ISSN 1725-2423

Official Journal of the European Union

C 63

English edition

Information and Notices

Volume 53

13 March 2010

Notice No | Contents | Page

EN

Price:
EUR 4

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

General Court

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE

(2010/C 63/01)

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

OJ C 51, 27.2.2010

Past publications

OJ C 37, 13.2.2010

OJ C 24, 30.1.2010

OJ C 11, 16.1.2010

OJ C 312, 19.12.2009

OJ C 297, 5.12.2009

OJ C 282, 21.11.2009

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 21 January 2010 (Reference for a preliminary ruling from the Sąd Rejonowy Gdańsk-Północ — Republic of Poland) — Insolvency proceedings opened against MG Probud Gdynia sp. z o.o.

(Case C-444/07) [1]

(Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Insolvency proceedings — Refusal of recognition by a Member State of a judgment opening insolvency proceedings handed down by the competent court of another Member State and of the judgments concerning the course and closure of those insolvency proceedings)

(2010/C 63/02)

Language of the case: Polish

Referring court

Sąd Rejonowy Gdańsk-Północ

Parties to the main proceedings

Applicant: MG Probud Gdynia sp. z o.o.

Defendant: Główny Urząd Celny w Saarbrücken

Re:

Reference for a preliminary ruling — Sąd Rejonowy Gdańsk-Północ — interpretation of Articles 3, 4, 16, 17 and 25 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — Attachment by the authorities of a Member State of funds held in a bank account of an undertaking after insolvency proceedings in respect of that undertaking have been opened in another Member State, notwithstanding the provisions of the national law of the State in which those proceedings have been opened — Refusal of recognition by a Member State, in which secondary insolvency proceedings have not been opened, of the insolvency proceedings opened by a court of another Member State

Operative part of the judgment

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, in particular Articles 3, 4, 16, 17 and 25, must be interpreted as meaning that, in a case such as that in the main action, after the main insolvency proceedings have been opened in a Member State the competent authorities of another Member State, in which no secondary insolvency proceedings have been opened, are required, subject to the grounds for refusal derived from Articles 25(3) and 26 of that regulation, to recognise and enforce all judgments relating to the main insolvency proceedings and, therefore, are not entitled to order, pursuant to the legislation of that other Member State, enforcement measures relating to the assets of the debtor declared insolvent that are situated in its territory when the legislation of the State of the opening of proceedings does not so permit and the conditions to which application of Articles 5 and 10 of the regulation is subject are not met.

[1] OJ C 283, 24.11.2007.

Judgment of the Court (Fourth Chamber) of 14 January 2010 (Reference for a preliminary ruling from the Conseil d'État — Belgium) — Association générale de l'industrie du médicament (AGIM) ASBL (C-471/07 and C-472/07), Bayer SA (C-471/07 and C-472/07), Pfizer SA (C-471/07 and C-472/07), Servier Benelux SA (C-471/07 and C-472/07), Janssen Cilag SA (C-471/07), Sanofi-Aventis Belgiu, previously Sanofi-Synthelabo SA (C-472/07) v État belge

(Joined Cases C-471/07 and C-472/07) [1]

(Directive 89/105/EEC — Transparency of measures regulating the pricing of medicinal products for human use — Article 4(1) — Direct effect — Price freeze)

(2010/C 63/03)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Association générale de l'industrie du médicament (AGIM) ASBL (C-471/07 and C-472/07), Bayer SA (C-471/07 and C-472/07), Pfizer SA (C-471/07 and C-472/07), Servier Benelux SA (C-471/07 and C-472/07), Janssen Cilag SA (C-471/07), Sanofi-Aventis Belgium, previously Sanofi-Synthelabo SA (C-472/07)

Defendant: État belge

In the presence of: Sanofi-Aventis Belgium SA (C-471/07)

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Article 4(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — Price freeze in respect of medicinal products imposed by the competent authorities of a Member State — Scope of the obligation on the Member State to carry out a review, at least once a year, to ascertain whether the 'macro-economic' conditions justify that that freeze be continued — Review only as to whether healthcare expenditure is manageable, or need to take account of the macro-economic effects of the price freeze on the pharmaceutical industry?

Operative part of the judgment

1. *Article 4(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems must be interpreted as meaning that it is for the Member States to determine, in compliance with the objective of transparency pursued by that directive and the requirements laid down by that provision, the criteria on the basis of which the review of macro-economic conditions which is referred to in that provision is to be carried out, provided that those criteria are based on objective and verifiable factors.*

2. *Article 4(1) of Directive 89/105 must be interpreted as not being, so far as its subject-matter is concerned, sufficiently precise for an individual to be able to rely on it before a national court against a Member State.*

3. *Article 4(1) of Directive 89/105 must be interpreted as meaning that a Member State may, 18 months after the end of a general price freeze in respect of refundable medicinal products which lasted eight years, adopt a new measure freezing the prices of medicinal products without carrying out the review of macro-economic conditions which is provided for in that provision.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Third Chamber) of 21 January 2010 — European Commission v Federal Republic of Germany

(Case C-546/07) ([1])

(Failure of a Member State to fulfil obligations — Freedom to provide services — Article 49 EC — Annex XII to the Act of Accession — List referred to in Article 24 of the Act of Accession: Poland — Chapter 2, paragraph 13 — Possibility of derogation by the Federal Republic of Germany from the first paragraph of Article 49 EC — 'Standstill' clause — Agreement of 31 January 1990 between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on the posting of workers from Polish undertakings to carry out works contracts — Exclusion of the possibility for undertakings established in other Member States to conclude works contracts with Polish undertakings for work to be carried out in Germany — Extension of the restrictions existing at the date of signature of the Treaty of Accession relating to the access of Polish workers to the German labour market)

(2010/C 63/04)

Language of the case: German

Parties

Applicant: European Commission (represented by: E. Traversa and P. Dejmek, Agents)

Defendant: Federal Republic of Germany (represented by: J. Möller, M. Lumma and C. Blaschke, Agents)

Intervener in support of the applicant: Republic of Poland *(represented by:* M. Dowgielewicz, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC and Annex XII (List referred to in Article 24 of the Act of Accession: Poland), Chapter 2 (Freedom of Movement of Persons), Paragraph 13 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 875) — Interpretation and application by the national

administrative authorities of the Agreement of 31 January 1990 between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on the posting of workers from Polish undertakings to carry out works contracts — Exclusion of the possibility for undertakings established in other Member States to conclude works contracts with Polish undertakings concerning work to be done in Germany — Extension of the restrictions which existed at the date the Act of Accession was signed relating to the access of Polish workers on fixed term contracts ('Werkvertragsarbeitnehmer') to the national labour market

Operative part of the judgment

The Court:

1. *Declares that, by interpreting, in its administrative practice, the term 'undertaking from the other side' in Paragraph 1(1) of the Agreement of 31 January 1990 between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on the posting of workers from Polish undertakings to carry out works contracts, as amended on 1 March and 30 April 1993, as meaning 'a German undertaking', the Federal Republic of Germany has failed to fulfil its obligations under Article 49 EC;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission and the Federal Republic of Germany to bear their own respective costs;*

4. *Orders the Republic of Poland to bear its own costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court (Grand Chamber) of 19 January 2010 (reference for a preliminary ruling from the Landesarbeitsgericht Düsseldorf — Germany) — Seda Kücükdeveci v Swedex GmbH & Co. KG

(Case C-555/07) ([1])

(Principle of non-discrimination on grounds of age — Directive 2000/78/EC — National legislation on dismissal not taking into account the period of employment completed before the employee reaches the age of 25 in calculating the notice period — Justification for the measure — National legislation contrary to the directive — Role of the national court)

(2010/C 63/05)

Language of the case: German

Referring court

Landesarbeitsgericht Düsseldorf

Parties to the main proceedings

Applicant: Seda Kücükdeveci

Defendant: Swedex GmbH & Co. KG

Re:

Reference for a preliminary ruling — Landesarbeitsgericht Düsseldorf (Germany) — Interpretation of the principle of non-discrimination on the ground of age, and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation relating to dismissals establishing notice periods which increase with length of service but in which any period of employment before the employee reaches the age of 25 is disregarded

Operative part of the judgment

1. *European Union law, more particularly the principle of non-discrimination on grounds of age as given expression by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that periods of employment completed by an employee before reaching the age of 25 are not taken into account in calculating the notice period for dismissal.*

2. *It is for the national court, hearing proceedings between individuals, to ensure that the principle of non-discrimination on grounds of age, as given expression in Directive 2000/78, is complied with, disapplying if need be any contrary provision of national legislation, independently of whether it makes use of its entitlement, in the cases referred to in the second paragraph of Article 267 TFEU, to ask the Court of Justice of the European Union for a preliminary ruling on the interpretation of that principle.*

([1]) OJ C 79, 29.3.2008.

Judgment of the Court (Grand Chamber) of 26 January 2010 (Reference for a preliminary ruling from the Tribunal Supremo — Spain) — Transportes Urbanos y Servicios Generales SAL v Administración del Estado

(Case C-118/08) ([1])

(Procedural autonomy of the Member States — Principle of equivalence — Action for damages against the State — Breach of European Union law — Breach of the Constitution)

(2010/C 63/06)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Transportes Urbanos y Servicios Generales SAL

Defendant: Administración del Estado

Re:

Reference for a preliminary ruling — Tribunal Supremo (Spain) — Infringement by a Member State of the rights granted to individuals under European Union law — Obligation to remedy the damage caused — An act contrary to the constitution of a Member State and an act contrary to European Union law — Principles of equivalence and effectiveness

Operative part of the judgment

European Union law precludes the application of a rule of a Member State under which an action for damages against the State, alleging a breach of that law by national legislation which has been established by a judgment of the Court of Justice of the European Communities given pursuant to Article 226 EC, can succeed only if the applicant has previously exhausted all domestic remedies for challenging the validity of a harmful administrative measure adopted on the basis of that legislation, when such a rule is not applicable to an action for damages against the State alleging breach of the Constitution by national legislation which has been established by the competent court.

([1]) OJ C 128, 24.5.2008.

Judgment of the Court (Second Chamber) of 14 January 2010 (Reference for a preliminary ruling from the Verwaltungsgericht Oldenburg — Germany) — Stadt Papenburg v Bundesrepublik Deutschland

(Case C-226/08) ([1])

(Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision of the Member State concerned to give its agreement to the draft list of sites of Community importance drawn up by the Commission — Interests and points of view which must be taken into account)

(2010/C 63/07)

Language of the case: German

Referring court

Verwaltungsgericht Oldenburg

Parties to the main proceedings

Applicant: Stadt Papenburg

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Verwaltungsgericht Oldenburg — Interpretation of Article 2(3), the first subparagraph of Article 4(2), and Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Economic interests of a municipality, linked to the operation of a river port and protected by the Constitution, which may suffer lasting effects as a result of the possible designation of the site concerned as a site of Community importance — Interests and points of view which must be taken into consideration by the Member State concerned when deciding to give its agreement to the draft list of sites of Community importance established by the Commission.

Operative part of the judgment

1. *The first subparagraph of Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2006/105/EC of 20 November 2006, must be interpreted as not allowing a Member State to refuse to agree on grounds other than environmental protection to the inclusion of one or more sites in the draft list of sites of Community importance drawn up by the European Commission;*

2. *Article 6(3) and (4) of Directive 92/43, as amended by Directive 2006/105, must be interpreted as meaning that ongoing maintenance works in respect of the navigable channels of estuaries, which are not connected with or necessary to the management of the site and which were already authorised under national law before the expiry of the time-limit for transposing Directive 92/43, as amended by Directive 2006/105, must, to the extent that they constitute a project and are likely to have a significant effect on the site concerned, undergo an assessment of their implications for that site pursuant to those provisions where they are continued after inclusion of the site in the list of sites of Community importance pursuant to the third subparagraph of Article 4(2) of that directive.*

   If, having regard in particular to the regularity or nature of those works or the conditions under which they are carried out, they can be regarded as constituting a single operation, in particular where they are designed to maintain the navigable channel at a certain depth by means of regular dredging necessary for that purpose, the maintenance works can be considered to be one and the same project for the purposes of Article 6(3) of Directive 92/43, as amended by Directive 2006/105.

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Grand Chamber) of 12 January 2010 (reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany)) — Colin Wolf v Stadt Frankfurt am Main

(Case C-229/08) [1]

(Directive 2008/78/EC — Article 4(1) — Prohibition of discrimination on grounds of age — National provision setting a maximum age of 30 years for the recruitment of officials to posts in the fire service — Aim pursued — Genuine and determining occupational requirement)

(2010/C 63/08)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Colin Wolf

Defendant: Stadt Frankfurt am Main

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main (Germany) — Interpretation of Articles 6(1) and 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination on grounds of age — Differences of treatment on grounds of age which are 'objectively and reasonably justified' and the 'need for a reasonable period of employment before retirement' — National provision laying down a maximum recruitment age of 30 for officers in the fire service

Operative part of the judgment

Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which sets the maximum age for recruitment to intermediate career posts in the fire service at 30 years.

[1] OJ C 223, 30.8.2008.

Judgment of the Court (First Chamber) of 14 January 2010 (reference for a preliminary ruling from the Nejvyšší správní soud (Czech Republic)) — Milan Kyrian v Celní úřad Tábor

(Case C-233/08) [1]

(Mutual assistance for the recovery of claims — Directive 76/308/EEC — Jurisdiction to review of the courts of the Member State in which the requested authority is situated — Enforceability of an instrument permitting enforcement — Lawfulness of notification of the instrument to the debtor — Notification in a language not understood by the addressee)

(2010/C 63/09)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Milan Kyrian

Defendant: Celní úřad Tábor

Re:

Reference for a preliminary ruling — Nejvyšší správní soud (Czech Republic) — Interpretation of the general principles of the right to a fair trial, sound administration and the rule of law, and of Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 1976 L 73, p. 18), as amended by Council Directive 79/1071/EEC of 6 December 1979, amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing of the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties (OJ 1979 L 331, p. 10), and by Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ 2001 L 175, p. 17) — Competence of the courts in the Member State in which the requested authority has its seat to review, in accordance with the laws and regulations in force in that Member State, whether the instrument permitting enforcement of the claim is enforceable and has been properly served — Enforcement order not including the date of birth of the debtor and in a language which he does not understand and which is not an official language of the Member State requested

Operative part of the judgment

1. *Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Council Directive 2001/44/EC of 15 June 2001, must be interpreted as meaning that the courts of the Member States where the requested authority is situated do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement. Conversely, where a court of that Member State hears a claim against the validity or correctness of the enforcement measures, such as the notification of the instrument permitting enforcement, that court has the power to review whether those measures were correctly effected in accordance with the laws and regulations of that Member State;*

2. *In the framework of the mutual assistance introduced pursuant to Directive 76/308, as amended by Directive 2001/44, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the Member State in which the requested authority is situated. In order to ensure compliance with that right, it is for the national court to apply national law while taking care to ensure the full effectiveness of Community law.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Second Chamber) of 28 January 2010 (reference for a preliminary ruling from the Hof van Cassatie van België (Belgium)) — Belgische Staat v Direct Parcel Distribution Belgium NV

(Case C-264/08) ([1])

(Community Customs Code — Customs debt — Amount of duty — Articles 217 and 221 — Communities own resources — Regulation (EC, Euratom) No 1150/2000 — Article 6 — Requirement of entry in the accounts of the amount of duty before it is communicated to the debtor — Definition of 'legally owed')

(2010/C 63/10)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Belgische Staat

Defendant: Direct Parcel Distribution Belgium NV

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 217(1) and 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (in the version in force in 1992) (OJ 1992 L 302, p. 1) and of Article 6 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities own resources (OJ 2000 L 130, p. 1) — Post-clearance recovery of import or export duties — Whether or not the amount of duty must be entered in the accounts before being communicated to the debtor — Meaning of 'entered … in the accounting records or on any other equivalent medium' — Recovery of undue payment

Operative part of the judgment

1. *Article 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that 'entry in the accounts' of the amount of duty to be recovered as referred to in that provision is the same as 'entry in the accounts' of that amount as defined in Article 217(1) of that regulation;*

2. *'Entry in the accounts' within the meaning of Article 217(1) of Regulation No 2913/92 must be distinguished from entry of established entitlements in the accounts for own resources as referred to in Article 6 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities own resources. Since Article 217 of Regulation No 2913/92 does not lay down any practical procedures for 'entry in the accounts' within the meaning of that provision or, accordingly, any minimum requirements of a technical or formal nature, that entry in the accounts must be made in a way which ensures that the competent customs authorities enter the exact amount of the import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium, so that, inter alia, the entry in the accounts of the amounts concerned may be established with certainty, including with regard to the person liable;*

3. *Article 221(1) of Regulation No 2913/92 must be interpreted as meaning that the amount of import or export duty due can be validly communicated to the debtor by the customs authorities, in accordance with appropriate procedures, only if the amount of that duty has been entered in the accounts beforehand by the authorities. The Member States are not required to adopt specific procedural rules on the manner in which communication of the amount of import or export duty is to be made to the debtor where national procedural rules of general application can be applied to that communication, which ensure that the debtor receives adequate information and which enable him, with full knowledge of the facts, to defend his rights;*

4. *Community law does not preclude the national court from proceeding on the assumption, based on the declaration by the customs authorities, that the 'entry in the accounts' of the amount of import or export duty within the meaning of Article 217 of Regulation No 2913/92 took place before that amount was communicated to the debtor, provided that the principles of effectiveness and equivalence are observed;*

5. *Article 221(1) of Regulation No 2913/92 must be interpreted as meaning that the communication of the amount of duty to be recovered must have been preceded by the entry in the accounts of that amount by the customs authorities of the Member State concerned and that, if it has not been entered in the accounts in accordance with Article 217(1) of Regulation No 2913/92, that amount may not be recovered by those authorities, which however remain entitled to proceed with a new communication of that amount, in accordance with the conditions laid down by Article 221(1) of Regulation No 2913/92 and the limitation rules in force at the time the customs debt was incurred;*

6. *Although the amount of import duty or export duty remains 'legally owed' within the meaning of Article 236(1), first subparagraph, of Regulation No 2913/92, even where that amount was communicated to the person liable without having been entered in the accounts beforehand in accordance with Article 221(1) of that regulation, the fact remains that, if such communication is no longer possible because the period laid down in Article 221(3) of that regulation has expired, that person must in principle be able to obtain repayment of that amount from the Member State which levied it.*

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (Third Chamber) of 21 January 2010 (reference for a preliminary ruling from the Tribunal de première instance de Mons — Belgium) — Société de Gestion Industrielle (SGI) v État belge

(Case C-311/08) ([1])

(Freedom of establishment — Free movement of capital — Direct taxation — Income tax legislation — Determination of the taxable income of companies — Companies having a relationship of interdependence — Unusual or gratuitous advantage granted by a resident company to a company established in another Member State — Addition of the amount of the advantage in question to the profits of the resident company which granted it — Balanced allocation of the power to tax between Member States — Combating tax avoidance — Prevention of abuse — Proportionality)

(2010/C 63/11)

Language of the case: French

Referring court

Tribunal de première instance de Mons

Parties to the main proceedings

Applicant: Société de Gestion Industrielle (SGI)

Défendant: État belge

Re:

Reference for a preliminary ruling — Tribunal de première instance de Mons (Belgium) — Interpretation of Articles 12, 43, 48 and 56 EC — Permissibility of a national law providing for the taxation of a resident company on an unusual or gratuitous advantage granted to a non-resident company with which it has a relationship of interdependence but which does not provide for such taxation where the same advantage is granted to a resident company

Operative part of the judgment

Article 43 EC, read in conjunction with Article 48 EC, must be interpreted as not precluding, in principle, legislation of a Member State, such as that at issue in the main proceedings, under which a resident company is taxed in respect of an unusual or gratuitous advantage where the advantage has been granted to a company established in another Member State with which it has, directly or indirectly, a relationship of interdependence, whereas a resident company cannot be taxed on such an advantage where the advantage has been granted to another resident company with which it has such a relationship. However, it is for the referring court to verify whether the legislation at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation, taken together.

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Third Chamber) of 28 January 2010 — European Commission v French Republic

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

(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Quantitative restriction on imports — Measure having equivalent effect — Prior authorisation scheme — Processing aids, and foodstuffs whose preparation involved the use of processing aids, from other Member States where they are lawfully manufactured and/or marketed — Procedure allowing economic operators to obtain the entry of such substances on a 'positive list' — Mutual recognition clause — National legislative context creating a situation of legal uncertainty for economic operators)

(2010/C 63/12)

Language of the case: French

Parties

Applicant: European Commission (represented by: B. Stromsky, Agent)

Defendant: French Republic (represented by: G. de Bergues and R. Loosli-Surrans, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 28 EC — Scheme of prior authorisation for processing aids, and foodstuffs the preparation of which involved the use of processing aids, from other Member States where they were lawfully manufactured and/or marketed — Lack of justification and/or non-compliance with the principle of proportionality

Operative part of the judgment

The Court:

1. *By laying down, for processing aids and foodstuffs whose preparation involved the use of processing aids from other Member States where they are lawfully manufactured and/or marketed, a prior authorisation scheme not complying with the principle of proportionality, the French Republic has failed to fulfil its obligations under Article 28 EC.*

2. *The French Republic is ordered to pay the costs.*

([1]) OJ C 285, 8.11.2008.

Judgment of the Court (Third Chamber) of 14 January 2010 — European Commission v Czech Republic

(Case C-343/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/41/EC — Activities and supervision of institutions for occupational retirement provision — Partial failure to transpose within the prescribed time-limit — No institutions for occupational retirement provision located in the national territory — Competence of Member States to organise their own national retirement pension system)

(2010/C 63/13)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: M. Šimerdová and N. Yerrell, Agents)

Defendant: Czech Republic (represented by: M. Smolek, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ 2003 L 235, p. 10)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Articles 8, 9, 13, 15 to 18 and 20(2) to (4) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, the Czech Republic has failed to fulfil its obligations under Article 22(1) of that directive;*

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

3. *Orders the Czech Republic to pay the costs.*

([1]) OJ C 272, 25.10.2008.

Judgment of the Court (Grand Chamber) of 26 January 2010 — Internationaler Hilfsfonds eV v European Commission

(Case C-362/08 P) ([1])

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Action for annulment — Notion of 'measure open to challenge' for the purposes of Article 230 EC)

(2010/C 63/14)

Language of the case: German

Parties

Appellant: Internationaler Hilfsfonds eV (represented by: H. Kaltenecker and R. Karpenstein, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: P. Costa de Oliveira, S. Fries and by T. Scharf, Agents)

Re:

Appeal brought against the judgment delivered by the Court of First Instance (Fifth Chamber) on 5 June 2008 in Case T-141/05 *Internationaler Hilfsfonds e.V.* v *Commission*, by which the Court of First Instance dismissed as inadmissible the action for annulment of the decision allegedly contained in the Commission's letter of 14 February 2005 refusing to grant the appellant access to certain documents relating to Contract LIEN 97-2011 concerning the co-financing of a medical aid programme organised in Kazakhstan — Inadmissibility of an action for annulment brought against a measure that merely confirms an earlier decision not contested within the time-limit for initiating proceedings — Wrong classification of the contested measure — Inadmissibility of an action for annulment brought against a measure constituting an initial response, for the purposes of Article 7(1) of Regulation No 1049/2001 — Wrong interpretation of Article 7(2) of Regulation No 1049/2001

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of 5 June 2008 in Case T-141/05 Internationaler Hilfsfonds v Commission;*

2. *Rejects the plea of inadmissibility raised by the Commission of the European Communities before the Court of First Instance of the European Communities;*

3. *Refers the case back to the General Court of the European Union for judgment on the claims of Internationaler Hilfsfonds eV seeking annulment of the decision of the Commission of the European Communities of 14 February 2005 refusing it access to certain documents in the Commission's possession;*

4. *Orders the European Commission to pay the costs of the present proceedings and those arising at first instance relating to the plea of inadmissibility;*

5. *Orders the costs to be reserved as to the remainder.*

([1]) OJ C 272, 25.10.2008.

Judgment of the Court (First Chamber) of 21 January 2010 — Audi AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-398/08 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Articles 7(1)(b) and 63 — Word mark Vorsprung durch Technik — Marks consisting of advertising slogans — Distinctive character — Application for a trade mark in respect of a large number of goods and services — Relevant public — Global assessment and reasoning — New documents)

(2010/C 63/15)

Language of the case: German

Parties

Appellant: Audi AG (represented by: S.O. Gillert and F. Schiwek, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Appeal against the judgment of 9 July 2008 in Case T-70/06 *Audi* v *OHIM* by which the Court of First Instance (Fourth Chamber) dismissed the action for annulment of the decision of the Second Board of Appeal of OHIM of 16 December 2005 dismissing in part the appeal against the examiner's decision refusing registration of the word mark 'VORSPRUNG DURCH TECHNIK' for goods and services in Classes 9, 12, 14, 25, 28, 37 to 40 and 42 — Marks consisting of advertising slogans — Distinctive character — Application of specific assessment criteria — Insufficient reasons stated as regards how the relevant public was determined — Consideration of pleas submitted for the first time in the procedure before the Court of First Instance

Operative part of the judgment

The Court:

1. *Sets aside the judgment of 9 July 2008 in Case T-70/06 Audi v OHIM (Vorsprung durch Technik), in so far as the Court of First Instance of the European Communities held that the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) had not infringed Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 3288/94 of 22 December 1994, in adopting its decision of 16 December 2005 (Case R 237/2005-2);*

2. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 December 2005 (Case R 237/2005-2) in so far as, on the basis of Article 7(1)(b) of Regulation No 40/94 as amended by Regulation No 3288/94, that decision refused in part the application for registration of the mark Vorsprung durch Technik;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to pay the costs of the proceedings at first instance and the appeal proceedings.*

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Third Chamber) of 28 January 2010 (Reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division) — United Kingdom) — Uniplex (UK) Ltd v NHS Business Services Authority

(Case C-406/08) [1]

(Directive 89/665/EEC — Procedures for review of the award of public contracts — Period within which proceedings must be brought — Date from which the period for bringing proceedings starts to run)

(2010/C 63/16)

Language of the case: English

Referring court

High Court of Justice (Queen's Bench Division)

Parties to the main proceedings

Applicant: Uniplex (UK) Ltd

Defendant: NHS Business Services Authority

Re:

Reference for a preliminary ruling — High Court of Justice (Queen's Bench Division) — Interpretation of Articles 1 and 2 of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — National legislation providing for a period of three months in which to apply for review — Date from which time begins to run — Date on which the Community provisions relating to the award of public contracts were infringed or date on which the complainant became aware of that infringement

Operative part of the judgment

1. *Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, requires that the period for bringing proceedings seeking to have an infringement of the public procurement rules established or to obtain damages for the infringement of those rules should start to run from the date on which the claimant knew, or ought to have known, of that infringement.*

2. *Article 1(1) of Directive 89/665, as amended by Directive 92/50, precludes a national provision, such as that at issue in the main proceedings, which allows a national court to dismiss, as being out of time, proceedings seeking to have an infringement of the public procurement rules established or to obtain damages for the infringement of those rules on the basis of the criterion, appraised in a discretionary manner, that such proceedings must be brought promptly.*

3. *Directive 89/665, as amended by Directive 92/50, requires the national court, by virtue of the discretion conferred on it, to extend the limitation period in such a manner as to ensure that the claimant has a period equivalent to that which it would have had if the period provided for by the applicable national legislation had run from the date on which the claimant knew, or ought to have known, of the infringement of the public procurement rules. If the national provisions do not lend themselves to an interpretation which accords with Directive 89/665, as amended by Directive 92/50, the national court must refrain from applying them, in order to apply Community law fully and to protect the rights conferred thereby on individuals.*

[1] OJ C 301, 22.11.2008.

Judgment of the Court (Fourth Chamber) of 14 January 2010 (Reference for a preliminary ruling from the VAT and Duties Tribunal, Edinburgh and the VAT and Duties Tribunal, Northern Ireland — United Kingdom) — Terex Equipment Ltd (C-430/08), FG Wilson (Engineering) Ltd (C-431/08), Caterpillar EPG Ltd (C-431/08) v The Commissioners for Her Majesty's Revenue & Customs

(Joined Cases C-430/08 and C-431/08) [1]

(Regulation (EEC) No 2913/92 establishing the Community Customs Code — Articles 78 and 203 — Regulation (EEC) No 2454/93 — Article 865 — Inward processing procedure — Incorrect customs procedure code — Circumstances under which a customs debt is incurred — Revision of a customs declaration)

(2010/C 63/17)

Language of the case: English

Referring court

VAT and Duties Tribunal, Edinburgh and the VAT and Duties Tribunal, Northern Ireland — United Kingdom

Parties to the main proceedings

Applicants: Terex Equipment Ltd (C-430/08), FG Wilson (Engineering) Ltd (C-431/08), Caterpillar EPG Ltd (C-431/08)

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

Re:

Reference for a preliminary ruling — Edinburgh Tribunal Centre — Interpretation of Articles 78, 203 and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Interpretation of Article 865 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Goods entered into the European Community under the inward processing relief system — Mistaken use of an incorrect customs procedure code (CPC) on declarations made when the goods were re-exported from the Community, identifying the goods as 'permanent export' rather than 're-export' — Possibility of revising the export declaration in order to correct the CPC and regularise the situation

Operative part of the judgment

1. *The use in the export declarations at issue in the main proceedings of customs code 10 00 indicating the export of Community goods, instead of code 31 51 used for goods for which duties are suspended under the inward processing procedure, gives rise to a customs debt pursuant to Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and the first paragraph of Article 865 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1677/98 of 29 July 1998.*

2. *Article 78 of Regulation No 2913/92 permits the revision of the export declaration of the goods in order to correct the customs procedure code given to them by the declarant, and the customs authorities are obliged, first, to assess whether the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information and whether the objectives of the inward processing regime have not been threatened, in particular in that the goods subject to that customs procedure have actually been re-exported, and, second, where appropriate, to take the measures necessary to regularise the situation, taking account of the new information available to them.*

(1) OJ C 327, 20.12.2008.

Judgment of the Court (Third Chamber) of 28 January 2010 — Commission of the European Communities v Ireland

(Case C-456/08) (1)

(Failure of a Member State to fulfil obligations — Directive 93/37/EEC — Public works contracts — Notification to candidates and tenderers of decisions awarding contracts — Directive 89/665/EEC — Procedures for review of the award of public contracts — Period within which actions for review must be brought — Date from which the period for bringing an action starts to run)

(2010/C 63/18)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos, M. Konstantinidis and E. White, agents)

Defendant: Ireland (represented by: D. O'Hagan, agent, A. Collins, SC)

Re:

Failure of Member State to fulfil obligations — Infringement of Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — Infringement of Article 8(2) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — Notification of the decision awarding the contract — Duty to state clearly the time-limit for bringing an action against a decision awarding a public contract

Operative part of the judgment

The Court:

1. *Declares that:*

— *by reason of the fact that the National Roads Authority did not inform the unsuccessful tenderer of its decision to award the contract for the design, construction, financing and operation of the Dundalk Western Bypass, and*

— *by maintaining in force Order 84A(4) of the Rules of the Superior Courts, in the version resulting from Statutory Instrument No 374 of 1998, in so far as it gives rise to uncertainty as to which decision must be challenged through legal proceedings and as to how periods for bringing an action are to be determined,*

Ireland has failed — as regards the first head of claim — to fulfil its obligations under Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, and Article 8(2) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997 and — as regards the second head of claim — to fulfil its obligations under Article 1(1) of Directive 89/665, as amended by Directive 92/50;

2. *Orders Ireland to pay the costs.*

([1]) OJ C 313, 6.12.2008.

Judgment of the Court (Second Chamber) of 21 January 2010 (reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg — Germany) — Ümit Bekleyen v Land Berlin

(Case C-462/08) ([1])

(EEC-Turkey Association Agreement — Second paragraph of Article 7 of Decision No 1/80 of the Association Council — Right of the child of a Turkish worker to respond to any offer of employment in the host Member State in which that child has completed a vocational training course — Start of the vocational training course after the parents have permanently left that Member State)

(2010/C 63/19)

Language of the case: German

Referring court

Oberverwaltungsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: Ümit Bekleyen

Defendant: Land Berlin

Re:

Reference for a preliminary ruling — Oberverwaltungsgericht Berlin-Brandenburg — Interpretation of the second paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council — Turkish national born in the host Member State who, having returned with her parents to her country of origin, returns on her own, more than ten years later, to the host Member State in which her parents used to be regularly employed for more than three years, in order to start a vocational training course — Right of access to the labour market and corresponding right of residence in the host Member State for that Turkish national following the completion of a vocational training course

Operative part of the judgment

The second paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the Development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that, in the case where a Turkish worker has previously been legally employed in the host Member State for more than three years, the child of such a worker may rely in that Member State, after completing her vocational training course there, on the right of access to the employment market and the corresponding right of residence, even though, after travelling back with her parents to their State of origin, she returned on her own to that Member State in order to start that training course there.

([1]) OJ C 19, 24.01.2009.

Judgment of the Court (Fifth Chamber) of 21 January 2010 (reference for a preliminary ruling from the Gerechtshof te Arnhem — Netherlands) — K. van Dijk v Gemeente Kampen

(Case C-470/08) ([1])

(Common agricultural policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Transfer of payment entitlements — Expiry of the lease — Obligations of the lessee and the lessor)

(2010/C 63/20)

Language of the case: Dutch

Referring court

Gerechtshof te Arnhem

Parties to the main proceedings

Applicant: K. van Dijk

Defendant: Gemeente Kampen

Re:

Reference for a preliminary ruling — Gerechtshof te Arnhem — Interpretation of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) and of Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 1) — Integrated system for the management and supervision of certain aid schemes — Single payment scheme — Transfer of payment entitlements — Obligations on the lessor and lessee.

Operative part of the judgment

Community law does not require a lessee, on the expiry of the lease, to deliver to the lessor the leased land, including the payment entitlements accumulated thereon or relating thereto, or to pay him compensation.

([1]) OJ C 6, 10.1.2009.

Judgment of the Court (First Chamber) of 21 January 2010 (reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia)) — Alstom Power Hydro v Valsts ieņēmumu dienests

(Case C-472/08) ([1])

(Reference for a preliminary ruling — Sixth VAT Directive — Article 18(4) — National legislation laying down a limitation period of three years for the refund of excess VAT)

(2010/C 63/21)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Alstom Power Hydro

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 18(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — National legislation providing for a period of three years for the introduction of applications for the refund of excess tax.

Operative part of the judgment

Article 18(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which lays down a limitation period of three years in which to make an application for the refund of excess value added tax collected by, though not due to, the tax authority.

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Third Chamber) of 28 January 2010 (reference for a preliminary ruling from the Sächsisches Finanzgericht — Germany) — Ingenieurbüro Eulitz GbR Thomas und Marion Eulitz v Finanzamt Dresden I

(Case C-473/08) ([1])

(Sixth VAT Directive — Article 13A(1)(j) — Exemption — Tuition given privately by teachers and covering school or university education — Services provided by an independent teacher in the context of continuing professional training courses organised by a separate entity)

(2010/C 63/22)

Language of the case: German

Referring court

Sächsisches Finanzgericht

Parties to the main proceedings

Applicants: Ingenieurbüro Eulitz GbR Thomas and Marion Eulitz

Defendant: Finanzamt Dresden I

Re:

Reference for a preliminary ruling — Sächsisches Finanzgericht — Interpretation of Article 13A(1)(j) of Directive 77/388/EEC: Sixth 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) — Exemption for 'tuition given privately by teachers and covering school or university education' — Teaching given by a graduate engineer on advanced training courses provided by a private school for the award of post-university specialist qualifications in preventive fire protection to engineers and architects — Supply of teaching services on a continuous basis and performance in parallel of management tasks on certain training courses — Receipt of fees even where courses cancelled in the absence of enrolled students

Operative part of the judgment

1. *Article 13A(1)(j) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that teaching work which a graduate engineer performs at an education institute established as a private-law association for participants in advanced training courses — culminating in an examination — who already have at least a university or higher technical college qualification as an architect or an engineer or who have an equivalent education can constitute 'tuition … covering school or university education' within the meaning of that provision. Activities other than teaching in the strict sense can also constitute such tuition, provided that they are carried out, essentially, in the context of the transfer of knowledge and skills between a teacher and pupils or students and cover school or university education. It is for the referring court, if need be, to ascertain whether all the activities at issue in the main proceedings are 'tuition' covering 'school or university education' within the meaning of that provision.*

2. *Article 13A(1)(j) of that directive must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person such as Mr Eulitz, a partner in the claimant in the main proceedings, who performs teaching work for training courses offered by another body, cannot be regarded as having given tuition 'privately' within the meaning of that provision.*

(1) OJ C 44, 21.02.2009.

Judgment of the Court (Eighth Chamber) of 29 October 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-22/09) (1)

(Failure of a Member State to fulfil obligations — Energy policy — Energy savings — Directive 2002/91/EC — Energy performance of buildings — Failure to transpose the directive within the prescribed time-limit)

(2010/C 63/23)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and L. de Schietere de Lophem, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (OJ 2003 L 1, p. 65), or failure to notify them to the Commission, within the prescribed time-limit

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 15(1) of that directive;*

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

(1) OJ C 82 of 4.04.2009.

Judgment of the Court (Third Chamber) of 23 December 2009 (reference for a preliminary ruling from the Višje sodišče v Mariboru — Republic of Slovenia) — Jasna Detiček v Maurizio Sgueglia

(Case C-403/09 PPU) [1]

(Judicial cooperation in civil matters — Matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Provisional measures concerning custody — Decision enforceable in a Member State — Wrongful removal of the child — Other Member State — Other court — Custody of the child granted to the other parent — Jurisdiction — Urgent preliminary ruling procedure)

(2010/C 63/24)

Language of the case: Slovene

Referring court

Višje sodišče v Mariboru

Parties to the main proceedings

Applicant: Jasna Detiček

Defendant: Maurizio Sgueglia

Re:

Reference for a preliminary ruling — Interpretation of Article 20 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Provisional and protective measures — Jurisdiction of a court in Member State A to rule provisionally on an application to have custody of the child restored, the court dealing with the substance (disposing of the divorce proceedings) being in Member State B

Operative part of the judgment

Article 20 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not allowing, in circumstances such as those of the main proceedings, a court of a Member State to take a provisional measure in matters of parental responsibility granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction under that regulation as to the substance of the dispute relating to custody of the child, has already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the territory of the former Member State.

[1] OJ C 312, 19.12.2009.

Order of the Court (Sixth Chamber) of 23 November 2009 (references for a preliminary ruling from the Monomeles Protodikio Rethimnis — Greece) — Georgios K. Lagoudakis v Kentro Aniktis Prostasias Ilikiomenon Dimou Rethimnis (C-162/08), Dimitros G. Ladakis, Andreas M. Birtas, Konstantinos G. Kiriakopoulos, Emmanouil V. Klamponis, Sofoklis E. Mastorakis v Dimos Geropotamou (C-163/08) and Mikhail Zakharioudakis v Dimos Lampis (C-164/08)

(Joined Cases C-162/08 to C-164/08) [1]

(First subparagraph of Article 104(3) of the Rules of Procedure — Social policy — Directive 1999/70/EC — Clauses 5 and 8 of the framework agreement on fixed-term work — Fixed-term employment contracts in the public sector — First or single use of a contract — Successive contracts — Equivalent legal measure — Reduction in the general level of protection afforded to workers — Measures intended to prevent abuse — Penalties — Absolute prohibition on conversion of fixed-term employment contracts into contracts of indefinite duration in the public sector — Consequences of the incorrect transposition of a directive — Interpretation in conformity with Community law)

(2010/C 63/25)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnis

Parties to the main proceedings

Applicants: Georgios K. Lagoudakis (C-162/08), Dimitros G. Ladakis, Andreas M. Birtas, Konstantinos G. Kiriakopoulos, Emmanouil V. Klamponis, Sofoklis E. Mastorakis (C-163/08), Mikhail Zakharioudakis (C-164/08)

Defendants: Kentro Aniktis Prostasias Ilikiomenon Dimou Rethimnis (C-162/08), Dimos Geropotamou (C-163/08), Dimos Lampis (C-164/08),

Re:

References for a preliminary ruling — Monomeles Protodikio Rethimnis — Interpretation of clauses 5 and 8(1) and (3) of the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Prohibition against adopting national measures in the guise of transposition where an equivalent national measure within the meaning of Article 5(1) of the Framework Agreement already exists and the new measures reduce the level of protection afforded to fixed-term workers

Operative part

1. *Clause 5(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding the adoption by a Member State of national legislation, such as Presidential Decree No 164/2004 laying down provisions concerning workers employed under fixed-term contracts in the public sector, which, for the purposes specifically of transposing Directive 1999/70 so as to implement the provisions of that directive in the public sector, provides for the implementation of the measures to prevent the misuse of successive fixed-term employment contracts or relationships which are listed in clause 5(1)(a) to (c) where — which it is for the national court to ascertain — an 'equivalent legal measure' within the meaning of that clause already exists under national law, such as Article 8(3) of Law No 2112/1920 on compulsory notice of termination of contracts of employment of employees in the private sector, provided, however, that that legislation (i) does not affect the effectiveness of the prevention of the misuse of fixed-term employment contracts or relationships resulting from that equivalent legal measure, and (ii) complies with Community law and, in particular, with clause 8(3) of the Framework Agreement.*

2. *Clause 5(1)(a) of the Framework Agreement on fixed-term work must be interpreted as precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term employment contracts in the public sector is deemed to be justified by 'objective reasons' within the meaning of that clause solely on the ground that those contracts are founded on legal provisions allowing them to be renewed in order to meet certain temporary needs when, in fact, those needs are fixed and permanent. By contrast, clause 5(1)(a) does not apply to the first or single use of a fixed-term employment contract or relationship.*

3. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as meaning that the 'reduction' with which that clause is concerned must be considered in relation to the general level of protection applicable in the Member State concerned both to workers who have entered into successive fixed-term employment contracts and to workers who have entered into a first or single fixed-term employment contract.*

4. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation, such as Presidential Decree No 164/2004, which, unlike an earlier rule of domestic law such as Article 8(3) of Law No 2112/1920, (i) no longer provides for fixed-term employment contracts to be recognised as contracts of indefinite duration where abuse arises from the use of such contracts in the public sector, or which makes such recognition subject to certain cumulative and restrictive conditions, and (ii) excludes from the benefit of the protection measures provided workers who have entered into a first or single fixed-term employment contract, where — which it is for the national court to ascertain — such amendments relate to a limited category of workers having entered into a fixed-term employment contract or are offset by the adoption of measures to prevent the misuse of fixed-term employment contracts within the meaning of clause 5(1) of the Framework Agreement.*

5. *However, the implementation of the Framework Agreement by national legislation such as Presidential Decree No 164/2004 cannot have the effect of reducing the protection previously applicable, under the domestic legal order, to fixed-term workers to a level below that set by the minimum protective provisions laid down by the Framework Agreement. In particular, compliance with clause 5(1) of the Framework Agreement requires that such legislation should provide, in respect of the misuse of successive fixed-term employment contracts, effective and binding measures to prevent such misuse and penalties which are sufficiently effective and a sufficient deterrent to ensure that those preventive measures are fully effective. It is therefore for the referring court to establish that those conditions are fulfilled.*

6. *In circumstances such as those of the cases in the main proceedings, the Framework Agreement on fixed-term work must be interpreted as meaning that, where the domestic law of the Member State concerned includes, in the sector under consideration, other effective measures to prevent and, where relevant, punish the abuse of successive fixed-term employment contracts within the meaning of clause 5(1) of that agreement, it does not preclude the application of a rule of national law which prohibits absolutely, in the public sector only, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts which, having been intended to cover fixed and permanent needs of the employer, must be regarded as constituting an abuse. It is none the less for the referring court to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law constitute a measure adequate for the prevention and, where relevant, the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships.*

7. *By contrast, since clause 5(1) of the Framework Agreement is not applicable to workers who have entered into a first or single fixed-term employment contract, that provision does not require the Member States to adopt penalties where such a contract does in fact cover fixed and permanent needs of the employer.*

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

(1) OJ C 171, 5.7.2008.

Order of the Court of 26 November 2009 — Região autónoma dos Açores v Council of the European Union, Commission of the European Communities, Kingdom of Spain, Seas at Risk VZW, formerly Stichting Seas at Risk Federation, WWF — World Wide Fund for Nature, Stichting Greenpeace Council

(Case C-444/08 P) (1)

(Appeal — Article 119 of the Rules of Procedure — Regulation (EC) No 1954/2003 — Action for annulment — Inadmissibility — Regional or local body — Measures of direct and individual concern to that entity — Appeal in part clearly inadmissible and clearly unfounded)

(2010/C 63/26)

Language of the case: English.

Parties

Appellant: Região autónoma dos Açores (represented by: M. Renouf and C. Bryant, Solicitors)

Other parties to the proceedings: Council of the European Union (represented by: J. Monteiro and F. Florindo Gijón, Agents), Commission of the European Communities (represented by K. Banks, Agent), Kingdom of Spain (represented by N. Díaz Abad, Agent), Seas at Risk VZW, formerly Stichting Seas at Risk Federation, WWF — World Wide Fund for Nature, Stichting Greenpeace Council

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 1 July 2008 in Case T-37/04 *Região autónoma dos Açores* v *Council* in which the Court of First Instance declared inadmissible an action for the partial annulment of Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources, modifying Regulation (EEC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ 2003 L 289, p. 1) — Requirement that the contested measure must be of individual concern

Operative part of the order

1. *The appeal is dismissed*

2. *The Região autónoma dos Açores shall pay the costs.*

3. *The Kingdom of Spain and the Commission of the European Communities shall bear their own costs.*

(1) OJ C 327, of 20.12.2008.

Order of the Court (Sixth Chamber) of 4 December 2009 — Matthias Rath v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Dr. Grandel GmbH

(Joined Cases C-488/08 P and C-489/08 P) (1)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Word marks Epican and Epican Forte — Opposition by the proprietor of the Community word mark EPIGRAN — Likelihood of confusion — Partial rejection of the application for registration — Appeals manifestly inadmissible)

(2010/C 63/27)

Language of the case: German

Parties

Applicant: Matthias Rath (represented by: S. Ziegler, C. Kleiner and F. Dehn, Rechtsanwälte)

Defendants: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), Dr. Grandel GmbH

Re:

Appeal brought against the order of the Court of First Instance (Seventh Chamber) of 8 September 2008, *Rath* v *OHIM and Grandel* (Case T-373/06) in which the Court of First Instance dismissed as manifestly lacking any foundation in law the action for annulment of the decision of the First Board of Appeal of OHIM of 5 October 2006 dismissing in part the action brought against the decision of the Opposition Division which, by upholding the opposition by the proprietor of the earlier Community word mark 'EPIGRAN', refused to register the word mark 'EPICAN FORTE' for goods and services in class 5 — Likelihood of confusion between the two marks

Operative part of the order

1. *The appeals are dismissed.*

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

([1]) OJ C 82 of 4.04.2009.

Order of the Court (Fifth Chamber) of 9 December 2009 — Prana Haus GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-494/08 P) ([1])

(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Word mark PRANAHAUS — Regulation (EC) No 40/94 — Absolute ground for refusal — Descriptive character — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2010/C 63/28)

Language of the case: German

Parties

Applicant: Prana Haus GmbH (represented by: N. Hebeis, Rechtsanwalt)

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

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) delivered on 17 September 2008 in Case T-226/07 *Prana Haus GmbH* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* by which the Court of First Instance dismissed the action for annulment of the decision of the First Board of Appeal of OHIM of 18 April 2007 dismissing the appeal against the Examiner's decision to refuse registration of the word mark PRANAHAUS for goods and services in classes 9, 16 and 35 — Descriptive character of the mark

Operative part of the order

1. *The appeal is dismissed.*

2. *Prana Haus GmbH is ordered to pay the costs.*

([1]) OJ C 32, 7.2.2009.

Order of the Court (Third Chamber) of 12 January 2010 (Reference for a preliminary ruling from the Amtsgericht Charlottenburg — Germany) — Amiraike Berlin GmbH

(Case C-497/08) ([1])

(Non-contentious proceedings — Appointment of the liquidator of a company — Lack of jurisdiction of the Court)

(2010/C 63/29)

Language of the case: German

Referring court

Amtsgericht Charlottenburg

Parties to the main proceedings

Applicant: Amiraike Berlin GmbH

Re:

Reference for a preliminary ruling — Amtsgericht Charlottenburg — Interpretation of Arts 10, 43 and 48 of the EC Treaty — Recognition by a Member State of an expropriatory measure concerning assets situated in its territory, ordered by the legal system of another Member State — Removal of a limited liability company under United Kingdom law from the register at Companies House for failure to fulfil publicity obligations, resulting in the forfeiture of its assets, including real estate situated in Germany, to the United Kingdom crown.

Operative part

The Court of Justice of the European Union clearly has no jurisdiction to rule on the question referred by the Amtsgericht Charlottenburg in its decision of 7 November 2008.

([1]) OJ C 113, 16.5.2009.

Appeal brought on 24 March 2009 by Sociedad General de Autores y Editores (SGAE) against the judgment delivered on 13 January 2009 by the Court of First Instance (Seventh Chamber) in Case T-456/08 Sociedad General de Autores y Editores (SGAE) v Commission of the European Communities

(Case C-112/09 P)

(2010/C 63/30)

Language of the case: Spanish

Parties

Appellant: Sociedad General de Autores y Editores (SGAE) (represented by: R. Allendesalazar Corcho and R. Vallina Hoset, abogados)

Other party to the proceedings: European Commission

By order of 14 January 2010 the Court of Justice (Eighth Chamber) dismissed the appeal.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Castilla La Mancha (Spain) lodged on 25 November 2009 — CLECE, S.A. v María Socorro Martín Valor and Ayuntamiento de Cobisa

(Case C-463/09)

(2010/C 63/31)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla La Mancha

Parties to the main proceedings

Applicant: CLECE, S.A.

Defendant: María Socorro Martín Valor and Ayuntamiento de Cobisa

Question referred

Does a situation in which a Town Hall resumes or takes over the activity of cleaning its premises, which was previously carried out by a contractor, and for which new staff are hired, fall within the scope of [Council Directive 2001/23/EC] [1], as defined in Article 1(1)(a) and (b) thereof?

[1] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 30 November 2009 — INMOGOLF SA v Administración General del Estado

(Case C-487/09)

(2010/C 63/32)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: INMOGOLF SA

Defendant: Administración General del Estado

Questions referred

Having regard to the fact that Article 11(a) of Council Directive 69/335/EEC [1] of 17 July 1969 concerning indirect taxes on the raising of capital (now Directive 2008/71/EC …) [2] prohibited the taxation of making available on the market or dealing in stocks, shares or other securities of the same type, and Article 12(1)(a) thereof only authorised Member States to charge duties on the transfer of securities, whether charged at a flat rate or not, and in the light of the fact that Article 108 of Law 24/1988 … on stock markets (in the wording of the 12th additional provision of Law 18/1991 …) nevertheless establishes a general exemption, from value added tax and from tax on capital transfers, for the transfer of securities, but subjects these transactions to tax on capital transfers, as transfers of assets for consideration, provided that they represent part of the capital of companies in which at least 50 % of the assets comprise immovable property and where the purchaser, as a result of that transfer, obtains a position which enables him to exercise control over the entity, without distinguishing between holding companies and companies which carry on an economic activity:

1. Does Council Directive 69/335/EEC of 17 July 1969 preclude the automatic application of legislation of Member States, such as Article 108(2) of Law 24/1988 on stock markets, which taxes certain transfers of securities which conceal transfers of immovable assets, even if there has been no intention to avoid taxation?

   If it is not necessary for there to be an intention to avoid taxation,

2. Does Council Directive 69/335/EEC of 17 July 1969 preclude legislation such as … Law 24/1988, which establishes a charge on the acquisition of major shareholdings in companies whose assets comprise mainly immovable property, even though those companies are fully operative and the immovable assets cannot be disassociated from their economic activities?

[1] OJ English Special Edition 1969 (II), p. 412.
[2] OJ 2008 L 46, p. 11.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 30 November 2009 — Asociación de Transporte Internacional por Carretera v Administración General del Estado

(Case C-488/09)

(2010/C 63/33)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación de Transporte Internacional por Carretera

Defendant: Administración General del Estado

Questions referred

1. If, after a Member State has detected an irregularity in the customs treatment of a TIR transport operation and has made a claim for payment of the amount corresponding to the assessment issued to the local guaranteeing association, the place where the infringement was actually committed is determined, is it compatible with Article 454(3) and Article 455 of Commission Regulation (EEC) No 2454/93 [1] of 2 July 1993 for the Member State where the infringement was committed to initiate new proceedings to recover the duties owed by the persons principally liable and by the guaranteeing association of the place where the infringement was actually committed, up to the limit of its liability, where the place where the infringement was committed is determined after the expiry of the time-limit laid down in the Community legislation?

If the answer is in the affirmative:

2. May the guaranteeing association of the Member State in which the irregularity was actually committed claim, under Articles 454(3) and 455 of Regulation (EEC) No 2454/93 or Article 221(3) of the Community Customs Code, that the right to recover the amount of the guaranteed liability is time-barred because the prescribed time-limit has expired and it had no knowledge of the facts before the expiry of that time-limit?

3. Does the claim for payment made against the guaranteeing association of the State which detected the irregularity by the customs authorities of that State under Article 11(2) of the TIR Convention have suspensory effect with respect to the proceedings initiated against the guaranteeing association of the place where the infringement was committed?

4. Can the last sentence of Article 11(2) of the TIR Convention be interpreted as meaning that the time-limit which it establishes is applicable to the State of the place of infringement even where the State which detected the irregularity did not suspend the demand for payment against the guaranteeing association, despite the existence of criminal proceedings relating to the same acts found to have been committed?

[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Finanzamt Burgdorf v Manfred Bog

(Case C-497/09)

(2010/C 63/34)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Burgdorf

Defendant: Manfred Bog

Questions referred

1. Does the sale of dishes or meals prepared for immediate consumption constitute a supply of goods within the meaning of Article 5 of Sixth Council Directive 77/388/EEC [1] of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?

2. Does the answer to Question 1 depend on whether additional service elements are supplied (the provision of facilities for consumption)?

3. In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(1) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Hans-Joachim Flebbe Filmtheater GmbH & Co. KG v Finanzamt Hamburg-Barmbek-Uhlenhorst

(Case C-499/09)

(2010/C 63/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hans-Joachim Flebbe Filmtheater GmbH & Co. KG

Defendant: Finanzamt Hamburg-Barmbek-Uhlenhorst

Questions referred

1. Does the sale of dishes or meals prepared for immediate consumption constitute a supply of goods within the meaning of Article 5 of Sixth Council Directive 77/388/EEC (1) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?

2. Does the answer to Question 1 depend on whether additional service elements are supplied (the provision, for use, of tables, chairs and other facilities for consumption, the experience of a visit to the cinema)?

3. In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(1) OJ 1977 L 145, p. 1

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Lothar Lohmeyer v Finanzamt Minden

(Case C-501/09)

(2010/C 63/36)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Lothar Lohmeyer

Defendant: Finanzamt Minden

Questions referred

1. Is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (1) to be interpreted as covering only 'take-away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

2. In the event that 'foodstuffs for human consumption' within the meaning of Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes also covers dishes or meals for immediate consumption:

Is the first subparagraph of Article 6(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering the sale of freshly prepared dishes or meals which the customer does not take away, but consumes on the spot making use of facilities for consumption such as counters, tables for standing at or the like?

(1) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Fleischerei Nier GmbH & Co. KG v Finanzamt Detmold

(Case C-502/09)

(2010/C 63/37)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Fleischerei Nier GmbH & Co. KG

Defendant: Finanzamt Detmold

Questions referred

1. Is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (1) to be interpreted as covering only 'take-away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

2. In the event that 'foodstuffs for human consumption' within the meaning of Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes also covers dishes or meals for immediate consumption:

   Is the process of the preparation of the dishes or meals to be taken into account as a service element if it has to be decided whether the single supply of a party-service business (provision of dishes or meals ready for consumption together with the transport thereof and, perhaps, the provision of cutlery and crockery and/or tables for standing at as well as the collection of the objects provided for use) is to be classified as a supply of foodstuffs that is subject to a reduced rate of taxation (Category 1 of Annex H to that directive) or as a supply of services not subject to a reduced rate of taxation (Article 6(1) of that directive)?

3. In the event that Question 2 is answered in the negative:

   Is it consistent with Article 2(1), in conjunction with Articles 5(1) and 6(1), of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes for the classification of the single supply of a party-service business as either a supply of goods or a *sui generis* supply of services to be based purely on the number of the elements in the nature of supplies of services (two or more) compared with the proportion constituted by the supply of goods, or must the elements in the nature of a supply of services necessarily be assessed independently of their number, and, if so, according to what criteria?

(1) OJ 1977 L 145, p. 1.

Appeal brought on 4 December 2009 by the European Commission against the judgment delivered on 23 September 2009 in Case T-263/07 European Commission v Republic of Estonia

(Case C-505/09 P)

(2010/C 63/38)

Language of the case: Estonian

Parties

Appellant: European Commission (represented by E. Kružíková, E. White and E. Randvere, acting as Agents)

Other parties to the proceedings: Republic of Estonia, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

Form of order sought

— set aside the contested judgment;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The Commission considers that the judgment of the Court of First Instance of the European Communities ('the Court') should be set aside on the following grounds:

1. The Court, by regarding the application as admissible in relation to Articles 1(3) and (4), 2(3) and (4), and 3(2) and (3) of the Commission's decision of 4 May 2007 concerning the national greenhouse gas allocation plan submitted by Estonia in accordance with Directive 2003/87/EC, ([1]) infringed Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. The Court wrongly found the application admissible in relation to the decision as a whole, even though the applicant adduced grounds for annulment only in relation to Articles 1(1) and (2), 2(1) and (2), and 3(1).

2. The Court erred in respect of Article 9(1) and (3) of the directive by misinterpreting the principle of equal treatment and also the objective of the directive, when defining the extent of the Commission's power of review and its competence when applying Article 9(3) of the directive. The allocation plans are not classic measures for transposing a directive, which are assessed *a posteriori*. To accept that each Member State makes use of its own data, which is not reviewed, gives rise to a risk of unequal treatment of Member States. The objectives of the directive can be achieved only if the demand for quotas exceeds the supply. The upper limit of the total amount of quotas to be issued must be distinguished from the total amount of quotas to be issued.

3. The Court misinterpreted the extent of the principle of sound administration. The drawing up of an allocation plan was the task of the Member State, and the Commission did not have competence to fill in lacunae, but only to assess the compatibility of the allocation plan with the directive.

4. The Court erred in the legal classification of the provisions of the Commission's decision, in finding that Articles 1(1) and (2), 2(1) and (2), and 3(1) were not separable from the other provisions of the decision and annulling the decision as a whole. There is in fact no such inseparability, and it follows clearly from the structure and grounds of the Commission's decision that each paragraph of Article 2 has an inseparable link with the corresponding paragraph of Article 1, but there is no inseparable link with the other paragraphs of Article 2. The same applies as regards the paragraphs of Article 1.

([1]) 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).

Appeal brought on 7 December 2009 by the Portuguese Republic against the judgment of the Court of First Instance of the European Communities (Seventh Chamber) delivered on 23 September 2009 in Case T-385/05: Transnáutica — Transportes e Navegação SA v Commission

(Case C-506/09 P)

(2010/C 63/39)

Language of the case: English

Parties

Appellant: Portuguese Republic (represented by: L. Fernandes, C. Guerra Santos, J. Gomes, P. Rocha, Agents)

Other parties to the proceedings: Transnáutica — Transportes e Navegação, SA, European Commission

Form of order sought

The appellant claims that the Court should:

— grant the appeal brought by the Portuguese authorities by staying the determination of this case pending delivery of judgment by the General Court, inasmuch as in the third-party proceedings it is necessary to argue not only the law but also the facts of the case;

— set aside the judgment given on 23 September in Case T-385/05 Transnáutica — Transportes e Navegação SA v Commission by the Court of First Instance of the European Communities by which that court annulled Commission Decision REM 05/2004 of 6 July 2005 refusing Transnáutica's application for repayment and remission of customs debts;

— order Transnáutica — Transportes e Navegação SA to pay the costs.

Pleas in law and main arguments

The appellant submits that the Court of First Instance erred when it concluded that the Portuguese customs authorities were at fault in the setting and monitoring of the comprehensive guarantee used in the transit operations at issue.

The appellant also submits that it is impossible to establish any causal link between the errors allegedly committed by the Portuguese authorities and the later removal of the goods from customs supervision and maintains that, by concluding otherwise, the Court of First Instance has contravened European Union law.

Action brought on 11 December 2009 — European Commission v Republic of Estonia

(Case C-515/09)

(2010/C 63/40)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by A. Marghelis and K. Saaremäel-Stoilov, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, ([1]) or in any event by failing to inform the Commission thereof, the Republic of Estonia has failed to fulfil its obligations under the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the directive into national law expired on 1 May 2008.

([1]) OJ 2006 L 102, p. 15.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 11 December 2009 — Tanja Borger v Tiroler Gebietskrankenkasse

(Case C-516/09)

(2010/C 63/41)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Claimant: Tanja Borger

Defendant: Tiroler Gebietskrankenkasse

Questions referred

1. Is Article 1(a) of 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 ([1]) to be interpreted as meaning that it also covers — for a period of six months — a person who, following the end of the two-year statutory suspension of her employment relationship following the birth of a child, agrees a further six-month period of unpaid leave with her employer in order to draw childcare allowance or a corresponding compensatory benefit for the maximum statutory period, and then terminates the employment relationship?

2. If Question 1 is answered in the negative:

   Is Article 1(a) of Regulation (EEC) No 1408/71 to be interpreted as meaning that it also covers — for a period of six months — a person who, following the end of the two-year statutory suspension of her employment relationship, agrees a further six-month period of unpaid leave with her employer, if she draws childcare allowance or a corresponding compensatory benefit during that period?

([1]) OJ, English Special Edition 1971 (II), p. 416.

Reference for a preliminary ruling from the Tartu Ringkonnakohus (Estonia) lodged on 15 December 2009 — AS Rakvere Piim, AS Maag Piimatööstus v Veterinaar- ja Toiduamet

(Case C-523/09)

(2010/C 63/42)

Language of the case: Estonian

Referring court

Tartu Ringkonnakohus

Parties to the main proceedings

Applicants: AS Rakvere Piim and AS Maag Piimatööstus

Defendant: Veterinaar- ja Toiduamet

Questions referred

1. Must Article 27(4)(a) of Regulation (EC) No 882/2004 [1] of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules be interpreted as not prohibiting the demanding of a fee from an operator at the minimum rate laid down in Part B of Annex IV to that regulation for the activities listed in Part A of Annex IV to the regulation, even if the costs borne by the responsible competent authorities in connection with the items listed in Annex VI to that regulation are lower than the above-mentioned minimum rates?

2. Is a Member State entitled, on the conditions mentioned in the previous question, to establish fees for the activities listed in Part A of Annex IV to that regulation that are lower than the minimum amounts laid down in Part B of Annex IV to that regulation, if the costs borne by the responsible competent authorities in connection with the items listed in Annex VI to that regulation are lower than the above-mentioned minimum rates, without the conditions laid down in Article 27(6) of that regulation being satisfied?

[1] OJ 2004 L 165, p. 1.

Action brought on 17 December 2009 — European Commission v Republic of Estonia

(Case C-527/09)

(2010/C 63/43)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by G. Braun and E. Randvere, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt the provisions necessary to transpose Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, [1] and by failing to inform the Commission thereof, the Republic of Estonia has failed to fulfil its obligations under the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into national law expired on 29 June 2008.

[1] OJ 2006 L 157, p. 87.

Action brought on 17 December 2009 — European Commission v Republic of Estonia

(Case C-528/09)

(2010/C 63/44)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by A. Marghelis and K. Saaremäel-Stoilov, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to transpose into national law as required Article 3(i)(iii), the third subparagraph of Article 8(2) and the second subparagraph of Article 8(3) of Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment, the Republic of Estonia has failed to fulfil its obligations under the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 concerns the treatment of waste electrical and electronic equipment. Having analysed the measures by which that directive is transposed into Estonian law, the Commission considers that the Republic of Estonia has not transposed as required Article 3(i)(iii), the third subparagraph of Article 8(2) and the second subparagraph of Article 8(3) of the directive.

Article 3(i)(iii) of the directive defines producers of electrical and electronic equipment. The Estonian legal provisions concerning waste electrical and electronic equipment contain two different definitions of producers, thereby making more difficult the comprehension and application of the rules on the treatment of waste.

The third subparagraph of Article 8(2) of the directive lays down that the costs of collection, treatment and environmentally sound disposal are not to be shown separately to purchasers at the time of sale of new products. The Commission considers that the Republic of Estonia has not transposed that requirement into its national law.

The second subparagraph of Article 8(3) of the directive lays down the obligation of the Member States to ensure that, for a transitional period of eight years after the entry into force of the directive, producers are allowed to show purchasers, at the time of sale of new products, the costs of collection, treatment and disposal in an environmentally sound way of waste, in which case the costs mentioned must not exceed the actual costs. The Commission takes the view that Estonia has not transposed that obligation into its national law.

The Republic of Estonia agreed with those complaints and promised in its reply to the Commission's reasoned opinion to eliminate the infringement of Article 3(i)(iii), the third subparagraph of Article 8(2) and the second subparagraph of Article 8(3) of the directive by a law amending the law on waste. Since the Republic of Estonia has not as yet, to the Commission's knowledge, enacted the promised law amending the law on waste, or at least has not notified it to the Commission, the Commission considers that the Republic of Estonia has not yet transposed into its national law as required Article 3(i)(iii), the third subparagraph of Article 8(2) and the second subparagraph of Article 8(3) of the directive, thereby failing to fulfil its obligations under the directive.

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Poznaniu (Republic of Poland) lodged on 18 December 2009 — Inter-Mark Group Sp. z o.o., Sp. komandytowa v Minister Finansów

(Case C-530/09)

(2010/C 63/45)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Poznaniu

Parties to the main proceedings

Applicant: Inter-Mark Group Sp. z o.o., Sp. komandytowa

Defendant: Minister Finansów

Questions referred

(a) Are the provisions of Article 52(a) of Council Directive 2006/112/EC [1] to be interpreted as meaning that services consisting in the temporary provision of exhibition and fair stands to clients presenting their goods and services at fairs and exhibitions must be classified as services ancillary to fair and exhibition services referred to in those provisions, that is to say services similar to cultural, artistic, sporting, scientific, educational and entertainment activities, which are taxed at the place where they are physically carried out,

(b) or should it be accepted that they are advertising services taxed at the place where the customer has established his business on a permanent basis or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides, in accordance with Article 56(1)(b) of Directive 2006/112,

— on the basis that those services concern the temporary provision of stands to clients presenting their goods and services at fairs and exhibitions which is normally preceded by the drawing up of a design and visualisation of the stand and, possibly, transportation of parts of the stand and its assembly at the place where the fair or exhibition is organised, and the service supplier's clients exhibiting their goods or services pay separately to the organiser of the relevant event fees for the very possibility of participating in the fair or exhibition which cover utility, fair infrastructure and media service costs and so forth,

each exhibitor is separately responsible for fitting out and constructing his own stand and in that respect uses the services at issue which require interpretation,

organisers charge visitors individually fees for entrance to their fair or exhibition which accrue to the organiser of the event and not to the supplier of the service?

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Appeal brought on 18 December 2009 by the Republic of Estonia against the judgment delivered on 2 October 2009 in Case T-324/05 Republic of Estonia v European Commission

(Case C-535/09 P)

(2010/C 63/46)

Language of the case: Estonian

Parties

Appellant: Republic of Estonia (represented by: L. Uibo, acting as Agent)

Other parties to the proceedings: European Commission, Republic of Latvia

Form of order sought

— set the contested judgment aside in its entirety;

— uphold the claims put forward at first instance.

Pleas in law and main arguments

The Republic of Estonia considers that the judgment of the Court of First Instance of the European Communities ('the Court') should be set aside on the following grounds:

1. The Court distorted the evidence and misapplied the principle of collegiality laid down in Article 219 of the Treaty.

2. The Court misinterpreted the Act of Accession and Regulation No 60/2004. ([1])

   (a) The Court misinterpreted Article 6 of Regulation No 60/2004 by finding that the concept of 'stocks' in that provision extends also to household reserves.

   — The Court determined the objective of Regulation No 60/2004 and point 2 of part 4 of Annex IV to the Act of Accession too strictly by defining it as preventing 'any' disturbance.

   — The Court misinterpreted Article 7(1) and Article 6 of Regulation No 60/2004 by imposing an obligation on the Member States to eliminate excess stocks of sugar, for which there is no legal basis.

   (b) The Court misinterpreted Article 6(1)(c) of Regulation No 60/2004 by impermissibly narrowing its scope and excluding from it the circumstances in which sugar stocks were built up in Estonia.

   — The Court erred in assessing the evidence and distorted the evidence when analysing Estonia's submission that the creation of household reserves played an essential part in the consumption and culture of Estonians.

   — The Court did not assess correctly the legitimate expectations of Estonia which had arisen in connection with the assurances given by the Commission during the accession negotiations.

   — The Court did not assess correctly the contribution of the EU to the building up of stocks.

3. The Court wrongly took the view that the Commission did not infringe the obligation to state reasons.

4. The Court wrongly took the view that the Commission did not infringe the principle of good faith.

([1]) Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8).

Reference for a preliminary ruling from the Upravno sodišče Republike Slovenije (Republic of Slovenia) lodged on 21 December 2009 — Marija Omejc v Republika Slovenije

(Case C-536/09)

(2010/C 63/47)

Language of the case: Slovene

Referring court

Upravno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Marija Omejc

Defendant: Republika Slovenije

Questions referred

1. Must the expression 'prevents an on-the-spot check [from being carried out]' be interpreted in accordance with national law, which links the concept of prevention to deliberate conduct or negligence on the part of a particular person?

2. If the first question is answered in the negative: must the expression 'prevents an on-the-spot check [from being carried out]' be interpreted as including, as well as deliberate acts or situations deliberately brought about that make it impossible to carry out that check, any act or omission that can be ascribed to the negligence of the farmer or of his representative if, as a result, it was not possible to carry out the check in its entirety?

3. If Question 2 is answered in the affirmative: is the imposition of the sanction under Article 23(2) of Regulation No 796/2004/EC [1] conditional upon the farmer's having been adequately informed of that part of the check which requires his cooperation?

4. When the holder does not live on the agricultural holding, must the issue of the definition of 'representative' for the purpose of Article 23(2) of Regulation No 796/2004/EC be considered in the light of national law or of Community/Union law?

5. If the issue in Question 4 has to be considered in the light of Community/Union law: must Article 23(2) of Regulation No 796/2004/EC be interpreted as meaning that any adult, having proper capacity, who lives on the holding and to whom the farmer entrusts at least part of the management of that agricultural holding must be considered to be the farmer's representative when an on-the-spot check is carried out?

6. If question 4 must be considered in the light of Community law and if the answer to question 5 is negative: is a person who runs an agricultural holding (the farmer for the purpose of Article 23(2) of Regulation No 796/2004/EC) but who does not live there required to appoint a representative who may, as a rule, be found on the agricultural holding at any time?

[1] Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 141, 30.4.2004, p. 18).

Reference for a preliminary ruling from Upper Tribunal (United Kingdom) made on 21 December 2009 — Ralph James Bartlett, Natalio Gonzalez Ramos, Jason Michael Taylor v Secretary of State for Work and Pensions

(Case C-537/09)

(2010/C 63/48)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Applicants: Ralph James Bartlett, Natalio Gonzalez Ramos, Jason Michael Taylor

Defendant: Secretary of State for Work and Pensions

Questions referred

1. (a) In relation to periods to which the form of Council Regulation (EEC) No 1408/71 [1] of 14 June 1971 in force immediately before 5 May 2005 applies, is the mobility component of disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 capable of being categorised separately from disability living allowance as a whole as either a social security benefit within Article 4(1) of the Regulation or a special non-contributory benefit within Article 4(2a) or otherwise?

   (b) If the answer to (a) is yes, what is the proper category?

   (c) If the answer to (a) is no, what is the proper category for disability living allowance?

   (d) If the answer to (b) or (c) is categorisation as a social security benefit, is the benefit in question an sickness benefit within Article 4(l)(a) or an invalidity benefit within Article 4(l)(b)?

(e) Are the answers to any of the above questions affected by the temporal limitation in point 2 of the Court's ruling in Commission of the European Communities v European Parliament and Council of the European Union, Case C-299/05, [2007] ECR I-8695?

2. (a) In relation to periods to which the form of Council Regulation (EEC) No 1408/71 of 14 June 1971 in force from 5 May 2005 by virtue of Council Regulation (EC) No 647/2005 ([2]) of 13 April 2005 applies, is the mobility component of disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 capable of being categorised separately from disability living allowance as a whole as either a social security benefit within Article 4(1) of the Regulation or a special non-contributory benefit within Article 4(2a) or otherwise?

(b) If the answer to (a) is yes, what is the proper category?

(c) If the answer to (a) is no, what is the proper category for disability living allowance?

(d) If the answer to (b) or (c) is categorisation as a social security benefit, is the benefit in question an sickness benefit within Article 4(l)(a) or an invalidity benefit within Article 4(l)(b)?

3. If the answers to the previous questions produce the outcome that mobility component is properly to be categorised as a special non-contributory benefit, is any other rule or principle of EC law relevant to the question of whether the United Kingdom is entitled to rely on any of the residence and presence conditions in regulation 2(l)(a) of the Social Security (Disability Living Allowance) Regulations 1991 in circumstances like those of the present cases?

([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

([2]) Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71
OJ L 117, p. 1

Reference for a preliminary ruling from the Giudice di Pace di Varese (Italy) lodged on 17 December 2009 — Mohammed Mohiuddin Siddiquee v Azienda Sanitaria Locale Provincia di Varese

(Case C-541/09)

(2010/C 63/49)

Language of the case: Italian

Referring court

Giudice di Pace di Varese

Parties to the main proceedings

Applicant: Mohammed Mohiuddin Siddiquee

Defendant: Azienda Sanitaria Locale Provincia di Varese

Questions referred

1. Does Article 4 of Community Regulation No 882/2004, ([1]) in conjunction with Article 6 thereof, establish an individual right for citizens to be subject to controls on foodstuffs and beverages only by staff who fulfil the requirements laid down in that regulation, and may such a right be relied on in legal proceedings and used as a defence to enforcement action by the Member States?

2. If not, is Directive 2000/13/EC, ([2]) in the context of the Community rules governing the labelling of foodstuffs and beverages, based on considerations of health?

3. Is it contrary to Directive 76/768/EEC ([3]) as subsequently amended, or to other relevant Community rules for a Member State to differentiate between the liability of the various operators in the industry, excluding the trader from liability by the very nature of his activity as a trader?

4. If not, must Article 6 of Directive 76/768/EEC as amended be interpreted as giving rise to the joint and several liability of the cosmetics manufacturer and the mere trader who takes no part in the manufacture, packaging or labelling of the cosmetic?

(1) OJ 2004 L 165, p. 1.
(2) OJ 2000 L 109, p. 29.
(3) OJ 1976 L 262, p. 169.

Action brought on 18 December 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-542/09)

(2010/C 63/50)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and M. van Beek, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by requiring that migrant workers and family members for whom they still provide must fulfil a residence requirement (the '3 out of 6 rule') in order to be eligible under the WSF (1) for the funding of educational studies abroad, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 45 TFEU and Article 7(2) of Regulation (EEC) No 1612/68; (2)

— order Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

As the Netherlands has still not adopted all the measures necessary to put an end to the residence requirement (the '3 out of 6 rule'), which migrant workers and family members for whom they still provide must fulfil in order to be eligible under the WSF for the funding of educational studies abroad, the Commission draws the conclusion that the Netherlands has failed to fulfil its obligations under Article 45 TFEU and Regulation No 1612/68.

(1) Wet Studiefinanciering 2000 (Law on funding for studies).
(2) Council Regulation of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, p. 2).

Action brought on 22 December 2009 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-545/09)

(2010/C 63/51)

Language of the case: English

Parties

Applicant: European Commission (represented by: J. Currall, B. Eggers, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that Article 12(4)(a) of the Convention defining the Statute of the European Schools (1) is to be interpreted and applied so as to ensure that teachers seconded by a Member State have access during their secondment to the same progression in status and pay as those enjoyed by teachers employed in that Member State, and that the exclusion of certain teachers seconded by the United Kingdom, during their secondment, from access to improved pay scales (variously known as 'threshold pay', 'excellent teacher system', 'advanced skills teachers') and from other additional payments (such as 'teaching and learning responsibility payments') as well as the progression on existing pay-scales available to teachers employed in maintained schools in England and Wales is incompatible with Articles 12(4)(a) and 25(1) of the Convention;

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

This is a request under Article 26 of the Convention defining the Statute of the European Schools ('the Convention') for a ruling regarding the interpretation and application of Articles 12(4)(a) and 25(1) of the Convention.

According to the convention, the teachers at the European Schools are seconded by their Member State of origin. Article 12(4)(a) of the Convention provides that seconded teachers 'retain promotion and retirement rights guaranteed by their national rules'. That notwithstanding, the salaries of teachers seconded by the United Kingdom are 'frozen' during the period of secondment. Thus, teachers seconded to the European Schools are denied access to improved pay scales (variously known as 'threshold pay', 'excellent teacher system', 'advanced skills teachers') and from other additional payments (such as 'teaching and learning responsibility payments') as well as the progression on existing pay-scales available to teachers employed in maintained schools in England and Wales.

This policy is contrary to the letter and purpose of Article 12(4)(a) of the Convention. It reduces the pension rights of the teachers concerned and their career prospects when returning to the United Kingdom. Moreover, it adversely affects the Union budget which bears the difference between a lower national pay and the Community top-up for seconded teachers.

Article 12(4)(a) of the Convention and by consequence Article 25(1) of the Convention should therefore be interpreted and applied so as to guarantee to seconded teachers full access to improved pay scales, progression on current pay scales and other allowances.

([1]) OJ L 212, 17.8.1994, p. 3

Action brought on 23 December 2009 — European Commission v Republic of Austria

(Case C-551/09)

(2010/C 63/52)

Language of the case: German

Parties

Applicant: European Commission (represented by: K. Gross and M. Adam, Agents)

Defendant: Republic of Austria

Form of order sought

1. declare that, by failing to take all necessary measures to recover the aid in issue in Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland, the Republic of Austria has failed to fulfil its obligations under Article 288 TFEU and under Articles 1 to 3 of that Commission Decision;

2. declare that, by failing to provide the Commission in good time with the information necessary for calculating the amount of the aid, the Republic of Austria has failed to fulfil its obligations under Article 288 TFEU and under Article 4 of Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland;

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

Pleas in law and main arguments

The Commission takes the view that the period given to the Republic of Austria in Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/2006) implemented by Austria for the privatisation of Bank Burgenland to provide the information required for the purpose of calculating the amount of the aid has expired.

An agreement reached by the Commission and the Republic of Austria after the expiry of the abovementioned period concerning the level of the amount to be recovered was, according to the Commission, revoked by the Republic of Austria on the ground that the company affected by the recovery claim intended, in the event of being obliged to pay, to cancel the purchase of Bank Burgenland. This, according to the Republic of Austria, would have had serious consequences for the economy of the *Land* of Burgenland. In the view of the Commission, however, this does not provide justification for waiving the demand for repayment.

The judicial challenge to the abovementioned decision likewise does not affect the obligation to give effect to it.

Reference for a preliminary ruling from the Audiencia Provincial de Tarragona (Spain) lodged on 4 January 2010 — Criminal proceedings against Valentín Salmerón Sánchez

(Case C-1/10)

(2010/C 63/53)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties to the main proceedings

Defendant: Valentín Salmerón Sánchez

Other parties: Ministerio Fiscal and Dorotea López León

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 Tribunale Amministrativo Regionale per la Puglia (Italy) lodged on 4 January 2010 — Azienda Agro-Zootecnica Franchini s.a.r.l. and Eolica di Altamura s.r.l. v Regione Puglia

(Case C-2/10)

(2010/C 63/54)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicants: Azienda Agro-Zootecnica Franchini s.a.r.l. and Eolica di Altamura s.r.l.

Defendant: Regione Puglia

Question referred

Is Article 1(1226) of Law No 296 of 27 December 2006, in conjunction with the first paragraph of Article 5 of the decreto del Ministero dell'ambiente e della tutela del territorio e del mare (Decree of the Ministry for the Protection of the Environment, Land and Sea) of 17 October 2007 and with Article 2(6) of Regional Law No 31 of Apulia of 21 October 2008, compatible with Community law, and in particular with the principles which may be inferred from Directives 2001/77/EC [1] and 2009/28/EC [2] (concerning renewable energies) and Directives 79/409/EEC [3] and 92/43/EEC [4] (concerning the protection of birds and natural habitats), in so far as those provisions absolutely prohibit, without distinction, the location of wind turbines not intended for self-consumption in the sites of Community importance (SCIs) and special protection areas (SPAs) comprising the 'Natura 2000' ecological network, instead of requiring an appropriate environmental impact assessment to be carried out to analyse the impact of an individual project on the particular site affected?

[1] OJ 2001 L 283, p. 33.
[2] OJ 2009 L 140, p. 16.
[3] OJ 1979 L 103, p. 1.
[4] OJ 1992 L 206, p. 7.

Reference for a preliminary ruling from the Tribunale di Rossano (Italy) lodged on 5 January 2010 — Franco Affatato v Azienda Sanitaria Provinciale di Cosenza, Azienda Sanitaria n. 3 di Rossano

(Case C-3/10)

(2010/C 63/55)

Language of the case: Italian

Referring court

Tribunale di Rossano

Parties to the main proceedings

Applicant: Franco Affatato

Defendants: Azienda Sanitaria Provinciale di Cosenza, Azienda Sanitaria n.3 di Rossano

Questions referred

1. Does Clause 2(1) of the Framework Agreement put into effect by Directive 1999/70/EC ([1]) preclude domestic rules, such as those laid down for SUW workers [socially useful workers — lavoratori socialmente utili]/PUW workers [publicly useful workers — lavoratori di pubblica utilità] by Article 8(1) of Legislative Decree No 468/97 and Article 4(1) [of Legislative Decree] No 81/00, which, by excluding the workers governed by these rules these rules from the right to establish an employment relationship, has the effect of precluding the application of legislation governing fixed-term employment in implementation of Directive 1999/70/EC?

2. Does Clause 2(2) of the Framework Agreement put into effect by Directive 1999/70/EC permit the exclusion of workers, such as SUW/PUW workers governed by Legislative Decree No 468/97 and Law No 81/00, from the scope of application of Directive 1999/70/EC?

3. Do the workers referred to in question 2 fall within the definitions set out in Clause 3(1) of the Framework Agreement put into effect by Directive 1999/70/EC?

4. Do Clause 5 of the Framework Agreement put into effect by Directive 1999/70/EC and the principles of equality [and] non-discrimination preclude rules governing workers in the schools sector (see in particular Article 4(1) of Law No 124/99 and Article 1(1)(a) of Ministerial Decree No 430/00), under which it is permissible not to specify the justification for the first fixed-term contract, which is a general requirement under national law for every other fixed-term employment relationship, and to renew contracts irrespective of the existence of fixed and permanent requirements, and which do not stipulate a total maximum duration for fixed-term contracts or employment relationships, the number of times such contracts or relationships can be renewed, or, normally do not provide that there should be periods between renewals or, in the case of supply teaching for the whole school year, that that period should correspond to the summer holidays, when there is no, or very little, teaching activity?

5. Can the body of legislation governing the schools sector, as described, be regarded as being equivalent to a set of rules for the prevention of abuse?

6. Can Legislative Decree No 368/01 and Article 36 of Legislative Decree No 165/01 be regarded, for the purpose of Article 2 of Directive 1999/70/EC, as measures with the characteristics of provisions transposing Directive 1999/70/EC with regard to fixed-term employment relationships in the schools sector?

7. Must a body with the characteristics of Poste Italiane S.p.a., namely:

   — which is State owned;

   — which is subject to State control;

   — for which the Minister of Communications chooses the universal service provider and in general carries out all activities connected with the substantive monitoring and control of the accounts, setting the objectives for the universal service provided;

   — which provides an essential public service of overriding general interest;

   — whose budget is linked with the State budget;

   — for which the costs of the service provided are determined by the State, which transfers to the body [the] amounts required to cover the additional costs incurred in providing the service,

   be regarded as a State body for the purposes of the direct application of Community law?

8. If the answer to question 7 is in the affirmative: can the company in question be considered, for the purpose of Clause 5, to constitute a sector, namely can the personnel which may be employed by it, considered as a whole, be regarded as a specific category of workers for the purposes of the distinction made as to the prohibitions imposed?

9. If the answer to question 7 is in the affirmative: does Clause 5 of Directive 1999/70/EC of itself, or in conjunction with Clauses 2 and 4 and the principle of equal treatment [and] non-discrimination, preclude a provision such as Article 2(1a) of Legislative Decree No 368/01, which permits the inclusion of a fixed term in an employment contract in relation to a specific individual without any requirement to give reasons, thereby placing that person, in contrast with the prohibition ordinarily imposed under national law (Article 1 of Legislative Decree No 68/01), beyond the protection of the requirement to state in writing and prove, where disputed, the technical reasons or reasons related to imperative requirements of production, organisation or replacement of workers which justified the inclusion of a fixed term in the employment contract, bearing in mind that it is possible to extend the original contract where so required on objective grounds and for the same work as that for which the fixed-term contract was concluded?

10. Do Legislative Decree No 368/01 and Article 36(5) of Legislative Decree No 165/01 constitute general legislation transposing Directive 1999/70/EC for State employees, regard being had to the exceptions to such general provisions as defined in the light of the responses to questions 1 to 9?

11. In the absence of provision for penalties in relation to SUW and PUW-type workers and workers in schools as described, does Directive 1999/70/EC, in particular Clause 5(2)(b) [of the Framework Agreement], preclude the application, by analogy, of rules simply intended to provide compensation, such as those in Article 36(5) of Legislation Decree No 165/01, that is to say does Clause 5(2)(b) establish a principle of preference for contracts or relationships to be deemed to be contracts or relationships of indefinite duration?

12. Do the Community principle of equal treatment [and] non-discrimination, Clause 4 and Clause 5(1) preclude a difference in treatment with regard to the penalties imposed in the 'State employee' sector on the basis of circumstances in which the relationship came about, or of the employer body, or, similarly, in the schools sector?

13. On the assumption that the extent to which Directive 1999/70/EC has been transposed in domestic law with regard to the State and quasi-State bodies has been established in the light of the response to the previous questions, does Clause 5 preclude a rule, such as that laid down in Article 36(5) of Legislative Decree No 165/01, which imposes an absolute ban on the conversion of employment relationships as regards the State; that is to say, what further checks must be carried out by the national court in order to preclude the application of the prohibition on establishing employment relationships of indefinite duration with public authorities?

14. Must Directive 1999/70/EC apply in its entirety to Italy, that is to say, does the conversion of employment relationships involving the public authorities appear to run contrary to the fundamental principles of national law and, therefore, Clause 5 must not be applied in that respect, since the effect of this would be contrary to Article 1-5 of the Treaty of Lisbon, insofar as the *fundamental structures, political and constitutional*, that is the *essential functions* of Italy, would not be respected?

15. Does Clause 5 of Directive 1999/70/EC, in providing, for cases in which there is a prohibition on the conversion of employment relationships, that it is necessary to adapt measures offering effective and equivalent guarantees for the protection of workers, in comparison with that afforded in similar situations under national law, in order duly to punish abuses resulting from the infringement of Clause 5 and to nullify the consequences of the breach of Community law, require that an employment relationship of indefinite duration with the State, to which the worker would be entitled in the absence of Article 36, and an employment relationship of indefinite duration with a private employer, with regard to which the employment relationship would be characterised by the stability comparable to that of an employment relationship with the State, must be considered as analagous under national law?

16. Does Clause 5 of Directive 1999/70/EC, in providing, for cases in which there is a prohibition on the conversion of employment relationships, that it is necessary to adopt measures offering effective and equivalent guarantees for the protection of workers, in comparison with that afforded in similar situations under national law, in order duly to punish abuses resulting from the infringement of Clause 5 and to nullify the consequences of the breach of Community law, require, when determining penalties, to be taken into account:

    (a) the time needed to find new employment and the fact that it is not possible to take up employment which has the characteristics mentioned in question 15;

    (b) or, on the other hand, the amount of remuneration which would have been paid had the employment relationship been converted from a fixed-term relationship into relationships of indefinite duration?

([1]) OJ 1999 L 175, p. 43.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 5 January 2010 — Bureau National Interprofessionnel du Cognac v Oy Gust. Ranin

(Case C-4/10)

(2010/C 63/56)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Bureau National Interprofessionnel du Cognac

Other parties to the proceedings: Oy Gust. Ranin, Patentti — ja rekisterihallituksen valituslautakunta

Questions referred

1. Is Regulation (EC) No 110/2008 ([1]) of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ('Regulation (EC) No 110/2008') applicable to the assessment of the conditions for registration of a trade mark, containing a geographical indication protected by that regulation, which was applied for on 19 December 2001 and registered on 31 December 2003?

2. If the answer to Question 1 is affirmative, is a trade mark which inter alia contains a geographical indication of origin which is protected by Regulation (EC) No 110/2008, or such an indication in the form of a generic term and a translation, and which is registered for spirit drinks which inter alia in the case of their manufacturing method and alcohol content do not meet the requirements set for the use of the geographical indication of origin in question, to be refused as contrary to Articles 16 and 23 of Regulation (EC) No 110/2008?

3. Regardless of whether or not the answer to Question 1 is affirmative, is a trade mark of the type described in Question 2 to be regarded as liable to mislead the public for instance as to the nature, quality or geographical origin of the goods or services, in the way referred to in Article 3(1)(g) of the First Council Directive 89/104/EEC ([2]) of 21 December 1988 to approximate the laws of the Member States relating to trade marks, currently Directive 2008/95/EC ([3]) of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) ('Directive 89/104/EEC')?

4. Regardless of the answer to Question 1, if a Member State has, on the basis of Article 3(2)(a) of Directive 89/104/EEC, decreed that a trade mark shall not be registered or if registered shall be liable to be declared invalid if the use of the trade mark can be prohibited by virtue of legislation other than the trade mark law of the Member State in question or Community law, is the view to be taken that, if the trade mark registration contains elements which infringe Regulation (EC) No 110/2008, on the basis of which the use of the trade mark can be prohibited, such a trade mark shall not be registered?

([1]) OJ 2008 L 39, p. 16.
([2]) OJ 1989 L 40, p. 1.
([3]) OJ 2008 L 299, p. 25.

Appeal brought on 6 January 2010 by Giampietro Torresan against the judgment of the Court of First Instance (Second Chamber) delivered on 19 November 2009 in Case T-234/06 Torresan v Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM) and Klosterbrauerei Weissenohe GmbH & Co. KG

(Case C-5/10 P)

(2010/C 63/57)

Language of the case: Italian

Parties

Appellant: Giampietro Torresan (represented by: G. Recher and R. Munarini, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Klosterbrauerei Weissenohe GmbH & Co. KG

Form of order sought

The appellant claims that the Court should:

— set aside the judgment in Case T-234/06, Reg. No 414968, notified by fax on 19 November 2009;

— uphold in their entirety the forms of order sought by Mr Torresan before the Court of First Instance (now 'the General Court') in Case T-234/06;

— in any event, order OHIM to pay the costs of the proceedings in their entirety, including the costs incurred before OHIM and in the proceedings before the General Court.

Pleas in law and main arguments

(i) Infringement and/or misapplication of the Community legislation concerning agriculture and foodstuffs;

(ii) Infringement and/or misapplication of the legislation on consumer protection, with regard to the notion of the average consumer;

(iii) Infringement of the language rules for proceedings;

(iv) Distortion of the facts or the evidence, all factors designed to confirm, as the sole and ultimate inference, the absolutely distinctive and non-descriptive character of the mark Cannabis, with a view to establishing the infringement or misapplication of Article 7(1)(c) of the Trade Mark Regulation [1] and the contradictory nature of the reasoning followed by the General Court in support of the finding that the mark Cannabis is descriptive. In consequence, it will be appropriate to declare that the judgment in Case T-234/06 — the judgment under appeal — is set aside in its entirety.

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

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 8 January 2010 — Staatssecretaris van Justitie, other party: T. Kahveci

(Case C-7/10)

(2010/C 63/58)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie

Other party: T. Kahveci

Questions referred

1. Must Article 7 of Decision No 1/80 [of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey] be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State cannot invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality?

2. In answering the first question is the time at which the Turkish worker concerned acquired the nationality of the host Member State of relevance?

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 8 January 2010 — Staatssecretaris van Justitie, Other party: O. Inan

(Case C-9/10)

(2010/C 63/59)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Staatssecretaris van Justitie, O. Inan

Questions referred

1. Must Article 7 of Decision No 1/80 [of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey] be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State cannot invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality?

2. In answering the first question is the time at which the Turkish worker concerned acquired the nationality of the host Member State of significance?

Action brought on 8 January 2010 — European Commission v Republic of Austria

(Case C-10/10)

(2010/C 63/60)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Lyal and W. Mölls, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by authorising tax deductibility for donations to research and educational institutions only in the case of institutions established within Austria, the Republic of Austria has failed to fulfil its obligations under Article 56 EC and Article 40 EEA;

— order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

In the Commission's view, donations to research and educational institutions which pursue non-commercial objectives come under the free movement of capital under Article 56 EC. The Austrian Government allows tax deduction only in the case of donations made to such institutions which are established in Austria, but not in the case of donations made to similar institutions in other Member States or in other States of the European Economic Area. This, the Commission submits, constitutes a breach of Article 56 EC and of Article 40 EEA.

In justification of this rule, the Republic of Austria argues that this amounts, in substantive terms, to a permissible restriction of the favourable treatment of donations which releases the State from what would otherwise be an obligation on it to provide finance. This, it contends, follows inter alia from the judgment in Case C-396/04 *Centro di Musicologia Walter Stauffer*. ([1])

The Commission takes issue with that justification. The provisions in dispute, it argues, draw a distinction on purely geographical grounds and irrespective of the purpose of the beneficiary institutions. Furthermore, there is no evidence of the interaction, claimed by the Republic of Austria, between direct State financing and the favourable tax treatment accorded to donations made by private individuals. Even if the interaction claimed by the Republic of Austria did exist, it would not, in the Commission's view, justify any restriction of the free movement of capital as it does not involve a qualified interest relating to the tax system within the terms of the judgment of the Court of Justice in Case C-204/90 *Bachmann*. ([2])

([1]) Judgment in Case C-386/04 *Centro di Musicologia Walter Stauffer* [2006] ECR I-8203.
([2]) Judgment in Case C-204/90 *Bachmann* [1992] ECR I-249.

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) made on 11 January 2010 — Nickel Institute v Secretary of State for Work and Pensions

(Case C-14/10)

(2010/C 63/61)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Nickel Institute

Defendant: Secretary of State for Work and Pensions

Questions referred

1. Are Commission Directive 2008/58/EC ([1]) (the '30th ATP Directive') and/or Commission Regulation (EC) No 790/2009 ([2]) (the '1st ATP Regulation'), to the extent that they purport to classify or reclassify the Nickel Carbonates for the relevant endpoints, invalid in that:

   (a) the classifications were arrived at without adequate assessment of the intrinsic properties of the Nickel Carbonates in accordance with the criteria and data requirements set out in Annex VI to Directive 67/548/EEC ([3]) (the 'Dangerous Substances Directive');

   (b) there was no adequate consideration of whether the intrinsic properties of the Nickel Carbonates may present a risk during normal handling and use, as required by sections 1.1 and 1.4 of Annex VI to the Dangerous Substances Directive;

   (c) the conditions for the use of the procedure in Article 28 of the Dangerous Substances Directive were not made out;

(d) the classifications were impermissibly based on a derogation statement prepared for the purposes of a risk assessment carried out by a competent authority pursuant to Regulation (EEC) No 793/93 ([4]); and/or

(e) the reasons for adopting the classifications were not given as required by Article 253 EC?

2. Are Commission Directive 2009/2/EC ([5]) (the '31st ATP Directive') and or the 1st ATP Regulation invalid, to the extent that they purport to classify or reclassify the Nickel Hydroxides and the Grouped Nickel Substances (together, the 'Contested Nickel Substances') in the specified respects, in that:

(a) the classifications were arrived at without adequate assessment of the intrinsic properties of the Contested Nickel Substances in accordance with the criteria and data requirements set out in Annex VI to the Dangerous Substances Directive, but rather on the basis of certain read-across methods;

(b) there was no adequate consideration of whether the intrinsic properties of the Contested Nickel Substances may present a risk during normal handling and use, as required by sections 1.1 and 1.4 of Annex VI to the Dangerous Substances Directive; and/or

(c) the conditions for the use of the procedure in Article 28 of the Dangerous Substances Directive were not made out?

3. Is the 1st ATP Regulation invalid, so far as it concerns the Nickel Carbonates and the Contested Nickel Substances, in that:

(a) the conditions for the use of the procedure in Article 53 of Regulation (EC) No 1272/2008 ([6]) (the 'CLP Regulation') were not made out, and/or

(b) the classifications for Table 3.1 of Annex VI to the CLP Regulation were arrived at without adequate assessment of the properties of the Nickel Carbonates and the Contested Nickel Substances in accordance with the criteria and data requirements set out in Annex I to the CLP Regulation, but rather on the application of Annex VII to the CLP Regulation?

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

([2]) Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (Text with EEA relevance)
OJ L 235, p. 1

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

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

([5]) Commission Directive 2009/2/EC of 15 January 2009 amending, for the purpose of its adaptation to technical progress, for the 31st time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (Text with EEA relevance)
OJ L 11, 16.1.2009, p. 6

([6]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance)
OJ L 353, p. 1

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) made on 11 January 2010 — Etimine SA v Secretary of State for Work and Pensions

(Case C-15/10)

(2010/C 63/62)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Etimine SA

Defendant: Secretary of State for Work and Pensions

Questions referred

1. Are the challenged borate classifications in Commission Directive 2008/58 ([1]) (the 30th ATP) and/or Commission Regulation 790/2009 ([2]) ('the 1st ATP') invalid on one of more of the following grounds:

(i) The classifications were included in the 30th ATP in breach of essential procedural requirements?

(ii) The classifications were included in the 30th ATP in breach of Directive 67/548 ([3]) ('the DSD') and/or as a result of manifest errors of assessment, in that:

(a) The Commission did not apply or failed properly to apply the 'normal handling and use' principle contained in Annex VI to the DSD?

(b) There was an unlawful application of risk assessment criteria?

(c) The Commission failed to apply or misapplied the 'appropriateness' criterion in breach of point 4.2.3.3 of Annex VI to the DSD?

(d) The Commission failed to have proper regard to the need for epidemiological/human data? and/or

(e) The Commission unlawfully extrapolated data relating to one of the borate substances for the purposes of classifying the other borate substances and/or gave inadequate reasoning for that extrapolation contrary to Article 253 EC?

(iii) The classifications were included in the 30th ATP in breach of the fundamental Community law principle of proportionality?

2. Are the challenged borate classifications in the 1st ATP invalid, in that:

(i) The 1st ATP was wrongly adopted using the procedure set out in Article 53 as its legal basis?

(ii) The criteria for a new harmonised classification under Annex I to Regulation (EC) 1272/2008 [4] ('the CLP Regulation') were not applied, and instead Annex VII to the CLP Regulation was wrongly applied?

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

[2] Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (Text with EEA relevance)
OJ L 235, p. 1

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

[4] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance)
OJ L 353, 31.12.2008, p. 1

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 11 January 2010 — The Number Ltd, Conduit Enterprises Ltd v Office of Communications and British Telecommunications PLC

(Case C-16/10)

(2010/C 63/63)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: The Number Ltd, Conduit Enterprises Ltd

Defendant: Office of Communications and British Telecommunications PLC

Questions referred

1. Is the power afforded to Member States under Article 8(1) of Directive 2002/22/EC [1] ('the Universal Service Directive'), read together with Article 8 of Directive 2002/21/EC [2] ('the Framework Directive'), Articles 3(2) and 6(2) of Directive 2002/20/EC [3] ('the Authorisation Directive'), and Article 3(2) of the Universal Service Directive and other material provisions of EC law, to designate one or more undertakings to guarantee the provision of universal service, or different elements of universal service, as identified in Articles 4, 5,6, 7 and 9(2) of the Universal Service Directive, to be interpreted as:

(a) Permitting the Member State, where it decides to designate an undertaking pursuant to this provision, only to impose specific obligations on that undertaking which require the undertaking itself to provide to end users the universal service or element thereof in respect of which it is designated? Or

(b) Permitting the Member State, when it decides to designate an undertaking under this provision, to place the designated undertaking under such specific obligations as the Member State considers to be most efficient, appropriate and proportionate for the purpose of guaranteeing the provision of the universal service or element thereof to end users, whether or not those obligations require the designated undertaking itself to provide the universal service or element thereof to end users?

2. Do the above provisions, when read also in light of Article 3(2) of the Universal Service Directive, permit Member States, in circumstances where an undertaking is designated under Article 8(1) of the Universal Service Directive in relation to Article 5(l)(b) of that Directive (comprehensive telephone directory enquiry service) without being required to supply such a service directly to end users, to impose specific obligations on that designated undertaking:

   (a) to maintain and update a comprehensive database of: subscriber information;

   (b) to make available in machine readable form the contents of a comprehensive database of subscriber information, as updated on a regular basis, to any person seeking to provide publicly available directory enquiry services or directories (whether or not that person intends to provide a comprehensive directory enquiry service to end-users); and

   (c) to supply the database on terms which are fair, objective, cost oriented and non-discriminatory to such a person?

(1) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) OJ L 108, p. 51

(2) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) OJ L 108, p. 33

(3) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) OJ L 108, p. 21

Action brought on 14 January 2010 — European Commission v Hellenic Republic

(Case C-24/10)

(2010/C 63/64)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Karanasou Apostolopoulou and G. Braun)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2006/46/EC (1) of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2006/46 into domestic law expired on 5 September 2008.

(1) OJ No L 224 of 16.8.2006, p. 1.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 18 January 2010 — Bureau National Interprofessionnel du Cognac

(Case C-27/10)

(2010/C 63/65)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Bureau National Interprofessionnel du Cognac

Other parties to the proceedings: Oy Gust. Ranin, Patentti — ja rekisterihallituksen valituslautakunta

Questions referred

1. Is Regulation (EC) No 110/2008 ([1]) of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ('Regulation (EC) No 110/2008') applicable to the assessment of the conditions for registration of a trade mark, containing a geographical indication protected by that regulation, which was applied for on 19 December 2001 and registered on 31 December 2003?

2. If the answer to Question 1 is affirmative, is a trade mark which inter alia contains a geographical indication of origin which is protected by Regulation (EC) No 110/2008, or such an indication in the form of a generic term and a translation, and which is registered for spirit drinks which inter alia in the case of their manufacturing method and alcohol content do not meet the requirements set for the use of the geographical indication of origin in question, to be refused as contrary to Articles 16 and 23 of Regulation (EC) No 110/2008?

3. Regardless of whether or not the answer to Question 1 is affirmative, is a trade mark of the type described in Question 2 to be regarded as liable to mislead the public for instance as to the nature, quality or geographical origin of the goods or services, in the way referred to in Article 3(1)(g) of the First Council Directive 89/104/EEC ([2]) of 21 December 1988 to approximate the laws of the Member States relating to trade marks, currently Directive 2008/95/EC ([3]) of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) ('Directive 89/104/EEC')?

4. Regardless of the answer to Question 1, if a Member State has, on the basis of Article 3(2)(a) of Directive 89/104/EEC, decreed that a trade mark shall not be registered or if registered shall be liable to be declared invalid if the use of the trade mark can be prohibited by virtue of legislation other than the trade mark law of the Member State in question or Community law, is the view to be taken that, if the trade mark registration contains elements which infringe Regulation (EC) No 110/2008, on the basis of which the use of the trade mark can be prohibited, such a trade mark shall not be registered?

([1]) OJ 2008 L 39, p. 16.
([2]) OJ 1989 L 40, p. 1; OJ, Special Edition 1994, 13/Volume 17, L 178.
([3]) OJ 2008 L 299, p. 25.

Action brought on 22 January 2010 — European Commission v Republic of Estonia

(Case C-39/10)

(2010/C 63/66)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by R. Lyal and K. Saaremäel-Stoilov, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that the Republic of Estonia is in breach of its obligations under Article 45 of the Treaty on the Functioning of the European Union and Article 28 of the Agreement on the European Economic Area, since it has not provided in its legislation for granting exemption from income tax on individuals to non-residents whose total income is so small that an exemption from income tax would apply to them if they were resident taxpayers;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The Commission received a complaint from a national of the Republic of Estonia resident in the Republic of Finland about the levying of income tax on his pension originating from Estonia. He complained that the Republic of Estonia did not apply, in relation to his pension, the usual income-tax-free threshold allowed to residents, nor the supplementary income-tax-fee threshold allowed to resident pensioners.

The complainant receives half his income in the form of a pension from the Republic of Estonia and the other half as a pension from the Republic of Finland. His income is very small, and if he received all his income from one and the same Member State, it would be taxed in a lower amount or not taxed at all.

It follows from consistent case-law of the Court of Justice that, while direct taxation is within the jurisdiction of the Member States, they must exercise that jurisdiction in harmony with European Union law and avoid discrimination on grounds of nationality.

The fact that a non-resident taxpayer who has made use of freedom of movement for workers is not allowed a tax exemption which is available to resident taxpayers constitutes different treatment of non-residents and residents, as well as a restriction of freedom of movement across borders.

May, and to what extent may, such different treatment be regarded as appropriate and justified as a result of the difference of residence?

In a situation in which the taxpayer's worldwide income is so low that the source State would not tax the income at all or would tax it in a smaller amount if a resident were concerned, the Commission considers that Member States must, when taxing non-resident individuals, take their personal and family circumstances into account to the extent that their equal treatment with resident taxpayers is ensured.

If the legislation of a Member State lays down a threshold below which it is considered that the taxpayer does not have the resources to finance public expenditure, there is no basis for differentiating between taxpayers whose income is below the defined threshold according to their residence.

The Commission takes the view that the provisions of the income tax law of the Republic of Estonia which do not make it possible to grant exemption from income tax on individuals to non-residents who receive half of their income from Estonia and the other half from some other Member State, and whose total income is so small that exemption from income tax would apply to them if they were resident taxpayers, are contrary to Article 45 of the Treaty on the Functioning of the European Union and Article 28 of the Agreement on the European Economic Area.

Order of the President of the Fourth Chamber of the Court of 10 December 2009 — European Commission v Republic of Austria

(Case C-110/08) [1]

(2010/C 63/67)

Language of the case: German

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

[1] OJ C 158, 21.6.2008.

Order of the President of the Court of 21 October 2009 (reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain)) — Emilia Flores Fanega v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Bolumburu S.A.

(Case C-452/08) [1]

(2010/C 63/68)

Language of the case: Spanish

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

[1] OJ C 6, 10.1.2009.

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

(Case C-516/08) [1]

(2010/C 63/69)

Language of the case: Polish

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

[1] OJ C 32, 7.2.2009.

Order of the President of the Sixth Chamber of the Court of 12 November 2009 — Commission of the European Communities v Republic of Hungary

(Case C-530/08) [1]

(2010/C 63/70)

Language of the case: Hungarian

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

[1] OJ C 19, 24.1.2009.

Order of the President of the Eighth Chamber of the Court of 12 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-44/09) [1]

(2010/C 63/71)

Language of the case: Greek

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

[1] OJ C 69, 21.3.2009.

Order of the President of the Seventh Chamber of the Court of 4 December 2009 — European Commission v Republic of Estonia

(Case C-46/09) [1]

(2010/C 63/72)

Language of the case: Estonian

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

[1] OJ C 90, 18.4.2009.

Order of the President of the Court of 24 November 2009 — Commission of the European Communities v Italian Republic

(Case C-121/09) [1]

(2010/C 63/73)

Language of the case: Italian

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

[1] OJ C 141, 20.6.2009.

Order of the President of the Court of 12 November 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-126/09) [1]

(2010/C 63/74)

Language of the case: French

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

[1] OJ C 141, 20.6.2009.

Order of the President of the Court of 11 January 2010 — European Commission v Kingdom of Belgium

(Case C-139/09) [1]

(2010/C 63/75)

Language of the case: French

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

[1] OJ C 141, 20.6.2009.

Order of the President of the Court of 15 December 2009 — European Commission v Grand Duchy of Luxembourg

(Case C-141/09) [1]

(2010/C 63/76)

Language of the case: French

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

[1] OJ C 141, 20.6.2009.

Order of the President of the Court of 17 December 2009 — European Commission v Grand Duchy of Luxembourg

(Case C-149/09) [1]

(2010/C 63/77)

Language of the case: French

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

[1] OJ C 141, 20.6.2009.

Order of the President of the Court of 15 December 2009 — European Commission v Portuguese Republic

(Case C-280/09) [1]

(2010/C 63/78)

Language of the case: Portuguese

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

[1] OJ C 256, 24.10.2009.

Order of the President of the Court of 5 November 2009 (reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands)) — Criminal proceedings against X

(Case C-297/09) [1]

(2010/C 63/79)

Language of the case: Dutch

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

[1] OJ C 11, 16.1.2010.

GENERAL COURT

Judgment of the General Court of 21 January 2010 — Goncharov v OHIM — DSB (DSBW)

(Case T-34/07) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark DSBW — Earlier Community word mark DSB — 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 63/80)

Language of the case: German

Parties

Applicant: Karen Goncharov (Moscow, Russia) (represented by: G. Hasselblatt and A. Späth, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: DSB (Copenhagen, Denmark) (represented by: F. González Diáz and T. Graf, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 December 2006 (Case R 1330/2005-2), relating to opposition proceedings between DSB and Mr K. Goncharov

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Karen Goncharov to pay the costs.*

[1] OJ C 82, 14.4.2007.

Judgment of the General Court of 21 January 2010 — G-Star Raw Denim v OHIM — ESGW (G Stor)

(Case T-309/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark G Stor — Earlier national and Community word and figurative marks G-STAR and G-STAR RAW DENIM — Relative ground for refusal — Absence of similarity between the marks — Article 8(5) of Regulation (EC) No 40/94 (now Article 8(5) of Regulation (EC) No 207/2009))

(2010/C 63/81)

Language of the case: English

Parties

Applicant: G-Star Raw Denim kft (Budapest, Hungary) (represented by: G. Vos, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis and J. Novais Gonçalves, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: ESGW Holdings Ltd (Road Town, British Virgin Islands, United Kingdom)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 14 April 2008 (R 1232/2007-1), relating to opposition proceedings between G-Star Raw Denim kft and ESGW Holdings Ltd

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders G-Star Raw Denim kft to pay the costs.*

[1] OJ C 260, 11.10.2008.

Judgment of the General Court of 27 January 2010 — REWE Zentral v OHIM — Grupo Corporativo Teype (Solfrutta)

(Case T-331/08) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark Solfrutta — Earlier Community word mark FRUTISOL — Relative grounds 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 63/82)

Language of the case: English

Parties

Applicant: REWE Zentral AG (Cologne, Germany) (represented by: M. Kinkeldey and A. Bognár, lawyers)

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 General Court: Grupo Corporativo Teype, SL (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 May 2008 (Case R 1679/2007-2) relating to opposition proceedings between Grupo Corporativo Teype, SL and REWE-Zentral AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of OHIM of 21 May 2008 (Case R 1679/2007-2);*

2. *Orders OHIM to pay the costs.*

[1] OJ C 260 of 11.10.2008.

Order of the President of the General Court of 20 January 2010 — Agriconsulting Europe v Commission

(Case T-443/09 R)

(Application for interim measures — Public procurement — Tendering procedure — Rejection of a tender — Application for suspension of operation and for interim measures — Loss of opportunity — Absence of serious and irreparable damage — No urgency)

(2010/C 63/83)

Language of the case: Italian

Parties

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

Defendant: European Commission (represented by: A. Bordes and L. Prete, acting as Agents)

Re:

Application for interim relief concerning the tendering procedure EuropeAid/127054/C/SER/Multi relating to short-term services in the exclusive interest of third countries benefiting from European Commission external aid.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 30 November 2009 — Fercal Consultadoria e Serviços v OHIM

(Case T-474/09)

(2010/C 63/84)

Language in which the application was lodged: Portuguese

Parties

Applicant: Fercal — Consultadoria e Serviços, Ltda (Lisbon, Portugal) (represented by: A. Rodrigues, 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: Jacson of Scandinavia AB (Vollsjö, Sweden)

Form of order sought

— Annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (O.H.I.M.) of 18 August 2009 in Case R 1253/2008-2 and, in consequence, maintenance in the register of Community trade mark No 1 077 858 'JACKSON SHOES'

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: JACKSON SHOES

Proprietor of the Community trade mark: applicant

Applicant for the declaration of invalidity: other party to the proceedings before the Board of Appeal

Trade mark right of applicant for the declaration: Swedish name mark 'JACSON OF SCANDINAVIA AB'

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

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Articles 8(4) and 53(1)(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, because there is no likelihood of confusion between the trade mark 'JACKSON SHOES' and the trade mark 'JACSON OF SCANDINAVIA AB'.

Although there are graphic and phonetic similarities between the names JACKSON and JACSON, the signs must be compared by taking them in their entirety: 'JACKSON SHOES'/'JACSON OF SCANDINAVIA AB'.

It is impossible to recognise (merely on the basis of a Swedish business name) an exclusive right in all the Member States of the European Union to use a name commonly used in many other countries of the Union by thousands of people and by other undertakings, thus constituting a sign of little distinctive character. In consequence, third parties cannot be prevented from again using that sign or another sign resembling it in combination with other elements.

In addition, an average consumer will easily realise that these are different kinds of distinctive signs: one consists of a name mark and the other of a business name, in this case with the addition of the letters AB.

Action brought on 4 January 2010 — PPG and SNF v ECHA

(Case T-1/10)

(2010/C 63/85)

Language of the case: English

Parties

Applicants: Polyelectrolyte Producers Group GEIE (PPG) (Bruxelles, Belgium), SNF SAS (Andrézieux, France) (represented by: K. Van Maldegem, P. Sellar and R. Cana, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— annul the contested act;

— order ECHA to pay the costs of these proceedings;

— take such other or further measures as justice may require.

Pleas in law and main arguments

The applicants seek the annulment of the decision of the European Chemicals Agency ('ECHA') of 7 December 2009 regarding the identification of acrylamide (EC No 201 — 173 — 7) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 [1] (hereinafter 'REACH'), in accordance with Article 59 of REACH.

On the basis of the contested decision, brought to the applicants attention by means of an ECHA press release of 7 December 2009, the substance acrylamide was included in the list of *15 new chemical substances of the Candidate list of substance of very high concern*. The applicants argue that, as a result, they will be required to provide certain information relating to the level of acrylamide in their products which they sell to customers in order for those customers to comply with notification and information obligations imposed on them by REACH. Further, they may also be required to update the safety data sheets and/or communicate to their customers information on the identification of acrylamide as a substance of very high concern.

The applicants submit that the contested act is unlawful because it is based on an underlying assessment of acrylamide that is scientifically and legally flawed. According to their submissions the defendant committed manifest errors of appraisal in adopting the contested act. In particular, the applicants submit that the contested act infringes the applicable rules established for the identification of substances of very high concern under REACH.

In summary, the applicants claim that the contested act effectively identifies acrylamide as a substance of very high concern on the basis that acrylamide is a chemical substance. However, the applicants claim that acrylamide is used exclusively as an intermediate and is therefore exempt from Title VII concerning Authorisations of REACH, according to Articles 2(8) and 59 of the said Regulation.

Furthermore, the applicants put forward that the contested act was adopted without sufficient evidential basis and therefore, the defendant committed a manifest error of appraisal.

Finally, the applicants claim that the contested act infringes, besides the requirements of REACH, the principles of proportionality and equal treatment.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Appeal brought on 15 January 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal of 29 October 2009 in Case F-94/08, Marcuccio v Commission

(Case T-12/10 P)

(2010/C 63/86)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— In any event, set aside in its entirety and without exception the order under appeal.

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever.

— Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order made by the Civil Service Tribunal (CST) on 29 October 2009 in Case F-94/08 *Marcuccio* v *Commission*. That order dismissed as manifestly inadmissible an action for annulment of the note of 28 March 2008 by which the European Commission informed the appellant of its intention to make a deduction from his invalidity benefit in order to secure payment of the costs incurred in earlier proceedings.

In support of his claims, the appellant alleges distortion and misrepresentation of the facts in the order under appeal, a total failue to state reasons and misapplication and misinterpretation of the principle *tempus regit actum* and of the concept of a decision having an adverse effect.

Action brought on 22 January 2010 — Alisei v Commission

(Case T-16/10)

(2010/C 63/87)

Language of the case: Italian

Parties

Applicant: Alisei (Rome, Italy) (represented by: F. Sciaudone, lawyer, R. Sciaudone, lawyer, A. Neri, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the rejection decision;

— annul the award decision;

— order the Commission to pay compensation for the damage suffered;

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

Pleas in law and main arguments

By the present action, Alisei seeks:

— annulment of the Commission's decision of 29 October 2009, by which the Commission (i) did not grant the application for funding which Alisei had submitted in response to the call for proposals on the theme '*Facility for rapid response to soaring food prices in developing countries*' (EuropeAid/128608/C/ACT/Multi) and (ii) placed Alisei's application on a reserve list;

— annulment of the Commission's decision of 29 October 2009, by which the Commission selected the application for funding submitted by another organisation;

— compensation for the damage suffered.

It is submitted in that regard that, in accordance with the information set out in the call for proposals, Alisei proposed a direct action to improve production capacity in Sao Tomé and Principe, suggesting as local partner for those purposes an organisation experienced in the agricultural sector.

As its proposal was shortlisted, Alisei was asked to submit the full application by 15 September 2009.

On receiving no word as to the outcome of the evaluation of its bid, unlike the other organisations which had responded to the call for proposals, Alisei requested information by email of 17 November 2009. On the same day, the Commission answered that the reply had already been sent to all the participants but, in any event, appended a copy of the reply. By the contested decision, the European Commission informed Alisei that the evaluation committee had not selected the proposal that it had submitted with a view to the grant of funding and had decided to place its proposal on a reserve list which would remain valid until 31 December 2009. The Commission also stated that, should Alisei not be contacted before that deadline, it would no longer be taken into consideration for the purposes of a grant of funding in connection with that particular call for proposals.

In support of its application for annulment of the decision refusing its application for funding, Alisei pleads:

— breach of the duty to state reasons, in so far as the Commission had failed to indicate, even in summary form, the reasons for which Alisei's application had been set aside and placed on a reserve list, and had refused, knowingly and expressly, the request for information in that regard;

— breach of the principle of the transparency of administrative action, of the principle of equal treatment, and of the rights of the defence, in so far as the Commission had informed the other unsuccessful candidates of the reasons for their exclusion, while making the communication of the information to Alisei a function of the expiry of the validity of the reserve list.

In support of its application for annulment of the decision awarding the funding to the successful organisation, Alisei pleads:

— that the assessment made in the decision was erroneous and unfounded, in so far as the Commission selected for the grant of funding an application which had been submitted by an organisation with limited professional experience and insufficient technical capability and which was not an independent application, by contrast with those submitted by the other organisations and, in particular, with the application submitted by Alisei.

Lastly, Alisei claims compensation for the damage suffered.

Order of the Court of 7 January 2010 — van Hest v Council and Commission

(Case T-11/98) ([1])

(2010/C 63/88)

Language of the case: Dutch

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

([1]) OJ C 72, 7.3.1998.

Order of the Court of 14 January 2010 — Koninklijke Friesland Campina v Commission

(Case T-348/03 RENV) ([1])

(2010/C 63/89)

Language of the case: Dutch

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

([1]) OJ C 21, 24.1.2004.

Order of the General Court of 11 January 2010 — Reno Schuhcentrum v OHIM — Payless ShoeSource Worldwide (Payless Shoesource)

(Case T-173/07) ([1])

(2010/C 63/90)

Language of the case: English

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

([1]) OJ C 170, 21.7.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 15 December 2009 — Michail v Commission

(Case F-100/09)

(2010/C 63/91)

Language of the case: Greek

Parties

Applicant: Christos Michail (Brussels, Belgium) (represented by: C. Meidani, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the defendant's decision rejecting the applicant's application under Article 24 of the Staff Regulations by reason of the harassment of which the applicant claims to have been a victim.

Forms of order sought

— Annulment of the decision dated 9 March 2009, rejecting the application for assistance under Article 24 of the Staff Regulations;

— Order against the Commission to pay compensation for non-material damage amounting to EUR 30 000;

— Costs order against the European Commission.

Action brought on 15 December 2009 — AA v Commission

(Case F-101/09)

(2010/C 63/92)

Language of the case: French

Parties

Applicant: AA (Brussels, Belgium) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

By way of principal claim, partial annulment of the decision to classify the applicant in Grade AD6, Step 2, and an order against the defendant to pay compensation for the material and non-material damage caused. In the alternative, an order against the defendant to pay compensation for the material and non-material damage caused by the delay in recruiting the applicant.

Forms of order sought

— As the main claim, annulment of the part of the decision of 19 February 2009 establishing the final classification of the applicant, and an order against the defendant to pay damages of EUR 320 854 and interest by way of damages and for delay at the rate of 6.75 % in respect of the material and non-material damage suffered.

— In the alternative, an order against the defendant to pay damages of up to EUR 2 331 246 and interest by way of damages and for delay at the rate of 6.75 % in respect of the material and non-material damage caused by the delay in recruiting the applicant;

— Costs order against the European Commission.

Action brought on 4 January 2010 — Marcuccio v Commission

(Case F-1/10)

(2010/C 63/93)

Language of the case: Italian

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decisions rejecting applicant's requests for 100 % reimbursement of certain medical expenses.

Form of order sought

— Annul the decisions, in whatever form, by which the two claims for reimbursement of 25 December 2008 were rejected;

— annul the decision, in whatever form, by which the request of 27 December 2008 was rejected;

— annul, *quatenus opus est*, the decision, in whatever form, rejecting the applicant's complaint of 11 July 2009 against both decisions rejecting the two claims for reimbursement of 25 December 2008 and against the decision rejecting the request of 27 December 2008;

— annul, *quatenus opus est*, the note of 21 September 2009, received by the applicant on 26 October 2009, which was not written in Italian, and the Italian translation of that note received on 24 December 2009;

— order the Commission to pay to the applicant, without undue delay, by way of 100 % reimbursement of the medical expenses incurred by him for which he claimed reimbursement under the Joint Sickness Insurance Scheme, the sum of EUR 2 519.08, or such lesser sum as the Tribunal may consider just and equitable, together with interest on the aforementioned sum, from the first day of the fifth month after the date on which the addressee of the request of 27 December 2008 and the two claims for reimbursement of 25 December 2008 was in a position to inspect them, at the rate of 10 % per annum, with annual capitalisation, or at such rate with capitalisation and from such date as the Tribunal may consider appropriate;

— order the Commission to pay to the applicant, without undue delay, the difference between the amount paid by him in respect of medical expenses incurred between 1 December 2000 and 30 November 2008 inclusive, in relation to which the applicant made numerous claims for reimbursement under the Joint Sickness Insurance Scheme in the period between 1 December 2000 and 30 November 2008, and the amount reimbursed to him to date, or such amount as the Tribunal may consider just and equitable in that connection, together with interest on the difference between such amounts or on such amount as the Tribunal may consider just and equitable, from the first day of the fifth month after the date on which the addressee of the request of 27 December 2008 was in a position to inspect it, at the rate of 10 % per annum, with annual capitalisation, or at such rate with capitalisation and from such date as the Tribunal may consider appropriate;

— order the Commission to pay the costs.

Action brought on 7 January 2010 — Marcuccio v Commission

(Case F-2/10)

(2010/C 63/94)

Language of the case: Italian

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decisions rejecting the applicant's requests for 100 % reimbursement of certain medical expenses.

Form of order sought

— Annul the decision, in whatever form, by which the request of 17 March 2009 was rejected;

— annul, *quatenus opus est*, the note of 9 June 2009;

— annul, *quatenum opus est*, the decision, in whatever form, rejecting the applicant's complaint of 15 September 2009 against the decision rejecting the request of 17 March 2009;

— annul, *quatenus opus est*, the note of 22 September 2009;

— order the Commission to pay to the applicant the difference between the amount paid by him in respect of medical expenses incurred between 1 December 2000 and 17 March 2007 inclusive, in relation to which numerous claims for reimbursement were made in the period between 1 December 2000 and 17 March 2009, and the amount reimbursed to him to date under the Joint Sickness Insurance Scheme, or such amount as the Tribunal may consider just and equitable in that connection, together with interest on the difference between such amounts or on such amount as the Tribunal may consider just and equitable, from the first day of the fifth month after the date on which the addressee of the request of 17 March 2009 was in a position to inspect it, at the rate of 10 % per annum, with annual capitalisation, or at such rate with capitalisation and from such date as the Tribunal may consider appropriate.

— order the Commission to pay the costs.

Action brought on 18 January 2010 — Nastvogel v Council

(Case F-4/10)

(2010/C 63/95)

Language of the case: French

Parties

Applicant: Christiana Nastvogel (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, H.-N. Louis and E Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision establishing the applicant's staff report for the period from 1 July 2006 to 31 December 2007.

Forms of order sought

— Annulment of the decision establishing the applicant's staff report for the period from 1 July 2006 to 31 December 2007.

— Costs order against the Council of the European Union.

Action brought on 19 January 2010 — Nicole Clarke v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case F-5/10)

(2010/C 63/96)

Language of the case: German

Parties

Applicant(s): Nicole Clarke (Alicante, Spain) (represented by: H. Tettenborn, Rechtsanwalt)

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

Subject-matter and description of the proceedings

Application for first, a declaration of invalidity of the clause of the applicant's contract providing for the automatic termination of the employment contract in the event that the applicant is not selected in an external selection procedure for the OHIM, and second a declaration that selection procedures OHMI/AD/01/07, OHMI/AD/02/07, OHMI/AST/01/07 and OHMI/AST/02/02 have no effect on the contract of the applicant. In addition, application for damages.

Form of order sought

— The Tribunal should set aside the letter from OHIM of 12 March 2009 and the decisions of OHIM contained in it, according to which the applicant's employment relationship is terminated with eight months' notice as of 16 March 2009, and declare that the applicant's employment relationship with the OHIM continues and has not been terminated. To the extent that the Tribunal considers it necessary, the applicant claims that the Tribunal should also set aside further letters from OHIM, classified by the applicant as related, of 3 August 2009 (setting a deadline of three months) and of 9 October 2009 (rejection of complaint).

— The Tribunal should set aside or declare invalid the cancellation clause in Article 5 of the applicant's employment contract with OHIM, and in the alternative,

declare that the applicant's contract of employment cannot in future be terminated on the basis of the cancellation clause in her employment contract;

in the further alternative, declare that, in any event, the selection procedures referred to in the letter from OHIM of 12 March 2009 were not capable of entailing negative consequences on the basis of the cancellation clause.

— The Tribunal should order OHIM to pay to the applicant damages of an appropriate amount at the discretion of the Tribunal for the non-material damage arising from the decisions referred to in paragraph 1 of the application.

— In the event that, at the time of the Tribunal's decision, the actual employment of the applicant and/or the payment by OHIM of salary owed to the applicant have already ceased as a result of the unlawful conduct of OHIM despite the continued existence of an employment relationship:

the Tribunal should declare that OHIM is under an obligation to continue to employ the applicant under the same conditions as hitherto and to reinstate her and order OHIM to compensate the applicant fully for the material damage suffered by her, in particular by paying any outstanding salary and all other expenses incurred by the applicant as a result of OHIM's unlawful conduct (after deduction of unemployment benefit received),

in the alternative, in the event that, in the present situation, for legal or practical reasons the applicant is not reinstated or re-employed under the same conditions as hitherto, order OHIM to pay the applicant compensation for the unlawful termination of her employment corresponding to the difference between her actual lifetime earnings and the lifetime earnings the applicant would have achieved if the contract had remained in force, taking into account pension benefits and other entitlements.

— The Tribunal should order OHIM to pay the costs.

Action brought on 19 January 2010 — Yannick Munch v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case F-6/10)

(2010/C 63/97)

Language of the case: German

Parties

Applicant(s): Yannick Munch (Barcelona, Spain) (represented by: H. Tettenborn, Rechtsanwalt)

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

Subject-matter and description of the proceedings

Application for, first, a declaration of invalidity of the clause of the applicant's contract providing for the automatic termination of the employment contract in the event that the applicant is not selected in an external selection procedure for the OHIM, and second a declaration that selection procedures OHMI/AD/01/07, OHMI/AD/02/07, OHMI/AST/01/07 and OHMI/AST/02/02 have no effect on the contract of the applicant. In addition, application for damages.

Form of order sought

— The Tribunal should set aside the letter from OHIM of 12 March 2009 and the decisions of OHIM contained in it, according to which the applicant's employment relationship is terminated with seven months' notice as of 16 March 2009, and declare that the applicant's employment relationship with the OHIM continues and has not been terminated. To the extent that the Tribunal considers it necessary, the applicant claims that the Tribunal should also set aside a further letter from OHIM of 9 October 2009, classified by the applicant as related (rejection of complaint).

— The Tribunal should set aside or declare invalid the cancellation clause in Article 5 of the applicant's employment contract with OHIM, and in the alternative,

declare that the applicant's contract of employment cannot in future be terminated on the basis of the cancellation clause in his employment contract;

in the further alternative, declare that, in any event, the selection procedures referred to in the letter from OHIM of 12 March 2009 were not capable of entailing negative consequences on the basis of the cancellation clause.

— The Tribunal should order OHIM to pay to the applicant damages of an appropriate amount at the discretion of the Tribunal for the non-material damage arising from the decisions referred to in paragraph 1 of the application.

— The Tribunal should declare that OHIM is under an obligation to continue to employ the applicant under the same conditions as hitherto and to reinstate him and order OHIM to compensate the applicant fully for the material damage suffered by him, in particular by paying any outstanding salary and all other expenses incurred by the applicant as a result of OHIM's unlawful conduct (after deduction of unemployment benefit received),

in the alternative, in the event that, in the present situation, for legal or practical reasons the applicant is not reinstated or re-employed under the same conditions as hitherto, order OHIM to pay the applicant compensation for the unlawful termination of his employment corresponding to the difference between his actual lifetime earnings and the lifetime earnings the applicant would have achieved if the contract had remained in force, taking into account pension benefits and other entitlements;

at the least, however, pay the applicant compensation for the material damage caused to the applicant by the unlawful termination of his employment, corresponding to the difference between his income earned until 15 October 2009 and the income the applicant would have earned if the contract had run until 15 November 2009, taking account of pension benefits and other entitlements;

— The Tribunal should order OHIM to pay the costs.

European Union Civil Service Tribunal

EN

2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

CD-Rom formats will be replaced by DVD formats during 2010.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN