (EC) No 207/2009 ([2]), since the applicant was not given an opportunity to submit a reply;

— Infringement of Article 80(1) and (2) of Regulation No 207/2009, since the decision on the admissibility of the opposition had not been legally annulled.

— Infringement of Article 83 of Regulation No 207/2009, and more particularly of the principle of legitimate expectations, in conjunction with Article 41(3) of the same Regulation, Rule 17(1) of Regulation (EC) No 2868/95 ([3]) und Article 8(3)(a) and (b) of Regulation (EC) No 2869/95 ([4]), since the applicant entertained reasonable expectations that the delay in lodging the opposition fee was remedied by the payment-within the prescribed time limit of the additional payment.

([1]) Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of OHIM (OJ 1996 L 28, p. 11),
([2]) Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 1995 L 303, p. 33)
([3]) Council Regulation (EC) No 207/2009 of February 2009 on the Community trade mark (OJ L 78 of 24.3.2009, p.1)
([4]) Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 1995 L 303, p. 33)

Action brought on 8 December 2009 — Leali v Commission

(Case T-489/09)

(2010/C 37/60)

Language of the case: Italian

Parties

Applicant: Leali SpA (Odolo, Italy) (represented by: G. Belotti, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 7492 final in Case COMP. 37 956 — Reinforcing bars, readoption — adopted by the Commission on 30 September 2009.

— In the alternative:

— Reduce the amount of the fine imposed.

— Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-472/09 *SP* v *Commission*.

Action brought on 8 December 2009 — Acciaierie e Ferriere Leali Luigi v Commission

(Case T-490/09)

(2010/C 37/61)

Language of the case: Italian

Parties

Applicant: Acciaierie e Ferriere Leali Luigi SpA (Brescia, Italy) (represented by: G. Belotti, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 7492 final in Case COMP. 37 956 — Reinforcing bars, readoption — adopted by the Commission on 30 September 2009.

— In the alternative:

— Annul Article 2 of the decision insofar as the applicant is ordered to pay the sum of EUR 6,093 million jointly and severally with the company Leali SpA.

— In the further alternative:

— Reduce the amount of the fine imposed.

— Order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-472/09 *SP* v *Commission*.

Action brought on 3 December 2009 — Spain v Commission

(Case T-491/09)

(2010/C 37/62)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

— annul Commission Decision 2009/721/EC of 24 September 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it is the object of the present action; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant relies on the following pleas:

1. Infringement, with regard to the financial correction applicable to aid to olive oil production, of Article 7(4) of Regulation 1258/1999 ([1]) and Article 31(1) of Regulation 1290/2005, ([2]) since the contested decision applies them in inappropriate circumstances, given that the theoretical irregularities relied on by the Commission to justify the financial corrective measures decided upon are insufficient.

2. That the irregularities alleged by the Commission concerning the financial correction applicable to aid for premiums for ovines and caprines do not exist, which implies that the contested decision infringed Article 7(4) of Regulation 1258/1999 and Article 31(1) of Regulation 1290/2005, by applying those provisions in inappropriate circumstances. It is alleged, in that regard, that on-the-spot checks were carried out during the retention period, in accordance with Article 24(2) of Regulation 2419/2001, ([3]) and that the problems alleged by the Commission in relation to the registration books of farms and to the fact that the inspectors made no observations concerning registrations not carried out, do not affect the determination of the number of animals eligible for subsidy of the farm throughout the entire retention period.

([1]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).
([2]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).
([3]) Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11).

Action brought on 7 December 2009 — MEDA Pharma v OHIM — Nycomed (ALLERNIL)

(Case T-492/09)

(2010/C 37/63)

Language in which the application was lodged: German

Parties

Applicant: MEDA Pharma GmbH & Co KG (Bad Homburg, Germany) (represented by: G. Würtenberger and R. Kunze, 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: Nycomed GmbH (Konstanz, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of 29 September 2009 in appeal proceedings R 1386/2007-4 concerning the objection lodged on the basis of the German trade mark No 1 042 583 'ALLERGODIL' against the European part of the international registration 845 934 'ALLERNIL';

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

Pleas in law and main arguments

Applicant for extension of protection: Nycomed GmbH

Trade mark for which an extension of protection is sought: the word mark 'ALLERNIL' for goods in Class 5 (international registration No 845 934, naming the European Community)

Proprietor of the mark cited in opposition proceedings: the applicant

Mark cited in opposition: the German word mark No 1 042 583 'ALLERGODIL' for goods in Class 5

Decision of the Cancellation Division: Rejection of the opposition

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] since the principles of trade mark law relating to the likelihood of confusion were not correctly applied;

— Infringement of Article 75 of Regulation No 207/2009 owing to deficiencies in the reasoning of the contested decision.

[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 7 December 2009 — LG Electronics v OHIM

(Case T-497/09)

(2010/C 37/64)

Language in which the application was lodged: French

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by J. Blanchard, lawyer)

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

Form of order sought

— declare the present action to be admissible;

— annul in part the decision made on 23 September 2009 by the First Board of Appeal of OHIM in so far as it dismissed in part an action brought by LG ELECTRONICS against the decision of 5 February 2009 refusing registration of the application for Community trade mark No 7 282 924 in so far as it applies to 'electronic vacuum cleaners';

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'KOMPRESSOR PLUS' for goods in Class 7 (Application No 7 282 924).

Decision of the Examiner: Rejection of the application for registration.

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

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 207/2009 on the Community trade mark.

Action brought on 14 December 2009 — Evonik Industries AG v OHIM (Representation of a purple rectangle with a rounded right side)

(Case T-499/09)

(2010/C 37/65)

Language in which the application was lodged: German

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by J. Albrecht, lawyer)

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

Form of order sought

— Annul the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Fourth Board of Appeal) of 2 October 2009 (Case R 491/2009-4);

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a figurative mark representing a rectangular shape in the colour Purple Pantone 513 C, for goods and services in classes 1 to 45 (Application No 7 235 179)

Decision of the Examiner: registration rejected

Decision of the Board of Appeal: appeal dismissed

Pleas in law: misapplication of Article 7(1)(b) of Regulation No 207/2009 [1], on the ground that the trade mark concerned has the requisite distinctive character

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

Action brought on 7 December 2009 — Italy v Commission

(Case T-500/09)

(2010/C 37/66)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: L. Ventrella, avvocato dello Stato)

Defendant: European Commission

Form of order sought

— Annul in part Decision C (2009) 7044 of 24 September 2009, notified on 25 September 2009, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), insofar as it applied to Italy, for the financial years 2005 and 2006:

  — fixed-rate financial corrections (5 %) on account of various alleged weaknesses in controls in the fruit and vegetables sector — citrus processing — totalling EUR 3 539 679,81.

Pleas in law and main arguments

In support of its challenge, the Italian Republic pleads breach of an essential procedural requirement (Article 253 EC), on account of a failure to state adequate reasons, and breach of the principle of proportionality.

The applicant submits in that connection that the Commission corrected certain aid for citrus processing and, in implementing those corrections, failed to ensure that adequate checks had been carried out as to whether the product delivered to the producers' organisations tallied with the product delivered to the processors and as to whether the product delivered for processing tallied with the finished product. According to the Italian Government, in the course of the procedure it had emerged that the checks had been carried out satisfactorily, in particular as regards both administrative/accounting checks and physical checks, at both the Organizzazione di Produttori (Producers' Organisation) and the processors; the checks were unannounced (without prior notice to the industry as to the date of the checks) and, in any event, were greater in number than that provided for in the relevant legislation. The essential point which the Commission should have addressed by stating adequate reasons in its decision was therefore whether the risk of loss to the Fund was 'significant', such as to justify a fixed-rate correction of 5 %, which appears, in any event, to be disproportionate.

Action brought on 8 December 2009 — PhysioNova v OHIM — Flex Equipos de Descanso (FLEX)

(Case T-501/09)

(2010/C 37/67)

Language in which the application was lodged: German

Parties

Applicant: PhysioNova GmbH (Erlangen, Germany) (represented by: J. Klinik, 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: Flex Equipos de Descanso, SA (Madrid, Spain)

Form of order sought

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

— amend the contested decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case R 1/2009-1 so as to overrule the decision of the Cancellation Division of 27. October 2008 in Case 2237 C;

— order OHIM to pay the costs of the proceedings, including those incurred during the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the Community figurative mark 'FLEX' No 2 275 220 for goods and services in classes 6, 10, 17 and 20

Proprietor of the Community trade mark: Flex Equipos de Descanso, SA

Applicant for the declaration of invalidity: PhysioNova GmbH

Trade mark right of applicant for the declaration: the German trade mark No 39 903 314 'PhysioFlex' and the German trade mark No 39 644 431 'Rotoflex'

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

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], since there is a likelihood of confusion between the trade marks at issue

[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 16 December 2009 — Völkl v OHIM-Marker Völkl (VÖLKL)

(Case T -504/09)

(2010/C 37/68)

Language in which the application was lodged: German

Parties

Applicant: Völkl GmbH & Co. KG (Erding, Germany) (represented by: C. Raßmann, 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: Marker Völkl International GmbH (Baar, Switzerland)

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 30 September 2009 in Case R 1387/2008-1;

— Annul the decision of the Opposition Division of the Office for Harmonisation in the Internal Market of 31 July 2008 on the opposition proceedings No B 1 003 153, in so far as the opposition was upheld;

— Refusal of the opposition;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Völkl GmbH & Co. KG

Community trade mark concerned: the word mark 'VÖLKL' for goods in classes 3, 9, 18 and 25 (Application No 4 403 705)

Proprietor of the mark or sign cited in the opposition proceedings: Marker Völkl International GmbH

Mark or sign cited in opposition: the word mark 'VÖLKL' (international trade mark No 571 440) for goods in classes 18, 25 and 28

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Annulment of the decision given by the Opposition Division concerning the determination of a likelihood of confusion of the signs which are compared and the referral back to the Opposition Division for further action; Dismissal of the appeal in relation to the decision on proof of use preserving the rights held

Pleas in law:

— Infringement of the principle that the parties delimit the subject-matter of the proceedings (Article 74(1) of Regulation (EC) No 40/94), [1] on the ground that the Board of Appeal should not have referred the proceedings back to the Opposition Division concerning goods in relation to which the opposition was not raised;

— Infringement of the prohibition of *reformatio in pejus*, on the ground that the Board of Appeal should not have referred the proceedings back to the Opposition Division concerning goods the registration of which the Opposition Division had already permitted;

— Infringement of the right to be granted a fair hearing (Article 38(3) and Article 73(2) of Regulation No 40/94);

— Infringement of Article 15(2)(a) and Article 43(2) and (3) of Regulation No 40/94 and Rule 22(2) of Regulation (EC) No 2868/95 [2], on the ground that the Board of Appeal erred in finding that the applicant has sufficiently proved that the opposition mark has been used in a manner which preserves its rights.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)
[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94 (OJ 1995 L 303, p. 1)

Order of the General Court of 18 December 2009 — Enviro Tech Europe and Enviro Tech International v Commission

(Case T-422/03) [1]

(2010/C 37/69)

Language of the case: English

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

[1] OJ C 47, 21.2.2004.

Order of the General Court of 16 December 2009 — Bactria v Commission

(Case T-76/04) [1]

(2010/C 37/70)

Language of the case: English

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

[1] OJ C 106, 30.4.2004.

Order of the General Court of 16 December 2009 — Bactria v Commission

(Case T-401/04) [1]

(2010/C 37/71)

Language of the case: English

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

[1] OJ C 19, 22.1.2005.

Order of the General Court of 17 December 2009 — Akzo Nobel and Others v Commission

(Case T-199/06) [1]

(2010/C 37/72)

Language of the case: English

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

[1] OJ C 212, 2.9.2006.

Order of the General Court of 14 December 2009 — UMG Recordings v OHIM — Osman (MOTOWN)

(Case T-143/07) [1]

(2010/C 37/73)

Language of the case: English

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

[1] OJ C 140, 23.6.2007.

Order of the General Court of 16 December 2009 — Bull and Others v Commission

(Case T-333/08) ([1])

(2010/C 37/74)

Language of the case: French

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

([1]) OJ C 285, 8.11.2008.

Order of the Court of First Instance (Third Chamber) of 9 December 2009 — IPublish Ganske Interactive Publishing v OHIM (Representation of a navigational device)

(Case T-555/08) ([1])

(2010/C 37/75)

Language of the case: German

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

([1]) OJ C 55, 7.3.2009.

Order of the General Court of 18 December 2009 — Complejo Agrícola v Commission

(Case T-174/09) ([1])

(2010/C 37/76)

Language of the case: Spanish

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

([1]) OJ C 153, 4.7.2009.

Order of the General Court of 14 December 2009 — Mars v OHIM — Marc (MARC Marlon Abela Restaurant Corporation)

(Case T-208/09) ([1])

(2010/C 37/77)

Language of the case: English

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

([1]) OJ C 167, 18.7.2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (First Chamber) of 15 December 2009 — Apostolov v Commission

(Case F-8/09) [1]

(Civil service — Officials — Action inadmissible — Delay)

(2010/C 37/78)

Language of the case: English

Parties

Applicant: Apostolov (Saarwellingen, Germany) (represented by: D. Schneider-Addaeh-Mensah, lawyer)

Defendant: Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the decision of EPSO not to include the applicant's name in the reserve list for selection procedure EPSO/CAST27/4/07

Operative part of the order

1. *Dismisses the action as inadmissible.*

2. *Orders Mr Apostolov to pay the costs.*

[1] OJ C 244, 10.10.2009, p. 16.

Action brought on 17 December 2009 — Bennett and Others v OHIM

(Case F-102/09)

(2010/C 37/79)

Language of the case: French

Parties

Applicants: Kelly-Marie Bennett (Mutxamel, Spain) and Others (represented by: L. Levi, lawyer)

Defendant: Office for Harmonisation in the Internal Market

Subject-matter and description of the proceedings

First, annulment of the decisions to terminate the applicants' contracts pursuant to a termination clause linked to passing an open competition with a specialisation in intellectual property. Secondly, compensation for the non-material harm suffered by the applicants.

Form of order sought

The applicants claim that the Tribunal should:

— annul the decisions to terminate the applicants' contracts, dated 12 March 2009;

— so far as necessary, annul the decision of 9 October 2009, notified on the same day, rejecting the complaints brought by the applicants on 12 June 2009;

— consequently, order the defendant (i) by way of damages and interest, to pay the applicants the remuneration in respect of the period from the date on which the termination of their contracts took effect until the date of their reinstatement on account of the annulment of the decisions taken and (ii) to reconstitute the career of each applicant unlawfully halted by the decisions to terminate their contracts; in the event that the applicants' reinstatement results in significant practical difficulties or is excessive with regard to the situation of a third party, order the defendant to pay monetary compensation equitable to the unlawful termination of the applicants' contracts. Such compensation must take into account, inter alia, not only the loss of remuneration with regard to the past but also the applicant's genuine opportunity to remain in the service of OHIM until their retirement age under a contract for an (fully) indeterminate period and to develop in their career;

— in the alternative, annul the decisions to terminate the applicants' contracts in so far as the duration of the notice period was not fixed taking into account all the years of service of each of the applicants within OHIM;

— order the defendant to pay damages and interest to compensate for the material and non-material harm suffered, assessed on equitable principles at EUR 85 000 in respect of each of the applicants;

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

Action brought on 22 December 2009 — Allen and Others v Commission

(Case F-103/09)

(2010/C 37/80)

Language of the case: English

Parties

Applicants: John Allen (Oxford, United Kingdom) and Others (represented by: P. Lasok, I. Hutton, B. Lask, Barristers)

Defendant: European Commission

The subject matter and description of the proceedings

An application for damages and for the annulment of a decision refusing to pay damages in respect of the loss suffered by each applicant as a result of the fact that each of them was not recruited as a temporary servant of the Communities during the time when they worked at the JET Joint Undertaking.

Form of order sought

The applicants claim that the Tribunal should:

— annul the Commission's Decision dated 25 September 2009;

— declare that the applicants had a right to, and should have been, treated as "other personnel" and/or recruited as such, in accordance with Article 8 of the original JET Statutes;

— declare that the Commission discriminated against the applicants without objective justification during their engagement on the JET Project as regards their remuneration, pension rights and related benefits, and security of future employment;

— order the Commission to compensate the applicants for the loss of earnings, pensions, and related benefits and privileges occasioned by the aforesaid breaches of Community law, including interest thereon as appropriate;

— order the costs of this appeal to be paid by the Commission; and

— take such further measures and grant such further relief, under the Statute of the Court of Justice and/or the Rules of procedure of the Civil Service Tribunal as may be necessary, just or equitable.

Action brought on 21 December 2009 — Canga Fano v Council

(Case F-104/09)

(2010/C 37/81)

Language of the case: French

Parties

Applicant: Diego Canga Fano (Brussels, Belgium) (represented by: S. Rodriguez and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Application for annulment of the defendant's decision not to include the applicant on the list of officials promoted to Grade AD 13 under the 2009 promotion procedure.

Form of order sought

The applicant claims that the Tribunal should:

— annul the appointing authority's decision not to include the applicant on the list of officials promoted to grade AD 13 under the 2009 promotion procedure;

— annul, so far as necessary, the appointing authority's decision rejecting the applicant's complaint;

— order the appointing authority to pay the applicant a sum fixed on equitable principles at EUR 150 000, in respect of compensation for the non-material harm suffered, plus default interest at the legal rate from the date on which it became payable, and a sum fixed on equitable principles at EUR 50 00, in respect of compensation for the harm to his career, plus default interest at the legal rate from the date on which it became payable;

— order the Council to pay the costs.

Action brought on 23 December 2009 — Scheefer v Parliament

(Case F-105/09)

(2010/C 37/82)

Language of the case: French

Parties

Applicant: Séverine Scheefer (Luxembourg, Luxembourg) (represented by: R. Adam, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for annulment the decisions of the defendant refusing to convert the applicant's contract as a temporary agent into a contract for an indefinite period in accordance with the first paragraph of Article 8 of the CEOS. In addition, application for compensation for the loss suffered by the applicant.

Form of order sought

The applicant claims that the Tribunal should:

— annul the Parliament's decision of 12 February 2009;

— annul the Parliament's decision of 12 October 2009;

— annul the legal characterisation of the original contract and its date of expiry set at 31 March 2009;

— accordingly, convert the applicant's contract of engagement into an engagement for an indefinite period;

— compensate the applicant for the loss she suffered as a result of the Parliament's conduct;

— in the alternative and if, contrary to all probability, the Tribunal reaches the conclusion that, despite the forming of a contract of engagement for an indefinite period, the working relationship has ceased, grant damages and interest for wrongful termination of the contractual relationship;

— in the further alternative and if, contrary to all probability, the Tribunal reaches the conclusion that no conversion of the contract is possible, grant damages and interest for the loss suffered by the applicant by reason of the European Parliament's wrongful conduct;

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

— order the European Parliament to pay the costs.

Action brought on 30 December 2009 — Pascual García v Commission

(Case F-106/09)

(2010/C 37/83)

Language of the case: Italian

Parties

Applicant: César Pascual García (Madrid, Spain) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Claim for compensation for the damage arising as a result of the failure to pay the applicant remuneration and related emoluments for the period 1 April 2006 — 1 March 2009 and for interest on the sum due.

Form of order sought

— Order the Commission to pay compensation for the damage arising as a result of the failure to pay the applicant remuneration and related emoluments for the period 1 April 2006 — 1 March 2009 and interest on the sum due.

— Order the Commission to pay the costs.

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