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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 148/01)

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

OJ C 134, 22.5.2010

Past publications

OJ C 113, 1.5.2010

OJ C 100, 17.4.2010

OJ C 80, 27.3.2010

OJ C 63, 13.3.2010

OJ C 51, 27.2.2010

OJ C 37, 13.2.2010

These texts are available on:

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

Designation of the Judge replacing the President as the Judge hearing applications for interim measures

(2010/C 148/02)

On 12 May 2010, the General Court decided, in accordance with Article 106 of the Rules of Procedure, to designate Judge Papasavvas to replace the President of the General Court for the purpose of deciding applications for interim measures where the latter is absent or prevented from dealing with them, in respect of the period from 1 July 2010 to 31 August 2010.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 15 April 2010 (reference for a preliminary ruling from the Handens Tingsrätt (Sweden)) — Criminal proceedings against Lars Sandström

(Case C-433/05) [1]

(Directives 94/25/EC and 2003/44/EC — Approximation of laws — Recreational craft — Prohibition of using personal watercraft on waters other than general navigable waterways — Articles 28 EC and 30 EC — Measures having equivalent effect — Access to the market — Impediment — Protection of the environment — Proportionality — Directive 98/34/EC — Article 8 — Amendment to national legislation — Obligation to notify — Conditions)

(2010/C 148/03)

Language of the case: Swedish

Referring court

Handens Tingsrätt

Party in the main proceedings

Lars Sandström

Re:

Preliminary ruling — Handens tingsrätt — Interpretation of Articles 28 EC to 30 EC and of Directive 2003/44/EC of the European Parliament and of the Council of 16 June 2003 amending Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft (OJ 2003 L 214, p. 18) — Prohibition of the use of maritime vehicles with outboard motors other than on general navigable waterways

Operative part of the judgment

The Court:

1. *Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft, as amended by Directive 2003/44/EC of the European Parliament and of the Council of 16 June 2003, does not preclude national regulations which, for reasons relating to the protection of the environment, prohibit the use of personal watercraft on waters other than designated waterways;*

2. *Articles 34 TFEU and 36 TFEU do not preclude such national regulations, provided that:*

   — *the competent national authorities are required to adopt the implementing measures provided for in order to designate waters other than general navigable waterways on which personal watercraft may be used;*

   — *those authorities have actually made use of the power conferred on them in that regard and designated the waters which satisfy the conditions laid down in the national regulations, and*

   — *such measures have been adopted within a reasonable period after the entry into force of those regulations.*

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

3. *Article 8(1) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations is to be interpreted as meaning that an amendment made to a draft technical regulation already notified to the European Commission, pursuant to the first subparagraph of that provision, and which contains, in relation to the notified draft, merely a relaxation of the conditions of use of the product in question and which, therefore, reduces the possible impact of the technical regulation on trade, is not a significant alteration of the draft for the purposes of the third subparagraph of that provision and need not be notified beforehand to the Commission. In the*

absence of such an obligation of prior notification, the failure to inform the Commission of a non-significant amendment to a technical regulation, prior to its adoption, does not affect the applicability of that regulation.

(1) OJ C 36, 11.2.2006.

Judgment of the Court (Grand Chamber) of 13 April 2010 (reference for a preliminary ruling from the Cour constitutionnelle — Belgium) — Nicolas Bressol, Anthony Wolf, Cédric Helie, Valérie Jabot, Claude Keusterickx, Denis Wilmet, Charlène Meurou, David Bacquart, Ayhar Gabriel Arslan, Yves Busegnies, Serge Clement, Sabine Gelaes, Etienne Dubuisson, Caroline Kinet, Dominique Peeters, Robert Lontie, Yannick Homerin, Isabelle Pochet, Walid Salem, Karin Van Loon, Olivier Leduc, Annick Van Wallendael, Dorothée Van Eecke, Olivier Ducruet, Céline Hinck, Nicole Arpigny, Eric De Gunsch, Thibaut De Mesmaeker, Mikel Ezquer, Constantino Balestra, Philippe Delince, Madeleine Merche, Jean-Pierre Saliez, Véronique de Mahieu, Muriel Alard, Danielle Collard, Pierre Castelein, Dominique De Crits, André Antoine, Christine Antierens, Brigitte Debert, Véronique Leloux, Patrick Parmentier, M. Simon, Céline Chaverot, Marine Guiet, Floriane Poirson, Laura Soumagne, Elodie Hamon, Benjamin Lombardet, Julie Mingant, Anne Simon, Anaïs Serrate, Sandrine Jadaud, Patricia Barbier, Laurence Coulon, Renée Hollestelle, Jacqueline Ghion, Pascale Schmitz, Sophie Thirion, Céline Vandeuren, Isabelle Compagnion v Gouvernement de la Communauté française

(Case C-73/08) (1)

(Citizenship of the Union — Articles 18 and 21 TFEU — Directive 2004/38/EC — Article 24(1) — Freedom to reside — Principle of non-discrimination — Access to higher education — Nationals of a Member State moving to another Member State in order to pursue studies there — Restriction on enrolment by non-resident students for university courses in the public health field — Justification — Proportionality — Risk to the quality of education in medical and paramedical matters — Risk of shortage of graduates in the public health sectors)

(2010/C 148/04)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Nicolas Bressol, Anthony Wolf, Cédric Helie, Valérie Jabot, Claude Keusterickx, Denis Wilmet, Charlène Meurou, David Bacquart, Ayhar Gabriel Arslan, Yves Busegnies, Serge Clement, Sabine Gelaes, Etienne Dubuisson, Caroline Kinet, Dominique Peeters, Robert Lontie, Yannick Homerin, Isabelle Pochet, Walid Salem, Karin Van Loon, Olivier Leduc, Annick Van Wallendael, Dorothée Van Eecke, Olivier Ducruet, Céline Hinck, Nicole Arpigny, Eric De Gunsch, Thibaut De Mesmaeker, Mikel Ezquer, Constantino Balestra, Philippe Delince, Madeleine Merche, Jean-Pierre Saliez, Véronique de Mahieu, Muriel Alard, Danielle Collard, Pierre Castelein, Dominique De Crits, André Antoine, Christine Antierens, Brigitte Debert, Véronique Leloux, Patrick Parmentier, M. Simon, Céline Chaverot, Marine Guiet, Floriane Poirson, Laura Soumagne, Elodie Hamon, Benjamin Lombardet, Julie Mingant, Anne Simon, Anaïs Serrate, Sandrine Jadaud, Patricia Barbier, Laurence Coulon, Renée Hollestelle, Jacqueline Ghion, Pascale Schmitz, Sophie Thirion, Céline Vandeuren, Isabelle Compagnion

Defendant: Gouvernement de la Communauté française

Re:

Reference for a preliminary ruling — Cour constitutionnelle (formerly Cour d'arbitrage), Belgium — Interpretation of the first paragraph of Article 12 and Article 18(1) EC, in conjunction with Articles 149 EC and 150 EC — *Numerus clausus* for enrolment by non-resident students in programmes of study in the area of public health offered by the universities and schools of higher education — Principle of non-discrimination — Justification and proportionality of restrictive measures — Maintenance of wide and democratic access to quality higher education for the population of the Member State concerned — Danger of a shortage of graduates in the occupational sectors concerned, constituting a danger to public health

Operative part of the judgment

1. *Articles 18 and 21 TFEU preclude national legislation, such as that at issue in the main proceedings, which limits the number of students not regarded as resident in Belgium who may enrol for the first time in medical and paramedical courses at higher education establishments, unless the referring court, having assessed all the relevant evidence submitted by the competent authorities, finds that that legislation is justified in the light of the objective of protection of public health.*

2. *The competent authorities may not rely on Article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, if the referring court holds that the decree of the French Community of 16 June 2006 which regulates the number of students in certain programmes in the first two years of undergraduate studies in higher education is not compatible with Articles 18 and 21 TFEU.*

(1) OJ C 116, 09.05.2008.

Judgment of the Court (Grand Chamber) of 13 April 2010 (reference for a preliminary ruling from the Landgericht Frankfurt am Main — Germany) — Wall AG v Stadt Frankfurt am Main, Frankfurter Entsorgungs- und Service GmbH (FES)

(Case C-91/08) ([1])

(Service concessions — Award procedure — Obligation of transparency — Subsequent replacement of a subcontractor)

(2010/C 148/05)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Wall AG

Defendants: Stadt Frankfurt am Main, Frankfurter Entsorgungs- und Service GmbH (FES)

Itervener: Deutsche Städte Medien (DSM) GmbH

Re:

Reference for a preliminary ruling — Landgericht Frankfurt am Main (Germany) — Interpretation of Articles 12 EC, 43 EC, 49 EC and 86(1) EC, the principles of transparency and equal treatment and the prohibition of discrimination, Article 2(1)(b) and (2) of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ 1980 L 195, p. 35), as amended by Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ 2000 L 193, p. 75), and Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Award of service concessions — Concept of public undertaking — Consequences for performance of the contract of failure to comply with the obligation of transparency on a subsequent change of subcontractor

Operative part of the judgment

1. *Where amendments to the provisions of a service concession contract are materially different in character from those on the basis of which the original concession contract was awarded, and are therefore such as to demonstrate the intention of the parties to renegotiate the essential terms of the contract, all necessary measures must be taken, in accordance with the national legal system of the Member State concerned, to restore the transparency of the procedure, which may extend to a new award procedure. If need be, a new award procedure should be organised in a manner appropriate to the specific features of the service concession involved, and should ensure that an undertaking located in another Member State has access to sufficient information on that concession before it is awarded.*

2. *Where an undertaking which is the holder of a concession concludes a contract for services within the scope of a concession it has been awarded by a regional or local authority, the obligation of transparency deriving from Articles 43 EC and 49 EC and from the principles of equal treatment and non-discrimination on grounds of nationality does not apply if that undertaking*

   — *was set up by the regional or local authority for the purpose of waste disposal and street cleaning but also operates in the market,*

   — *belongs to that regional or local authority to the extent of a 51 % holding, but decisions of shareholders can be taken only by a three-quarters majority of votes at a general meeting of the company,*

   — *has only a quarter of the members of its supervisory board, including the chairman, appointed by the regional or local authority, and*

   — *obtains more than half its turnover from bilateral contracts for waste disposal and street cleaning in the territory of that regional or local authority, which reimburses itself by means of municipal taxes on its residents.*

3. *The principles of equal treatment and non-discrimination on grounds of nationality enshrined in Articles 43 EC and 49 EC and the consequent obligation of transparency do not require the national authorities to terminate a contract or the national courts to make a restraining order in every case of an alleged breach of that obligation in connection with the award of service concessions. It is for the domestic legal system to regulate the legal procedures for safeguarding the rights which individuals derive from that obligation in such a way that those procedures are no less favourable that similar domestic procedures and do not make the exercise of those rights practically impossible or excessively difficult. The obligation of transparency flows directly from*

Articles 43 EC and 49 EC, which have direct effect in the domestic legal systems of the Member States and take precedence over any contrary provision of national law.

(1) OJ C 142, 07.06.2008.

Judgment of the Court (Third Chamber) of 15 April 2010 (Reference for a preliminary ruling from the Pest Megyei Bíróság (Hungary)) — CIBA Speciality Chemicals Central and Eastern Europe Szolgáltató, Tanácsadó és Keresdedelmi Kft. v Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály

(Case C-96/08) (1)

(Freedom of establishment — Direct taxation — Vocational training levy — Basis for calculating the levy to be paid by undertakings established in the national territory — Account taken of the wage costs of workers employed in a branch established in another Member State — Double taxation — Whether it is possible to reduce gross liability to the levy)

(2010/C 148/06)

Language of the case: Hungarian

Referring court

Pest Megyei Bíróság

Parties to the main proceedings

Applicant: CIBA Speciality Chemicals Central and Eastern Europe Szolgáltató, Tanácsadó és Keresdedelmi Kft.

Defendants: Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály

Re:

Reference for a preliminary ruling — Pest Megyei Bíróság — Interpretation of Articles 43 EC and 48 EC — National rules requiring account to be taken, for the purposes of determining the basis for the vocational training levy of a company established on national territory, of the wage costs of workers employed in a branch established in another Member State, even if the company in question is subject to an equivalent charge, by reason of the employment of those workers, in that other Member State

Operative part of the judgment

Articles 43 EC and 48 EC preclude Member State legislation under which an undertaking, which has its seat in that State, is obliged to pay a levy such as the vocational training levy, the amount of which is calculated on the basis of its wage costs including those wage costs incurred at a branch of that undertaking established in another Member State, if, in practice, such an undertaking is prevented, with regard to that branch, from benefiting from the possibilities provided for in that legislation of reducing that levy or from having access to those possibilities.

(1) OJ C 142, 7.6.2008.

Judgment of the Court (First Chamber) of 15 April 2010 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — E. Friz GmbH v Carsten von der Heyden

(Case C-215/08) (1)

(Consumer protection — Contracts negotiated away from business premises — Scope of Directive 85/577/EEC — Entry into a closed-end real property fund established in the form of a partnership — Cancellation)

(2010/C 148/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: E. Friz GmbH

Defendant: Carsten von der Heyden

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 1(1) and 5(2) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31) — Scope — Consumer joining a closed-end real property fund in the form of a partnership whose essential purpose is the investment of capital — Legal effects of cancellation.

Operative part of the judgment

1. *Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises applies to a contract, concluded in circumstances such as those at issue in the main proceedings, concerning a consumer's entry to a closed-end real property fund established in the form of a partnership when the principal purpose of joining is not to become a member of that partnership, but is a means of capital investment;*

2. *Article 5(2) of the Directive does not preclude, in circumstances such as those of the main proceedings, a national law according to which, in the event of cancellation of membership of a closed-end real property fund established in the form of a partnership, entered into following a doorstep transaction, the consumer has a claim against that partnership, to his severance balance, calculated on the basis of the value of his interest at the date of his retirement from membership of that fund, and may therefore get back less than the value of his capital contribution or have to participate in the losses of that fund.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (First Chamber) of 15 April 2010 — Claudia Gualtieri v European Commission

(Case C-485/08 P) ([1])

(Appeal — Seconded national expert — Daily subsistence allowance — Principle of equal treatment)

(2010/C 148/08)

Language of the case: Italian

Parties

Appellant: Claudia Gualtieri (represented by: P. Gualtieri and M. Gualtieri, avvocati)

Other party to the proceedings: European Commission (represented by: J. Currall, Agent)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 10 September 2008 in Case T-284/06 *Gualtieri* v *Commission*, by which that court dismissed the application for annulment of the decision of the Commission of 30 January 2006 rejecting the applicant's claim for adjustment, following her divorce, of the amount of the allowances payable under Article 17 of Commission Decision C(2002) 1559 of 30 April 2002 laying down the rules applicable to national experts on secondment, as amended.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Gualtieri to pay the costs.*

([1]) OJ C 32, 7.2.2009.

Judgment of the Court (Fourth Chamber) of 15 April 2010 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Verbraucherzentrale Nordrhein-Westfalen eV v Handelsgesellschaft Heinrich Heine GmbH

(Case C-511/08) ([1])

(Directive 97/7/EC — Consumer protection — Distance contracts — Right of withdrawal — Consumer charged with the cost of delivering the goods)

(2010/C 148/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verbraucherzentrale Nordrhein-Westfalen eV

Defendant: Handelsgesellschaft Heinrich Heine GmbH

Re:

Preliminary ruling — Bundesgerichtshof — Interpretation of Article 6(1), second sentence, and Article 6(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19) — National legislation which allows the costs of delivering the goods to be charged to the consumer if he withdraws from the contract

Operative part of the judgment

Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts are to be interpreted as precluding national legislation which, in the context of a distance contract, requires the cost of delivering the goods to be charged to the consumer after he exercises his right of withdrawal.

([1]) OJ C 32, 7.2.2009.

Judgment of the Court (Third Chamber) of 15 April 2010 (reference for a preliminary ruling from the Tribunal de grande instance de Paris (France)) — Fundación Gala-Salvador Dalí, Visual Entidad de Gestión de Artistas Plásticos v Société Auteurs dans les arts graphiques et plastiques, Juan-Leonardo Bonet Domenech, Eulalia-María Bas Dalí, María del Carmen Domenech Biosca, Antonio Domenech Biosca, Ana-María Busquets Bonet, Mónica Busquets Bonet

(Case C-518/08) ([1])

(Approximation of laws — Intellectual property — Copyright and related rights — Resale right for the benefit of the author of an original work of art — Directive 2001/84/EC — Persons entitled to receive royalties after the death of the author of the work of art — Concept of 'those entitled' — National legislation retaining, for a period of 70 years after the death of the author, the resale right solely for the benefit of the author's heirs, to the exclusion of all legatees and successors in title — Whether that legislation is compatible with Directive 2001/84)

(2010/C 148/10)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicants: Fundación Gala-Salvador Dalí, Visual Entidad de Gestión de Artistas Plásticos

Defendants: Société Auteurs dans les arts graphiques et plastiques, Juan-Leonardo Bonet Domenech, Eulalia-María Bas Dalí, María del Carmen Domenech Biosca, Antonio Domenech Biosca, Ana-María Busquets Bonet, Mónica Busquets Bonet

Re:

Reference for a preliminary ruling — Tribunal de grande instance de Paris — Interpretation of Article 6 and Article 8(2) and (3) of Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ 2001 L 272, p. 32) — Beneficiaries of the resale right after the death of the author of the work — Whether a national law which retains, for a period of 70 years, the resale right for the benefit of the heirs of the author, to the exclusion of all legatees and successors in title complies with Directive 2001/84/EC

Operative part of the judgment

Article 6(1) of Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art must be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which reserves the benefit of the resale right to the artist's heirs at law alone, to the exclusion of testamentary legatees. That being so, it is for the referring court, for the purposes of applying the national provision transposing Article 6(1) of Directive 2001/84, to take due account of all the relevant rules for the resolution of conflicts of laws relating to the transfer on succession of the resale right.

([1]) OJ C 32, 7.2.2009.

Judgment of the Court (Third Chamber) of 15 April 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden, Gerechtshof Amsterdam — Netherlands) — X Holding B.V. v Staatssecretaris van Financiën (Case C-538/08), Oracle Nederland BV v Inspecteur van de Belastingdienst Utrecht-Gooi (Case C-33/09)

(Joined Cases C-538/08 and C-33/09) ([1])

(Sixth VAT Directive — Right to deduct input tax — National legislation excluding certain categories of goods and services from the right to deduct — Option for Member States to retain rules excluding the right to deduct which were in existence when the Sixth VAT Directive entered into force — Amendment after that directive had entered into force)

(2010/C 148/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden, Gerechtshof Amsterdam

Parties to the main proceedings

Applicants: X Holding BV (Case-538/08), Oracle Nederland BV (C-33/09)

Defendants: Staatssecretaris van Financiën (Case C-538/08), Inspecteur van de Belastingdienst Utrecht-Gooi (Case C-33/09)

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden, Den Haag — Interpretation of Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ English special edition 1967, p. 16) and of Articles 6(2) and 17(2) and (6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the legislation of the Member States concerning turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exclusion of the right of deduction — Power of the Member States to maintain exclusions existing upon the entry into force of the Sixth Directive — Rules pre-dating the Sixth Directive providing for the exclusion of the right of deduction for categories of goods and services provided for use in private transport — Definition of those categories

Operative part of the judgment

1. *Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax, and Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as not precluding the tax legislation of a Member State from excluding from deduction value added tax which relates to categories of expenditure concerning, on the one hand, the provision of 'private transport', 'food', 'drink', 'accommodation' and 'opportunities for recreation' to the members of staff of a taxable person and, on the other hand, the provision of 'business gifts' or 'other gifts';*

2. *Article 17(6) of Sixth Directive 77/388 must be interpreted as not precluding national legislation, enacted before the Sixth Directive entered into force, under which a taxable person may deduct value added tax paid on the acquisition of certain goods and services used partly for private purposes and partly for professional purposes not in full but only in proportion to their use for professional purposes.*

3. *Article 17(6) of Sixth Directive 77/388 must be interpreted as not precluding an amendment by a Member State, after the entry into force of that directive, to an existing exclusion from the right of deduction, designed in principle to restrict the scope of that exclusion but in respect of which it cannot be ruled out that, in an individual case in a particular tax year, the scope of that exclusion might be extended by reason of the flat-rate nature of the amended scheme.*

([1]) OJ C 55, 7.3.2009.
OJ C 90, 18.4.2009.

Judgment of the Court (Fourth Chamber) of 15 April 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Friedrich G. Barth v Bundesministerium für Wissenschaft und Forschung

(Case C-542/08) ([1])

(Freedom of movement for persons — Workers — Equal treatment — Special length-of-service increment for university professors provided for by national legislation held to be incompatible with Community law by a judgment of the Court — Limitation period — Principles of equivalence and effectiveness)

(2010/C 148/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Friedrich G. Barth

Defendant: Bundesministerium für Wissenschaft und Forschung

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interepretation of Art. 39 EC and Art. 7(1) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475) — National legislation providing for a special length-of-service increment for university professors, the incompatibility of which with Community law, in its earlier version, was established in Case C-224/01 *Köbler* — Amended legislation which, by suspending the time-limit for taking advantage of the rights at issue only as from the date of that Court judgment, disadvantages professors who were deprived of that increment by reason of the previous legislation incompatible with Community law

Operative part of the judgment

European Union law does not preclude legislation such as that at issue in the main proceedings making claims for payment of special length-of-service increments — which a worker who had exercised his rights to freedom of movement was denied prior to the delivery of the judgment of 30 September 2003 in Case C-224/01 Köbler, on the basis of a domestic law incompatible with Community law — subject to a three-year limitation rule.

([1]) OJ C 90, 18.4.2009.

Judgment of the Court (Second Chamber) of 15 April 2010 — Ralf Schräder v Community Plant Variety Office (CPVO)

(Case C-38/09 P) ([1])

(Appeal — The Court's power of review — Regulations (EC) Nos 2100/94 and 1239/95 — Agriculture — Community plant variety rights — Distinctness of the candidate variety — Variety a matter of common knowledge — Proof — Plant variety SUMCOL 01)

(2010/C 148/13)

Language of the case: German

Parties

Appellant: Ralf Schräder (represented by: T. Leidereiter, Rechtsanwalt)

Other party to the proceedings: Community Plant Variety Office (CPVO) (represented by: M. Ekvad and B. Kiewiet, acting as Agents, and by A. von Mühlendahl, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Seventh Chamber) of 19 November 2008 in Case T-187/06 *Schräder* v *CPVO*, by which that Court dismissed the action brought by the appellant against the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 2 May 2006 dismissing the appeal against the decision of the CPVO concerning the rejection of the application for Community plant variety rights in respect of the plant variety 'SUMCOL 01' — Distinctness of the candidate variety — Factors which can be taken into consideration in order to determine whether a variety is a matter of common knowledge — Incorrect assessment of the facts — Infringement of the right to be heard before a court

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

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

([1]) OJ C 82, 04.04.2009.

Judgment of the Court (First Chamber) of 15 April 2010 — European Commission v French Republic

(Case C-64/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/53/EC — Articles 5(3) and (4), 6(3) and 7(1) — Defective transposition)

(2010/C 148/14)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and A. Adam, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt all the laws and regulations necessary to ensure the complete and correct implementation of Article 2(13), Article 4(2)(a), Article 5(3) and (4), Article 6(3), Article 7(1) and Article 8(3) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ 2000 L 269, p. 34) — Definitions of 'dismantling information' for out-of use vehicles and 'stripping' during their treatment — Obligation on vehicle manufacturers and component producers to provide dismantling information, in the form of manuals or by means of electronic media, for each type of new vehicle put on the market

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws and regulations necessary to ensure the correct and complete transposition of Article 2.13, Article 4(2)(a), Article 5(3) and (4), in so far as, for the latter paragraph, demolishers which have accepted to take back an end-of-life vehicle for destruction are excluded from the system of compensation for costs of treatment, Article 7(1) and Article 8(3) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles, the French Republic has failed to fulfil its obligations under that directive;*

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

3. *Orders the European Commission and the French Republic to bear their own respective costs.*

([1]) OJ C 90, 18.4.2009.

Judgment of the Court (Fifth Chamber) of 15 April 2010 — European Commission v Ireland

(Case C-294/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2006/43/EC — Statutory audits of annual accounts and consolidated accounts — Failure to transpose completely within the prescribed period — Failure to communicate the measures to transpose the directive)

(2010/C 148/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: G. Braun and A.-A. Gilly, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt or to communicate, within the prescribed period, the measures necessary to comply with 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 (OJ 2006 L 157, p. 87)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to comply with 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 and, in any event, by failing to communicate to the Commission of the European Communities the provisions of national law considered to contribute to ensuring such compliance, Ireland has failed to fulfil its obligations under Article 53 of that directive;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 220, 12.9.2009.

Order of the Court (Fifth Chamber) of 5 February 2010 — Volker Mergel, Klaus Kampfenkel, Burkart Bill, Andreas Herden v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-80/09 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(c) — Refusal to register — Word mark Patentconsult — Absolute ground for refusal — Descriptive character — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 148/16)

Language of the case: German

Parties

Appellants: Volker Mergel, Klaus Kampfenkel, Burkart Bill, Andreas Herden (represented by: G.P. Friderichs, Rechtsanwalt)

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

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 16 December 2008 in Case T-335/07 *Mergel and Others* v *OHIM*, by which the Court dismissed the action for annulment of the decision of the Fourth Board of Appeal of OHIM of 25 June 2007, dismissing the action against the decision of the examiner to refuse the registration of the Community word mark 'Patentconsult' for the goods and services within Classes 35, 41 and 42 — Distinctive character of a mark which consists exclusively of signs or indications which may serve, in trade, to designate the characteristics of the goods or services concerned

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Mergel, Kampfenkel, Bill and Herden to pay the costs.*

(1) OJ C 90, 18.4.2009.

Order of the Court (Fifth Chamber) of 18 March 2010 — Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-282/09 P) (1)

(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(b) and (c) — Refusal to register — Overall assessment with regard to the goods and services referred to in the application for registration — Goods and services constitute homogeneous groups — Appeal in part manifestly unfounded and in part manifestly inadmissible)

(2010/C 148/17)

Language of the case: French

Parties

Appellant: Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) (represented by: P. Greffe and L. Paudrat, avocats)

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

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 20 May 2009 in Joined Cases T-405/07 and T-406/07 *CFCMCEE* v *OHIM*, by which the Court dismissed the actions brought by the appellant against the decision of the First Board of Appeal of OHIM of 10 July and 12 September 2007, dismissing its actions against the examiner's refusal to register as trade marks of the word signs PAYWEB CARD and P@YWEB CARD for the goods and services within Classes 9, 36 and 38 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 — Infringement of Article 7(1)(b) and Article 73 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Need for a separate examination of each of the grounds of refusal to register set out in Article 7(1) of that regulation — The requirement of reasons for the refusal to register with regard to each of the goods and services referred to in the application for registration — Goods and services constitute homogeneous groups

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders the Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) to pay the costs.*

(1) OJ C 233, 26.9.2009.

Reference for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 29 December 2009 — Generalbundesanwalt beim Bundesgerichtshof v E and F

(Case C-550/09)

(2010/C 148/18)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Prosecutor: Generalbundesanwalt beim Bundesgerichtshof

Defendants: E, F

Questions referred

1. Taking account, if appropriate, of the amended procedure resulting from the decision of the Council of the European Union of 28 June 2007 (2007/445/EC), ([1]) is the listing on the basis of Article 2 of Council Regulation (EC) No 2580/2001 ([2]) of 27 December 2001 of an organisation which has not brought proceedings contesting the decisions concerning it to be regarded as effective from the outset even if basic procedural guarantees were infringed in listing it?

2. Are Articles 2 and 3 of Council Regulation (EC) No 2580/2001 of 27 December 2001 to be interpreted as meaning that funds, financial assets and economic resources are made available to a legal person, group or entity included in the list referred to in Article 2(3) of the regulation, that there is involvement in such provision or that there is participation in activities to circumvent Article 2 of the regulation even where the provider is, himself, a member of the legal person, group or entity?

3. Are Articles 2 and 3 of Council Regulation (EC) No 2580/2001 of 27 December 2001 to be interpreted as meaning that funds, financial assets and economic resources are made available to a legal person, group or entity included in the list referred to in Article 2(3) of the regulation, that there is involvement in such provision or that there is participation in activities to circumvent Article 2 of the regulation even where the asset to be provided already is, if only in the broader sense, accessible to the legal person, group or entity?

([1]) Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58).

([2]) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

Appeal brought on 12 February 2010 by France Télécom SA against the judgment delivered on 30 November 2009 in Joined Cases T-427/04 and T-17/05 *French Republic and France Télécom v Commission*

(Case C-81/10 P)

(2010/C 148/19)

Language of the case: French

Parties

Appellant: France Télécom SA (represented by: S. Hautbourg, L. Olza Moreno, L. Godfroid and M. van der Woude, avocats)

Other parties to the proceedings: European Commission, French Republic

Form of order sought

— Set aside the judgment under appeal;

— give final judgment as to the substance in accordance with Article 61 of the Statute of the Court of Justice and grant the form of order sought by France Télécom at first instance;

— alternatively refer the case back to the General Court; and

— order the Commission to pay all the costs.

Pleas in law and main arguments

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

By its first ground of appeal, France Télécom invokes the misapplication by the Court of First Instance (now 'the General Court') of the concept of State aid when it accepts that categorisation in the present case while, on the other hand, admitting that the existence (or non-existence) of any advantage did not depend in the present case on the inherent characteristics of the regime at issue, but on factors extraneous to the regime itself, the effects of which could be determined only *ex post*. The General Court thus misconstrued the very nature of the system of prior scrutiny of State aid provided for by Articles 107 TFEU and 108 TFEU, an *ex ante* system based on an objective analysis of the inherent characteristics of regimes on the basis of prior notification of national authorities.

By its second ground of appeal, the appellant submits that the General Court misapplied the concept of advantage, in that it refused to carry out a comprehensive analysis of all the provisions laid down by the special tax regime. That regime, which was established by Law No 90-568, provided for two specific methods of taxation: (i) the 'fixed levy', during the period 1991 to 1993, which resulted in the overtaxation of the appellant as compared with the position under the general law, and (ii) the general law, during the period 1994 to 2002, which had a favourable fiscal effect as far as the appellant was concerned. By refusing to compare the effects of the special tax regime as a whole with the general law *in respect of both of the periods at issue*, the General Court made a number of errors of law.

By its third ground of appeal, the appellant alleges a breach of the principle of legitimate expectations, in that the General Court refused to hold that the Commission's silence, in its decision of 8 February 2005 concerning La Poste, as regards the established tax regime, could have given rise to an expectation on the appellant's part as to the conformity of the measures concerned under the rules on State aid. Furthermore, the General Court had failed to take account of certain exceptional circumstances specific to the present case which justified the application of the principle of legitimate expectations.

By its fourth ground of appeal, France Télécom invokes a failure to state reasons for the judgment, in that the General Court substituted its own reasoning for that of the Commission in response to its arguments relating to breach of the limitation principle with regard to State aid. Thus, according to the appellant, the 10-year limitation period laid down under Article 15(1) of Regulation (EC) No 659/1999 [1] should have been calculated from 2 July 1990, the date on which Law No 90-568 established the tax regime at issue, and not from the date on which the aid was actually granted to the beneficiary.

By its fifth and final ground of appeal, the appellant submits, lastly, that the General Court erred in law by holding that the Commission was entitled to quantify the aid on the basis of a 'range' and to order its recovery without committing a breach of the principle of legal certainty, whereas it was impossible to determine the real advantage which it could have enjoyed. Furthermore, the General Court had failed to respond to all of the appellant's arguments alleging breach of the principle of legal certainty.

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

Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 5 March 2010 — European Air Transport SA v Collège d'Environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

(Case C-120/10)

(2010/C 148/20)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: European Air Transport SA

Defendants: Collège d'Environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

Questions referred

1. Must the concept of 'operating restriction' in Article 2(e) of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports [1] be interpreted as including rules imposing limits on noise levels, as measured on the ground, to be complied with by aircraft overflying territories located near the airport and providing that any person responsible for exceeding those limits may incur a penalty, it being understood that aircraft are required to keep to the designated routes and comply with the landing and take-off procedures laid down by other administrative authorities without taking account of the need to comply with those noise limitations?

2. Must Articles 2(e) and 4(4) of Directive 2002/30 be interpreted as meaning that all 'operating restrictions' must be 'performance-based', or do those provisions allow other provisions, relating to environmental protection, to restrict access to the airport on the basis of the noise level, as measured on the ground, to be observed by aircraft overflying territories located near the airport, it being provided that any person responsible for exceeding that level may incur a penalty?

3. Must Article 4(4) of Directive 2002/30 be interpreted as precluding the existence, in addition to performance-based operating restrictions based on the noise emitted by aircraft, of rules on environmental protection which impose limits on noise levels, as measured on the ground, to be complied with by aircraft overflying territories located near the airport?

4. Must Article 6(2) of Directive 2002/30 be interpreted as precluding rules which impose limits on noise levels, as measured on the ground, to be complied with by aircraft overflying territories located near the airport, and which provide that any person exceeding those limits may incur a penalty, where those rules are capable of being infringed by aircraft which comply with the standards in Volume 1, part II, chapter 4 of Annex 16 of the Convention on International Civil Aviation?

(1) OJ 2002 L 85, p. 40.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 8 March 2010 — Waltraud Brachner v Pensionsversicherungsanstalt

(Case C-123/10)

(2010/C 148/21)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Waltraud Brachner

Defendant: Pensionsversicherungsanstalt

Questions referred

1. Is Article 4 of Directive 79/7/EEC (1) to be interpreted as meaning that the annual pension adjustment system (valorisation) provided for in the law on the statutory pension insurance scheme falls within the scope of the prohibition of discrimination in Article 4(1) of that directive?

2. If the answer to the first question is in the affirmative:

   Is Article 4 of Directive 79/7/EEC to be interpreted as precluding a national provision concerning an annual pension adjustment whereby a potentially smaller increase is provided for a particular category of pensioners receiving a small pension than for other pensioners, in so far as the provision in question adversely affects 25 % of male pensioners, but 57 % of female pensioners and there are no objective grounds for discrimination?

3. If the answer to the second question is in the affirmative:

   May a disadvantage for female pensioners arising from the annual increase in their pensions be justified by the earlier age at which they become entitled to a pension and/or the longer period during which they receive a pension and/or by the fact that the standard amount for a minimum income, provided for under social law (balancing supplement standard amount), was disproportionately increased, where the provisions concerning the payment of the minimum income provided for under social law (balancing supplement) require account to be taken of the pensioner's other income and the income of a spouse living in the common household, whereas in the case of other pensioners the pension increase takes place without account being taken of the pensioner's other income or the income of the pensioner's spouse?

(1) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

Reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 12 March 2010 — Corman SA v Bureau d'intervention et de restitution belge (BIRB)

(Case C-131/10)

(2010/C 148/22)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Corman SA

Defendant: Bureau d'intervention et de restitution belge (BIRB)

Questions referred

1. Can the provisions of [Commission] Regulation No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs, [1] a regulation which implements [Council] Regulation No 1255/99 [of 17 May 1999] on the common organisation of the market in milk and milk products, [2] be regarded as constituting sectoral Community rules derogating from Article 3(1) of Regulation No 2988/95 of 18 December 1995 [3] and preventing the application of national provisions on limitation?

2. Must Article 3(3) of Regulation No 2988/95 of 18 December 1995 be construed as only applying to instances where the irregularity is committed by the recipient of the subsidy, whilst the general rule of limitation after four years applies in all cases of irregularities committed by persons with whom the recipient has entered into contracts, in view of the maximum period of four years applicable to the [Community] rules governing contracting parties under the common organisation of the market in milk and milk products?

[1] OJ 1997 L 350, p. 3.
[2] OJ 1999 L 160, p. 48.
[3] Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Action brought on 15 March 2010 — European Commission v Kingdom of Belgium

(Case C-133/10)

(2010/C 148/23)

Language of the case: French

Parties

Applicant: European Commission (represented by: V. Peere and K. Walkerová, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/81/EC of 28 November 2005 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, [1] and in any event by not communicating such measures to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2005/81/EC expired on 19 December 2006. As at the date on which the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not notified the Commission thereof.

[1] OJ 2005 L 312, p. 47.

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 15 March 2010 — The European Communities v The Région de Bruxelles-Capitale

(Case C-137/10)

(2010/C 148/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: The European Communities

Defendant: The Région de Bruxelles-Capitale

Questions referred

1. Must Article 282 of the Treaty establishing the European Community, in particular the phrase '[t]o this end, the Community shall be represented by the Commission', contained in the second sentence of that article, be interpreted as meaning that an institution is properly authorised to represent the Community simply by virtue of the existence of an authority by which the Commission has delegated to that institution its powers of representation in legal proceedings, irrespective of whether or not that authority appointed by name a natural person empowered to represent the delegate institution?

2. If not, can a national court such as the Conseil d'Etat verify the admissibility of an appeal lodged by a European institution which has been duly authorised to bring legal proceedings by the Commission, pursuant to the second sentence of Article 282 of the Treaty establishing the European Community, by examining whether that institution is represented by the appropriate natural person empowered to bring proceedings before the national court?

3. In the alternative, and in the event of an affirmative reply to the foregoing question, must the first sentence of the first subparagraph of Article 207(2) of the Treaty establishing the European Community, more specifically the phrase 'assisted by a Deputy Secretary-General responsible for the running of the General Secretariat', be interpreted as meaning that the Deputy Secretary-General of the Council may properly represent the Council for the purposes of bringing proceedings before the national courts?

Reference for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 15 March 2010 — DP Grup EOOD v Direktor na Agentsia 'Mituitsi'

(Case C-138/10)

(2010/C 148/25)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: DP Grup

Defendant: Direktor na Agentsia 'Mituitsi'

Questions referred

1. In the circumstances of the main proceedings, is Article 63 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1] to be interpreted as requiring the customs authority to carry out only an examination of the conformity of the customs declaration with the requirements of Article 62 of that regulation by merely undertaking an examination of documents to the extent specified in Article 68 of the Regulation, and to take a decision concerning acceptance of the customs declaration solely on the basis of the documents presented, where a doubt has arisen as to the correctness of the tariff code of the goods and an expert report is necessary in order to determine that code?

2. In the circumstances of the main proceedings, is the decision of the customs authority concerning immediate acceptance of the customs declaration pursuant to Article 63 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code to be regarded as a decision of a customs authority in accordance with Article 4(5) in conjunction with Article 8(1), first indent, of the Customs Code, and this in respect of the entire content of the customs declaration made, when at the same time the following circumstances are present:

   (a) the customs authority's decision concerning acceptance of the customs declaration was taken solely on the basis of the documents presented together with the customs declaration;

   (b) when the required examinations were being carried out prior to acceptance of the customs declaration, the suspicion existed that the tariff code declared for the goods was not correct;

   (c) when the required examinations were being carried out prior to acceptance of the customs declaration, the information on the content of the goods declared, which is relevant for the purposes of correct determination of the tariff code, was incomplete;

   (d) during the examination prior to acceptance of the declaration, a sample was taken in order that an expert report could be drawn up for the purpose of correct determination of the tariff code of the goods?

3. In the circumstances of the main proceedings, is Article 63 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code to be interpreted as meaning that

   (a) it allows the lawfulness of acceptance of the customs declaration to be contested before a court after release of the goods, or that

   (b) acceptance of the customs declaration is not contestable, because it merely records the declaration of the goods to the customs authorities and determines the date on which the customs debt on importation is incurred and does not constitute a decision by the customs authority as to the correct tariff classification and the amount of duties due on the basis of that declaration?

(1) OJ L 302, p. 1;

Reference for a preliminary ruling from the Kammergericht Berlin (Germany) lodged on 18 March 2010 — Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts v JPMorgan Chase Bank N.A., Frankfurt Branch

(Case C-144/10)

(2010/C 148/26)

Language of the case: German

Referring court

Kammergericht Berlin

Parties to the main proceedings

Applicants: Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts

Defendant: JPMorgan Chase Bank N.A., Frankfurt Branch

Questions referred

1. Does the scope of Article 22(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (1) also extend to proceedings in which a company or legal person objects, with regard to a claim made against it stemming from a legal transaction, that decisions of its organs which led to the conclusion of the legal transaction are ineffective as a result of infringements of its articles of association?

2. If the question under (1) is answered in the affirmative, is Article 22(2) of Regulation No 44/2001 also applicable to legal persons governed by public law in so far as the effectiveness of the decisions of its organs are subject to review by civil courts?

3. If the question under (2) is answered in the affirmative, is the court of the Member State last seised in legal proceedings required to stay the proceedings pursuant to Article 27 of Regulation No 44/2001 even if it is claimed that, as a result of a decision of the organs of one of the parties which is ineffective under its articles of association, an agreement conferring jurisdiction is likewise ineffective?

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

Reference for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 22 March 2010 — Eva-Maria Painer v Standard VerlagsGmbH, Axel Springer AG, Süddeutsche Zeitung GmbH, SPIEGEL-Verlag Rudolf AUGSTEIN GmbH & Co KG, Verlag M. DuMont Schauberg Expedition der Kölnischen Zeitung GmbH & Co KG

(Case C-145/10)

(2010/C 148/27)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Eva-Maria Painer

Defendants: Standard VerlagsGmbH, Axel Springer AG, Süddeutsche Zeitung GmbH, SPIEGEL-Verlag Rudolf AUGSTEIN GmbH & Co KG, Verlag M. DuMont Schauberg Expedition der Kölnischen Zeitung GmbH & Co KG

Questions referred

1. Is Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to be interpreted as meaning that its application and therefore joint legal proceedings are not precluded where actions brought against several defendants for copyright infringements identical in substance are based on differing national legal grounds the essential elements of which are nevertheless identical in substance — such as applies to all European States in proceedings for a prohibitory injunction, not based on fault, in claims for reasonable remuneration for copyright infringements and in claims in damages for unlawful exploitation?

2. (a) Is Article 5(3)(d) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, ([2]) in the light of Article 5(5) of that directive, to be interpreted as meaning that its application is not precluded where a press report quoting a work or other protected matter is not a literary work protected by copyright?

   (b) Is Article 5(3)(d) of the directive, in the light of Article 5(5) thereof to be interpreted as meaning that its application is not precluded where the name of the author or performer is not attached to the work or other protected matter quoted?

3. (a) Is Article 5(3)(e) of Directive 2001/29, in the light of Article 5(5) thereof, to be interpreted as meaning that in the interests of criminal justice in the context of public security its application requires a specific, current and express appeal for publication of the image on the part of the security authorities, i.e. that publication of the image must be officially ordered for search purposes, or otherwise an offence is committed?

   (b) If the answer to question 3a should be in the negative: are the media permitted to rely on Article 5(3)(e) of the directive even if, without such a search request being made by the authorities, they should decide, of their own volition, whether images should be published 'in the interests of public security'?

   (c) If the answer to question 3b should be in the affirmative: is it then sufficient for the media to assert after the event that publication of an image served to trace a person or is it always necessary for there to be a specific appeal to readers to assist in a search in the investigation of an offence, which must be directly linked to the publication of the photograph?

4. Are Article 1(1) of Directive 2001/29 in conjunction with Article 5(5) thereof and Article 12 of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), as revised on 28 September 1979, particularly in the light of Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 20 March 1952 and Article 17 of the Charter of Fundamental Rights of the European Union, ([3]) to be interpreted as meaning that photographic works and/or photographs, particularly portrait photos, are afforded 'weaker' copyright protection or no copyright protection at all against adaptations because, in view of their 'realistic image', the degree of formative freedom is too minor?

([1]) OJ 2001 L 12, p. 1.
([2]) OJ 2001 L 167, p. 10.
([3]) OJ 2000 C 364, p. 1.

Action brought on 26 March 2010 — European Commission v Republic of Austria

(Case C-146/10)

(2010/C 148/28)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Marghelis and M. Adam, Agents)

Defendant: Republic of Austria

Form of order sought

The Commission requests the Court:

— to declare that, by failing to adopt in full 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 by failing to notify the Commission in full of those provisions, the Republic of Austria has failed to fulfil its obligations under Directive 2006/21/EC;

— to order the Republic of Austria pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 1 May 2008.

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

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, made on 29 March 2010 — British Sugar plc v Rural Payments Agency, an Executive Agency of the Department for Environment, Food and Rural Affairs

(Case C-147/10)

(2010/C 148/29)

Language of the case: English

Referring court

High Court of Justice (England and Wales), Chancery Division

Parties to the main proceedings

Applicant: British Sugar plc

Defendant: Rural Payments Agency, an Executive Agency of the Department for Environment, Food and Rural Affairs

Questions referred

1. Is Commission Regulation (EC) No 1193/2009 (1) invalid, having regard to the judgments of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 Zuckerfabrik Jülich AG v Hauptzollamt Aachen [2008] ECR I-3231 and joined cases C-175/07 to C-184/07 SAFBA [2008] ECR I-184*?

2. Is Commission Regulation (EC) No 1193/2009 otherwise invalid, having regard to the legal basis on which it has been adopted, namely Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (2)?

3. In calculating the compensation payable in respect of overpayments of sugar production levies in the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006, is the applicable currency exchange rate and date of conversion a matter to be determined by European Union law? If so, is Article 6 of Commission Regulation (EC) No 1193/2009 to be interpreted as requiring compensation to be paid by reference to the currency exchange rates that applied at the time the overpaid levy was originally calculated? If so, is Article 6 of Commission Regulation (EC) No 1193/2009 valid?

4. In relation to interest:

   (i) Does EU law preclude a person in the position of the Claimant from recovering interest on sums overpaid as a result of an invalid Commission regulation from the national authority competent to collect production levies in circumstances where the national authority competent to collect production levies is precluded from recovering interest on the corresponding sums repayable to it from the Commission?

   (ii) If the answer to (i) above is yes, does the EU legislation concerning own resources (Decision 2000/597/EC, Euratom (3), and its implementing Regulation (EC) No 1150/2000 (4)), properly construed, preclude a national authority competent to collect production levies from recovering interest on sums repayable to it from the Commission in the circumstances of the present case?

   (iii) If the answer to (i) above is no: does EU law preclude a national court or authority from exercising any discretion it may have to award no interest in such circumstances when making an award to a person in the position of the Claimant?

(1) Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006
OJ L 321, p. 1

(2) OJ L 178, p. 1

(3) Council Decision of 29 September 2000 on the system of the European Communities' own resources
OJ L 253, p. 42

(4) 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 L 130, p. 1

Reference for a preliminary ruling from the Diikitiko Efetio Thessalonikis (Greece) lodged on 29 March 2010 — Zoe Chatzi v Ipourgos Ikonomikon

(Case C-149/10)

(2010/C 148/30)

Language of the case: Greek

Referring court

Diikitiko Efetio Thessalonikis

Parties to the main proceedings

Applicant: Zoe Chatzi

Defendant: Ipourgos Ikonomikon

Questions referred

1. Can clause 2.1 of Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, interpreted in conjunction with Article 24 of the Charter of Fundamental Rights of the European Union relating to the rights of the child — and in light of the enhanced level of protection of those rights which has been brought about by the Charter of Fundamental Rights — be regarded as also creating in parallel a right to parental leave for the child, so that, if twins have been born, the grant of one period of parental leave constitutes an infringement of Article 21 of the Charter of Fundamental Rights of the European Union on the grounds of discrimination on the basis of birth and a restriction on the right of twins that is not permitted by the principle of proportionality?

2. If the answer to the preceding question is in the negative, does the term 'birth' in clause 2.1 of Directive 96/34/EC mean that a double right to the grant of parental leave is created for working parents, that right being based on the fact that pregnancy with twins results in two successive births of children (twins), or does it mean that parental leave is granted for one birth, irrespective of how many children are thereby born, without any infringement in the latter case of equality before the law under Article 20 of the Charter of Fundamental Rights of the European Union?

Reference for a preliminary ruling from the Højesteret (Denmark) lodged on 31 March 2010 — Unomedical A/S v Skatteministeriet

(Case C-152/10)

(2010/C 148/31)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Unomedical A/S

Defendant: Skatteministeriet

Questions referred

1. Is a dialysis bag, manufactured from plastic, which is specially designed for and can only be used with a dialyser to be classified under

   — Chapter 90, CN heading 9010 90 30, as a 'part' and/or 'accessory' for a dialyser, see chapter note 2(b) to Chapter 90 of the Common Customs Tariff

   or

   — Chapter 39, CN heading 3926 90 99, as plastics or articles thereof?

2. Is a urine drainage bag, manufactured from plastic, which is specially designed for and therefore can only be, and in fact is, used exclusively in connection with a catheter, to be classified under

   — Chapter 90, CN heading 9018 39 90 30, as a 'part' and/or 'accessory' for a catheter, see chapter note 2(b) to Chapter 90 of the Customs Tariff

   or

   — Chapter 39, CN heading 3926 90 99, as plastics or articles thereof?

Appeal brought on 6 April 2010 by Mr Karen Goncharov against the judgment of the General Court (Fourth Chamber) delivered on 21 January 2010 in Case T-34/07 Karen Goncharov v Office for Harmonisation in the Internal Market (Trade Marks and Designs); other party to the proceedings before the Board of Appeal of OHIM: DSB

(Case C-156/10 P)

(2010/C 148/32)

Language of the case: German

Parties

Appellant: Karen Goncharov (represented by: A. Späth and G.N. Hasselblatt, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), DSB

Form of order sought

The appellant requests the Court to:

— Set aside the judgment of the General Court of 21 January 2010 (Case T-34/07);

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 December 2006 (Case R 1330/2005-2); and

— Order OHIM to pay the costs of the proceedings before the Court of Justice, the General Court and the Board of Appeal, as well as the appellant's costs.

Pleas in law and main arguments

The judgment of the General Court of 21 January 2010 (Case T-34/07) should be set aside, because it infringes the provision on the relative grounds for refusal of registration contained in Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark).

The General Court misapplied the general principles concerning the assessment of the likelihood of confusion. In particular, it failed to take the circumstances of the present case fully into account, by disregarding the fact that the marks at issue consist in acronyms.

The General Court bases its decision finally only on a general rule according to which the consumer usually attaches greater weight to the first part of words. Thus, the difference in the form of the letter 'W' in the contested mark is not sufficient to eliminate the visual and aural similarity.

The General Court thereby ignored the fact that the marks in conflict are not words, but acronyms. The reasoning of the judgment shows that the General Court failed to undertake a comprehensive examination of the likelihood of confusion, relying instead only on a general rule, which is moreover not applicable at all to the present case.

The consumer is in fact accustomed in the case of acronyms to directing his attention specifically to each single letter. General rules concerning word marks consisting in words may not therefore be applied without hesitation to word marks consisting in acronyms.

Reference for a preliminary ruling from the Tribunal de grande instance de Paris (France) lodged on 6 April 2010 — Olivier Martinez, Robert Martinez v MGN Ltd

(Case C-161/10)

(2010/C 148/33)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicants: Olivier Martinez, Robert Martinez

Defendant: MGN Limited

Question referred

Must Articles 2 and 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] be interpreted to mean that a court or tribunal of a Member State has jurisdiction to hear an action brought in respect of an infringement of personal rights allegedly committed by the placing on-line of information and/or photographs on an internet site published in another Member State by a company domiciled in that second State — or in a third Member State, but in any event a State other than the first Member State —:

— on the sole condition that the internet site can be accessed from the first Member State,

— on the sole condition that there is between the harmful act and the territory of the first Member State a link which is sufficient, substantial or significant and, in that case, whether that link can be created by:

— the number of hits on the page at issue made from the first Member State, as an absolute figure or as a proportion of all hits on that page,

— the residence, or nationality, of the person who complains of the infringement of his or her personal rights or, more generally, of the persons concerned,

— the language in which the information at issue is broadcast or any other factor which may demonstrate the site publisher's intention to address specifically the public of the first Member State,

— the place where the events described occurred and/or where the photographic-images put on line were taken,

— other criteria?

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

Order of the President of the Second Chamber of the Court of 19 March 2010 — European Commission v Kingdom of Belgium

(Case C-307/08) [1]

(2010/C 148/34)

Language of the case: French

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

[1] OJ C 272, 25.10.2008

Order of the President of the First Chamber of the Court of 12 March 2010 (reference for a preliminary ruling from the Landgericht Tübingen — Germany) — FGK Gesellschaft für Antriebsmechanik mbH v Notar Gerhard Schwenkel, in the presence of: Präsidentin des Landgericht Tübingen

(Case C-450/08) [1]

(2010/C 148/35)

Language of the case: German.

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

[1] OJ C 69, 21.03.2009.

Order of the President of the Third Chamber of the Court of 5 March 2010 (reference for a preliminary ruling from the Court of Appeal — United Kingdom) — The Motor Insurers' Bureau v Helphire (UK) Limited, Angel Assistance Limited

(Case C-26/09) [1]

(2010/C 148/36)

Language of the case: English.

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

[1] OJ C 282, 21.11.2009

Order of the President of the Sixth Chamber of the Court of 10 March 2010 — European Commission v Republic of Poland

(Case C-172/09) [1]

(2010/C 148/37)

Language of the case: Polish

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

[1] OJ C 167, 18.07.2009.

Order of the President of the Court of 11 March 2010 — European Commission v Republic of Poland

(Case C-223/09) [1]

(2010/C 148/38)

Language of the case: Polish

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

[1] OJ C 233, 26.09.2009.

Order of the President of the Court of 26 February 2010 — European Commission v Hellenic Republic

(Case C-370/09) [1]

(2010/C 148/39)

Language of the case: Greek

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

[1] OJ C 267, 07.11.2009.

Order of the President of the Court of 19 March 2010 (references for preliminary rulings from the tribunal de grande instance de Nanterre — France) — Tereos, Vermandoise Industries SA, Sucreries de Toury et Usines annexes SA, Roquette Frères SA, Sucreries & Distilleries de Souppes — Ouvré Fils SA, Cruistal Union, Lesaffre Frères SA, Sucreries Bourdon, SAFBA, Sucreries du Marquenterre SA v Directeur général des douanes et droits indirects, Receveur principal des douanes et droits indirects de Gennevilliers

(Joined Cases C-411/09 to C-420/09) [1]

(2010/C 148/40)

Language of the case: French

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

[1] OJ C 312, 19.12.2009.

GENERAL COURT

Judgment of the General Court of 28 April 2010 — Amann & Söhne and Cousin Filterie v Commission

(Case T-446/05) [1]

(Competition — Agreements, decisions and concerted practices — European market in industrial thread — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Concept of a single infringement — Definition of the market — Fines — Upper limit for the fine — Gravity and duration of the infringement — Mitigating circumstances — Cooperation — Proportionality — Equal treatment — Rights of the defence — Guidelines on the method of setting fines)

(2010/C 148/41)

Language of the case: German

Parties

Applicants: Amann & Söhne GmbH & Co. KG (Bönnigheim, Germany) and Cousin Filterie SAS (Wervicq-Sud, France) (represented by: A. Röhling, M. Dietrich and C. Horstkotte, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and K. Mojzesowicz, acting as Agents, assisted by G. Eickstädt, lawyer)

Re:

Application for annulment of Commission Decision C(2005) 3452 of 14 September 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.337 — PO/Thread), as amended by Commission Decision C(2005) 3765 of 13 October 2005, and, in the alternative, for reduction of the fine imposed on the applicants by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Amann & Söhne GmbH & Co. KG and Cousin Filterie SAS to pay the costs.*

[1] OJ C 60, 11.3.2006.

Judgment of the General Court of 28 April 2010 — Oxley Threads v Commission

(Case T-448/05) [1]

(Competition — Agreements, decisions and concerted practices — European market in thread for automotive customers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation — Proportionality — Equal treatment — Guidelines on the method of setting fines)

(2010/C 148/42)

Language of the case: English

Parties

Applicant: Oxley Threads Ltd (Ashton-Under-Lyne, Lancashire, United Kingdom) (represented by: G. Peretz, Barrister, M. Rees and K. Vernon, Solicitors)

Defendant: European Commission (represented by: N. Khan and K. Mojzesowicz, acting as Agents)

Re:

Application for partial annulment of Commission Decision C(2005) 3452 of 14 September 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.337 — PO/Thread), as amended by Commission Decision C(2005) 3765 of 13 October 2005 and, in the alternative, for reduction of the fine imposed on the applicant by that decision

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Oxley Threads Ltd to pay the costs.*

[1] OJ C 48, 25.2.2006.

Judgment of the General Court of 28 April 2010 — BST v Commission

(Case T-452/05) [1]

(Competition — Agreements, decisions and concerted practices — European market in industrial thread — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation — Non-contractual liability — Disclosure of confidential information — Damage — Causal link)

(2010/C 148/43)

Language of the case: Dutch

Parties

Applicant: Belgian Sewing Thread (BST) NV (Deerlijk, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission (represented by: A. Bouquet and K. Mojzesowicz, acting as Agents)

Re:

Application for (i) partial annulment of Commission Decision C(2005) 3452 of 14 September 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.337 — PO/Thread), as amended by Commission Decision C(2005) 3765 of 13 October 2005 and, in the alternative, reduction of the fine imposed on the applicant by that decision and (ii) an order that the Commission pay compensation, on the basis of the non-contractual liability of the European Community, for the loss which the applicant has suffered

Operative part of the judgment

The Court:

1. *Fixes at EUR 856 800 the fine imposed on Belgian Sewing Thread (BST) NV by Article 2 of Commission Decision C(2005) 3452 of 14 September 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.337 — PO/Thread);*

2. *For the rest, dismisses the application for annulment;*

3. *Dismisses the claim for damages.*

4. *Orders BST to bear 90 % of its own costs and to pay 90 % of the costs incurred by the European Commission, and the European Commission to bear 10 % of its own costs and to pay 10 % of the costs incurred by BST.*

[1] OJ C 60, 11.3.2006.

Judgment of the General Court of 28 April 2010 — Gütermann and Zwicky v Commission

(Joined Cases T-456/05 and T-457/05) [1]

(Competition — Agreements, decisions and concerted practices — European market in industrial thread — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fines — Gravity of the infringement — Actual impact on the market — Duration of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Guidelines on the method of setting fines)

(2010/C 148/44)

Language of the case: German

Parties

Applicants: Gütermann AG (Gutach-Breisgau, Germany) (Case T-456/05); and Zwicky & Co. AG (Wallisellen, Switzerland) (Case T-457/05) (represented by: J. Burrichter, B. Kasten and S. Orlikowski-Wolf, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, M. Schneider and K. Mojzesowicz, and subsequently by F. Castillo de la Torre and K. Mojzesowicz, acting as Agents)

Re:

Application for annulment of Commission Decision C(2005) 3452 of 14 September 2005 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.337 — PO/Thread), as amended by Commission Decision C(2005) 3765 of 13 October 2005 and, in the alternative, for reduction of the fine imposed on the applicants by that decision

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Gütermann AG et Zwicky & Co. AG to pay the costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the General Court of 13 April 2010 — Esotrade v OHIM — Segura Sánchez (YoKaNa)

(Case T-103/06) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark YoKaNa — Earlier Community and national figurative marks YOKONO — Relative grounds for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 148/45)

Language of the case: Spanish

Parties

Applicant: Esotrade SA (Madrid, Spain) (represented by: J. de Rivera Lamo de Espinosa and J.E. Astiz Suárez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Antonio Segura Sánchez (Alicante, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 January 2006 (Case R 217/2004-2), concerning opposition proceedings between Antonio Segura Sánchez and Esotrade SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 121, 20.5.2006.

Judgment of the General Court of 15 April 2010 — Cabel Hall Citrus v OHIM — Casur (EGLÉFRUIT)

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

(Community trade mark — Invalidity proceedings — Community word mark EGLÉFRUIT — Earlier Community word mark UGLI and earlier national figurative mark 'UGLI Fruit — but the affliction is only skin deep' — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94 (now Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009))

(2010/C 148/46)

Language of the case: English

Parties

Applicant: Cabel Hall Citrus Ltd (George Town, Grand Cayman, Cayman Islands) (represented by: C. Rogers, barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: Casur S. Coop. Andaluza (Viator, Spain)

Re:

Action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 September 2007 (Case R 293/2007-1), relating to invalidity proceedings between Cabel Hall Citrus Ltd and Casur S.C. Andaluza.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Cabel Hall Citrus Ltd to pay the costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the General Court of 20 April 2010 — Rodd & Gunn Australia v OHIM (Representation of a dog)

(Case T-187/08) [1]

(Community trade mark — Figurative Community trade mark representing a dog — Cancellation of the mark upon expiry of the registration — Request for renewal of the mark — Application for restitutio in integrum — Article 78 of Regulation (EC) No 40/94 (now Article 81 of Regulation (EC) No 207/2009))

(2010/C 148/47)

Language of the case: English

Parties

Applicant: Rodd & Gunn Australia Ltd (Wellington, New Zealand) (represented by: B. Brandreth, Barrister, and N. Jenkins, Solicitor)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 March 2008 (Case R 1245/2007-4) relating to an application for *restitutio in integrum*.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rodd & Gunn Australia Ltd to pay the costs.*

[1] OJ C 171, 5.7.2008.

Judgment of the General Court of 21 April 2010 — Coin v OHIM — Dynamiki Zoi (Fitcoin)

(Case T-249/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark 'Fitcoin' — Earlier national, international and Community figurative marks 'coin' — Relative ground for refusal — Relevant public — 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 148/48)

Language of the case: English

Parties

Applicant: Coin SpA (Venice, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dynamiki Zoi AE (Athens, Greece)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 April 2008 (Case R 1429/2007-1), relating to opposition proceedings between Coin SpA and Dynamiki Zoi AE.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 15 April 2008 (Case R 1429/2007-1);*

2. *Orders OHIM to pay the costs.*

[1] OJ C 209, 15.8.2008.

Judgment of the General Court of 22 April 2010 — Italy v Commission

(Cases T-274/08 and T-275/08) [1]

(EAGF — Clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the EAGF — Sums recoverable from the Italian Republic where there is non-recovery within the time-limits specified — Meaning of financial consequences — Receipt of interest — Article 32(5) of Regulation (EC) No 1290/2005)

(2010/C 148/49)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, lawyer)

Defendant: European Commission (represented by: F. Jimeno Fernández and P. Rossi, acting as Agents)

Re:

Application, in Case T-274/08, for partial annulment of Commission Decision 2008/396/EC of 30 April 2008 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) for the 2007 financial year (OJ 2008 L 139, p. 33) in so far as it includes interest on the sums charged to the budget of the Italian State under Article 32(5) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), and, in Case T-275/08, for partial annulment of Commission Decision 2008/394/EC of 30 April 2008 on the clearance of the accounts of certain paying agencies in Germany, Italy and Slovakia concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year (OJ 2008 L 139, p. 22) in so far as it includes interest on the sums charged to the budget of the Italian State under Article 32(5) of Regulation No 1290/2005.

Operative part of the judgment

The Court:

1. *Joins Cases T-274/08 and T-275/08 for the purposes of judgment;*

2. *Dismisses the actions;*

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

[1] OJ C 223, 30.8.2008.

Judgment of the General Court of 21 April 2010 — Peek & Cloppenburg and van Graaf v OHIM — Queen Sirikit Institute of Sericulture (Thai Silk)

(Case T-361/08) [1]

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark Thai Silk — Earlier national figurative trade mark representing a winged creature — Admissibility of the action — 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 148/50)

Language of the case: German

Parties

Applicants: Peek & Cloppenburg (Hamburg, Germany); and van Graaf GmbH & Co. KG (Vienna, Austria) (represented by: V. von Bomhard, A. Renck, T. Dolde and J. Pause, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: The Queen Sirikit Institute of Sericulture, Office of the Permanent Secretary, Ministry of Agriculture and Cooperatives, Thailand (Bangkok, Thailand), replaced by the Office of the Permanent Secretary, The Prime Minister's Office, Thailand (represented by: A. Kockläuner, lawyer)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 10 June 2008 (Case R 1677/2007-4), relating to opposition proceedings between Peek & Cloppenburg and the Office of the Permanent Secretary, The Prime Minister's Office, Thailand.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders Peek & Cloppenburg and van Graaf GmbH & Co. KG to pay the costs.*

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 14 April 2010 — Laboratorios Byly v OHIM — Ginis (BILLY'S Products)

(Case T-514/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark BILLY'S Products — Earlier Community and national word marks BYLY and byly — Relative grounds for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 148/51)

Language of the case: Spanish

Parties

Applicant: Laboratorios Byly SA (Barberà del Vallès, Spain) (represented by: L. Plaza Fernández-Villa, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vasileios Ginis (Athens, Greece)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 15 September 2008 (Case R 469/2008-2), concerning opposition proceedings between Laboratorios Byly SA and Vasileios Ginis.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 15 September 2008 (Case R 469/2008-2);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 19, 24.1.2009.

Judgment of the General Court of 21 April 2010 — Schunk v OHIM (Presentation of part of a chuck)

(Case T-7/09) ([1])

(Community trade mark — Application for a Community trade mark in the form of a presentation of part of a chuck with three grooves — Absolute ground for refusal — Lack of distinctive character — Lack of distinctive character acquired by use — Article 7(1)(b) and (3) of Regulation (EC) No 40/94 (now Article 7(1)(b) and (3) of Regulation (EC) No 207/2009))

(2010/C 148/52)

Language of the case: German

Parties

Applicant: Schunk GmbH & Co KG Spann- und Greiftechnik (Lauffen am Neckar, Germany) (represented by: C. Koppe-Zagouras, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 31 October 2008 (Case R 1109/2007-1) concerning the registration of the sign in the form of a presentation of part of a chuck with three grooves as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Schunk GmbH & Co KG Spann- und Greiftechnik to pay the costs.*

([1]) OJ C 69, 21.3.2009.

Judgment of the General Court of 28 April 2010 — Claro v OHIM — Telefónica (Claro)

(Case T-225/09) [1]

(Community trade mark — Opposition proceedings — Application for the Community three-dimensional mark Claro — Earlier Community word mark CLARO — Inadmissibility of the appeal brought before the Board of Appeal — Articles 59 and 62 of Regulation (EC) No 40/94 (now Articles 60 and 64 of Regulation (EC) No 207/2009) — Rule 49(1) of Regulation (EC) No 2868/95)

(2010/C 148/53)

Language of the case: Spanish

Parties

Applicant: Claro, SA (São Paulo, Brazil) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Telefónica SA (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 26 February 2009 (Case R 1079/2008-2), relating to opposition proceedings between Telefónica, SA and BCP S/A

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Claro, SA to pay the costs.*

[1] OJ C 180, 1.8.2009.

Order of the General Court of 13 April 2010 — Diputación Foral de Álava and Others v Commission

(Joined Cases T-529/08 to T-531/08) [1]

(Application for annulment — State aid — Tax advantages — Recovery of State aid declared unlawful — Application of compound interest scheme — Confirmatory act — Inadmissibility)

(2010/C 148/54)

Language of the case: Spanish

Parties

Applicants: Territorio Histórico de Álava — Diputación Foral de Álava and Others (Spain) (Case T-529/08); Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (Spain) (Case T-530/08); and Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (Spain) (Case T-531/08) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Defendant: European Commission (represented by: C. Urraca Caviedes, acting as Agent)

Re:

Application for annulment of the Commission's letter of 2 October 2008, communicating to the applicants that is necessary to apply compound interest in the context of the recovery of State aid declared unlawful by Commission Decisions 2002/820/EC, 2002/894/EC and 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in respectively Álava, Guipúzcoa and Vizcaya in the form of a tax credit amounting to 45 % of investments (respectively, OJ 2002 L 296, p. 1, OJ 2002 L 314, p. 26, and OJ 2003 L 17, p. 1), and Commission Decisions 2002/892/EC, 2002/540/EC and 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in respectively Álava, Guipúzcoa and Vizcaya (respectively, OJ 2002 L 314, p. 1, OJ 2002 L 174, p. 31 and OJ 2002 L 279, p. 35), which were upheld by the judgments of the General Court in Joined Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01 *Diputación Foral de Álava and Others* v *Commission* [2009] ECR II-0000; and Joined Cases T-230/01 and T-267/01 to T-269/01 *Diputación Foral de Álava and Others* v *Commission* [2009] ECR II-0000.

Operative part of the order

1. *The actions are dismissed as inadmissible.*

2. *Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya shall each bear their own costs and pay the costs incurred by the European Commission.*

(1) OJ C 32, 7.2.2009.

Order of the General Court of 23 March 2010 — Marcuccio v Commission

(Case T-16/09 P) (1)

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

(2010/C 148/55)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-87/07 *Marcuccio* v *Commission*, not yet published in the ECR, seeking the annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*

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

(1) OJ C 55, 7.3.2009.

Action brought on 6 April 2010 — Ayadi v Commission

(Case T-527/09)

(2010/C 148/56)

Language of the case: English

Parties

Applicant: Chafiq Ayadi (represented by: H. Miller Solicitor, B. Emmerson and S. Cox, Barristers)

Defendant: European Commission

Form of order sought

— annul Commission Regulation No 954/2009, in so far as it applies to the applicant;

— order the Commission to pay the costs.

Pleas in law and main arguments

In the present case, the applicant seeks the partial annulment of Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision.

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

First, the applicant submits that the Commission misused its power by including the applicant in Annex I to Regulation No 881/2002 without having carefully and impartially examined all the relevant elements of the applicant's case.

Second, the applicant claims that the contested regulation was adopted in breach of the applicant's right to effective judicial review since the regulation lacked of evidential basis and, in consequence, the Court is unable even to begin to exercise its duty of considering that evidence.

Third, the applicant argues that the contested regulation was adopted in breach of the applicant's right of defence. He submits that the Commission failed to provide a statement of evidence but only provided the allegations in the Sanctions Committee statement. Without the evidence, the applicant was unable to address the Commission on defects in that evidence or misunderstandings.

Fourth, he claims that the contested regulation, freezing the applicant's assets both retrospectively and, for an indefinite period, prospectively, constitutes an unjustified restriction on his fundamental right of property.

Action brought on 5 March 2010 — Italy v Commission

(Case T-117/10)

(2010/C 148/57)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato, and G. Palmieri, avvocato dello Stato)

Defendant: European Commission

Form of order sought

— Annul Decision No C(2009) 10350 of the European Commission of 22 December 2009 concerning the cancellation of part of the contribution from the European Regional Development Fund allocated to Italy for the operational programme POR Puglia Obiettivo 1 2000-06.

— Order the European Commission to pay the costs.

Pleas in law and main arguments

The Italian Republic challenges before the General Court of the European Union Decision No C(2009) 10350 of the European Commission of 22 December 2009, notified on 23 December 2009, concerning the cancellation of part of the contribution from the European Regional Development Fund allocated to Italy for the operational programme POR Puglia Obiettivo 1 2000-06.

In support of its challenge, the Italian Republic relies on the following grounds:

First ground: infringement of Article 39(2)(c) and (3) of Regulation No 1260/99 [1] and Article 4 of Regulation No 438/2001. [2] It is submitted in this connection that the Community auditors concluded that there were systemic deficiencies in first-level controls on the basis of certain irregularities which were not identified by those controls in the award and implementation of public works contracts. While the contested decision did not in fact refute the analytical counter-arguments put forward by the Region, which ruled out the possibility of systemic deficiencies, it nevertheless made a correction of 10 % under Article 39 of Regulation No 1260/99, as if the first-level regional control systems did not comply with the requirements of Article 4 of Regulation No 438/2001. The Commission thus also infringed the principle of partnership.

Second ground: infringement of Article 39(2)(c) and (3) of Regulation No 1260/99 and Article 10 of Regulation No 438/2001. The applicant points out that the second ground is similar to the first ground but concerns the second-level checks provided for in Article 10 of Regulation No 438/2001, which the Community audit also found to be systematically deficient due to the irregularities that had not been pointed out which were identified in certain samples, in spite of the fact that all those irregularities were disputed in analyses carried out by the Region supported by factual and legal arguments which were not rebutted in the contested decision.

Third ground: failure to state reasons and further infringement of Article 39(2) and (3) of Regulation No 1260/99. The contested decision is vitiated as a result of failure to state reasons because the conclusion that there were systemic deficiencies justifying a 10 % correction is based on the situation as it appeared to the auditors in 2007 and 2008, while it totally disregards the quantitative and qualitative progress documented by the Region up to the end of 2009 and the counter arguments to the specific points made by the auditors referred to in connection with the previous grounds. No reasons were therefore given for the Commission's conclusion that there was a serious threat to the Fund.

Fourth ground: infringement of Article 12 of Regulation No 1260/99, the first paragraph of Article 4 of Regulation No 438/2001 and Article 258 TFEU and lack of competence on the part of the defendant. According to the applicant, the Commission attached major importance to the alleged infringements — which are of no great importance — of the rules governing the award of public contracts. However, according to a correct interpretation of Article 12 of Regulation 1260/99 and Article 4 of Regulation No 438/2001, systematic infringement of those rules cannot result directly in a correction being made but must instead give rise to the instigation of an infringement procedure, with a corresponding suspension of payments, pursuant to Article 32(3)(f) of Regulation No 1260/99, in respect of the measures to which the infringement relates.

(1) Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).
(2) Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

Action brought on 10 March 2010 — USFSPEI and Others v Council

(Case T-122/10)

(2010/C 148/58)

Language of the case: French

Parties

Applicants: Union syndicale fédérale des services publics européens et internationaux (USFSPEI) (Brussels, Belgium), Giuseppe Calo (Luxembourg, Luxembourg), Jean-Pierre Tytgat (Mamer, Luxembourg) (represented by: J.-N. Louis, A. Coolen, B. Cambier, L. Renders, S. Pappas, avocats)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remunerations and pensions of officials and other servants of the European Union and the correction coefficients applied thereto, which is nevertheless to remain in force until the Council has adopted a new regulation, in accordance with the proposal of the Commission, to take effect on 1 July 2009;

— order the Council to pay the applicants Calo and Tytgat, as well as other officials and servants of the European Union, arrears in remuneration and pensions which they are entitled to from 1 July 2009 onwards, together with default interest from the date those arrears were due, at the rate laid down by the ECB for its main refinancing operations, increased by two percentage points;

— order the Council to pay the USF one Euro by way of symbolic compensation for the moral harm suffered through the wrongful act in the form of the adoption of the illegal Regulation No 1296/2009 of 23 December 2009.

Pleas in law and main arguments

By the present action, the applications seek the annulment of Council Regulation (EU, EURATOM) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto. (1)

In support of their action, the applicants allege that Regulation No 1296/2009 is illegal, that there has been an abuse of process and an infringement of the principles of sincere cooperation and coherence flowing from Article 4(3) TEU.

The applicants also submit that there has been an infringement of Articles 65 and 65a of the Statute, Articles 1 and 3 of Annex XI thereof as well as the principle of parallel action, the principle of legitimate expectations and the principle of 'patere legem quam ipse fecisti'.

Finally, the applicants submit that there has been an infringement of the obligation to state reasons and the principle of proportionality.

(1) OJ 2009 L 348, p.10

Action brought on 18 March 2010 — Amecke Fruchtsaft v OHIM — Uhse (69 Sex up)

(Case T-125/10)

(2010/C 148/59)

Language in which the application was lodged: German

Parties

Applicant: Amecke Fruchtsaft GmbH & Co. KG (Menden, Germany) (represented by: R. Kaase and J.-C. Plate, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Beate Uhse Einzelhandels GmbH (Flensburg, Germany)

Form of order sought

— Declare the application, together with the annexes submitted, made against the decision of the First Board of Appeal of OHIM of 12 January 2010 in Case R 612/2009-1, admissible; and

— Annul the contested decision on the ground of incompatibility with Article 8(1)(b) of Regulation (EC) No 40/94; ([1])

— Order the defendant to pay the costs of the proceedings, including the costs before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Beate Uhse Einzelhandels GmbH

Community trade mark concerned: Word mark '69 Sex up' for goods and services in Classes 3, 5, 9, 29, 30, 32, 33, 38 and 41 (application No 5 418 108)

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

Mark or sign cited in opposition: German word mark 'sex:h:up' No 305 31 669.9 for goods in Classes 5, 29, 30 and 32

Decision of the Opposition Division: To uphold the opposition for all disputed goods

Decision of the Board of Appeal: To rescind the contested decision and reject the opposition

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 40/94, since there is a likelihood of confusion between the conflicting marks

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

Action brought on 22 March 2010 — Saupiquet v Commission

(Case T-131/10)

(2010/C 148/60)

Language of the case: French

Parties

Applicant: Saupiquet (Courbevoie Cedex, France) (represented by: R. Ledru, lawyer)

Defendant: European Commission

Form of order sought

— annul, in full, Commission Decision No REM 07/08 of 16 December 2009;

— order the European Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2009) 10005 final of 16 December 2009, informing the French authorities that the repayment to the applicant of import duties on cans of tuna originating in Thailand is not justified (file REM 07/08).

In support of its action, the applicant submits that the Commission failed to fulfil its obligation to guarantee that importers, established in France or in other Member States in which customs offices are legally closed on Sundays, who lodged their customs declarations on Monday 2 July 2007 would have equal and non-discriminatory access to quota No 09.2005 for the period 2007/2008,

— by not taking, in the circumstances of the present case in which that quota was opened on Sunday, 1 July 2007, regulatory measures that would have made it possible to treat those importers in a manner that is equal and free from discrimination;

— by not postponing the date of opening of that quota until Monday, 2 July 2007, even though the quota in question was very critical.

Action brought on 22 March 2010 — Communauté de communes de Lacq v Commission

(Case T-132/10)

(2010/C 148/61)

Language of the case: French

Parties

Applicant: Communauté de communes de Lacq (Mourenx, France) (represented by: J. Daniel, lawyer)

Defendant: European Commission

Form of order sought

— Order the European Union to pay the applicant the sum of EUR 10 000 000 because of the unlawfulness and deficiency of the Commission's behaviour in the light of the breach, by ACETEX, of its undertakings;

— order the European Union to pay the applicant EUR 25 000 by way of non -recoverable costs;

— order the European Union to pay the costs.

Pleas in law and main arguments

By its action, the Communauté de communes de Lacq (Community of the communes of Lacq) seeks damages for the harm allegedly suffered as a result of the Commission's decision to declare compatible with the common market and the functioning of the EEA Agreement the concentration involving the acquisition, by Celanese Corporation, of control of Acetex Corporation, without acknowledging the legal value to an alleged undertaking by Celanese, in particular the commitment to continue the operation of the Acetex factory in Pardies for five years (Case COMP/M.3625 — Blackstone/Acetex).

In support of its action, the applicant submits that the Commission infringed the principles of legal certainty and legitimate expectations since, through its interpretation of the EC Merger Regulation, [1] it deprived all third parties to concentrations (employees and local officials) of protection, even though, in the light of the commitments given by Celanese Corporation, it was certain that employees would be protected against a cessation of activity for five years.

The applicant thus certainly suffered significant damage. Indeed, local authorities in that area are deprived of important fiscal resources and have to pay out numerous social benefits because of the closure of the site. Numerous redundancies must be expected, both among employees of Acetex and also among employees of companies whose activities were closely linked to that of Celanese Corporation.

In the alternative, if it cannot be established that there was tortious liability on the part of the European Commission, the applicant asks that the Commission be held strictly liable. There can be no doubt as to the damage suffered by the applicant and its unusual and special nature and that that damage was directly caused by the refusal of the European Commission to sanction Celanese Corporation.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1)

Action brought on 19 March 2010 — FESI v Conseil

(Case T-134/10)

(2010/C 148/62)

Language of the case: English

Parties

Applicant: Fédération européenne de l'industrie du sport (FESI) (Brussels, Belgium) (represented by: E. Vermulst and Y. Van Gerven, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (1) in its entirety or alternatively as far as the applicant and its members, particularly its four sampled members are concerned (Adidas AG, Nike European Operations BV, Puma AG and Timberland Europe BV);

— order the Council to disclose the production data for each sampled Union producer which was the basis of sample selection in the review investigation as well as the employment data for each sampled Union producer;

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

Pleas in law and main arguments

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

First, it submits that by not requiring the complainant European Union producers to complete sampling forms, the Council erred in the application of Article 17(1) of the basic regulation (2), committed a manifest error of appraisal and violated the rights of defence and the principle of non-discrimination. In particular, the applicant claims that the European Union institutions did not require the complainant EU producers to complete sampling forms and therefore, the EU producers' sample was selected in the absence of requisite data, on the basis of limited — unverifiable — data provided by the complainants. The applicant argues that, consequently, they were precluded from verifying the suitability of the sample selected. It further contends that the EU institutions treated interested parties placed in comparable situations in a different manner without any objective reasons and breached the fundamental principle of non-discrimination.

Second, the applicant claims that in the selection of the EU producers' sample the Council committed a manifest error of appraisal and violated Article 17(1) of the basic regulation. It submits that the EU producers' sample did not constitute the largest representative volume of production or sales that could reasonably be investigated in the time available within the meaning of Article 17(1) of the basic regulation and the sample was predominantly selected on the basis of criteria not mentioned in this provision.

Third, the applicant contends that the Council violated Article 6.10 of the World Trade Organization Anti-dumping Agreement by not applying Article 17(1) of the basic regulation in conformity with the former. The Council did not establish a sample of EU producers that represented the largest percentage of volume of production or sales as required by Article 6.10 of the WTO Anti-Dumping Agreement.

Fourth, the applicant argues that in determining likelihood of continuation of injury, the Council breached Articles 3(l), 3(2), 3(5) and 11(2) of the basic regulation and made manifest error of assessment of the facts. In the applicant's view, the Council wrongly established likelihood of continuation of injury in the absence of measures on the basis of the finding of continued injury during the review investigation period ("RIP") to the EU industry based on the macroeconomic data that included data of producers not part of the EU industry and on the basis of unverified data. Additionally, the microeconomic indicators were evaluated on the basis of the data of an unrepresentative sample of EU producers.

Fifth, the applicant claims that by granting confidential treatment to the identity of the complainant EU producers, the Council violated Article 19(1) of the basic regulation and breached the rights of defence since it granted confidential treatment without good cause and without thoroughly examining the confidentiality claims.

Sixth, it submits that in the establishment of the product control number ("PCN") system for the classification of the product under consideration, the Council violated Article 2(10) and 3(2) of the basic regulation, and the principle of diligence and sound administration. The applicant considers that the PCN system used and the reclassification of certain footwear categories in the middle of the investigation precluded a fair comparison between the normal value and export price. Furthermore, in the applicant's view, this also precluded an objective examination of both the volume of the dumped imports and the effects of the dumped imports on prices in the domestic market for like products and the consequent impact of these imports on domestic producers of such products. The applicant also submits that the Council did not examine carefully and impartially all the relevant elements and the duly substantiated reasons necessitating a change in the PCN system as suggested by the applicant.

Finally, the applicant claims that in selecting the analogue country, the Council violated the principle of diligence and sound administration, committed a manifest errors in the assessment of the facts and violated Article 2(7)a of the basic regulation. The applicant considers that the Council committed serious procedural irregularities in the selection of Brazil as the analogue country since this selection was not done in an appropriate and reasonable manner in this case.

([1]) OJ 2009 L 352, p. 1

([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 16 March 2010 — M v EMEA

(Case T-136/10)

(2010/C 148/63)

Language of the case: English

Parties

Applicant: M (represented by: C. Thomann, Barrister and I. Khawaja, Solicitor)

Defendant: European Medicines Agency (EMEA)

Form of order sought

— award damages pursuant to Article 340 TFUE for the losses sustained as a result of breaches, to be calculated or such other sums as the Court may rule appropriate;

— interest on such sums as are found to be due at a rate equivalent to that applied pursuant to section 35A of the Supreme Court Act 1981 or such other sum as the Court may rule to be appropriate;

— costs;

— such further additional relief that the General Court considers appropriate.

Pleas in law and main arguments

In the present case, the applicant requests the Court to award him damages pursuant to Article 340 TFEU for the losses he sustained as a result of an accident at work. He claims that he sustained injuries by reason of the defendant's breaches of duties owed to him as its employee.

The applicant relies *inter alia*, upon Article 6(3) of Directive 89/391 EEC [1], Article 15 of Annex I of Council Directive 89/654 EEC [2] and Article 3 of Directive 89/655 EEC [3] concerning the minimum safety and health requirements for the workplace.

The failure on the defendant's part to comply with its health and safety obligations as regards the assessment and reduction of risk, the suitability of equipment provided and the provision of clear surface areas at the workplace breached the defendant's obligations under United Kingdom Health and Safety Law, and its common duty of care. The applicant claims having suffered personal injury, financial losses and non-material damage as a result of the above breaches and he contends being entitled to be compensated for these.

[1] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1)

[2] Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC), (OJ 1989 L 393, p. 1)

[3] Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), (OJ 1989 L 393, p. 13)

Action brought on 17 March 2010 — Coordination bruxelloise d'Institutions sociales et de santé (CBI) v European Commission

(Case T-137/10)

(2010/C 148/64)

Language of the case: French

Parties

Applicant: Coordination bruxelloise d'Institutions sociales et de santé (CBI) (Brussels, Belgium) (represented by: D. Waelbroeck, avocat, and D. Slater, solicitor)

Defendant: European Commission

Form of order sought

— annul the decision of the defendant of 28 October 2009 declaring compatible with the common market on the basis of Article 86(2) EC unlawful State aid granted by Belgium to certain public hospitals in the Région de Bruxelles-Capitale (Region of Brussels — Capital) and dismissing the applicant's complaint;

— order the defendant to pay the costs.

Pleas in law and main arguments

By way of the present action, the applicant seeks the annulment of Commission Decision C(2009) 8120 final COR of 28 December 2009, declaring compatible with the common market all the funding granted by the Belgian authorities to the public hospitals belonging to the IRIS network in the Région Bruxelles-Capitale, by way of compensation for hospital and non-hospital services they provide in the form of services of general economic interest (SGEI) (State aid NN 54/2009 (ex-CP 244/2005)).

In support of its action, the applicant submits that the Commission's decision contains manifest errors of assessment or, at least, provides very inadequate reasons.

The applicant submits in particular that the Commission's claim that there is no need to examine the efficiency of the aid beneficiary, for example by comparing it to a 'typical undertaking, well run and adequately provided for', when examining the State aid in the light of Article 86(2) EC, allows Member State to cover all the costs of an undertaking charged with public service duties, irrespective of how exorbitant or disproportionate those may be, and thus must be rejected.

The applicant submits that, in order to avoid any distortion of competition on the market, compensation for carrying out public service duties should be limited to what is strictly necessary compared to the costs that an efficient operator would have incurred, which is not the case in the present case.

Action brought on 26 March 2010 — Milux v OHIM (REFLUXCONTROL)

(Case T-139/10)

(2010/C 148/65)

Language of the case: English

Parties

Applicant(s): Milux Holding SA (Luxembourg, Luxembourg) (represented by: J. Bojs, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 January 2010 in case R 1134/2009-4; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark "REFLUX-CONTROL" for goods and services in classes 9, 10 and 44

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal misapplied the principle of non-discrimination to the facts of this case; in the alternative, infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in its conclusion that the trade mark applied for does not possess sufficient inherent distinctiveness.

Action brought on 26 March 2010 — Hans Günter Söns v OHIM — Settimio (GREAT CHINA WALL)

(Case T-140/10)

(2010/C 148/66)

Language in which the application was lodged: English

Parties

Applicant: Hans Günter Söns (Wehr, Germany) (represented by: M. Schwabe, lawyer)

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

Other party to the proceedings before the Board of Appeal: Alfredo Settimio (Los Angeles, United States)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 in case R 281/2009-1;

— Order the defendant to declare invalid the registered Community trade mark subject of the application for invalidity; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for invalidity: The word mark "GREAT CHINA WALL" for goods in classes 18, 24 and 25

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

Party requesting the revocation of the Community trade mark: The applicant

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(c) and (g) of Council Regulation No 207/2009 as the Board of Appeal wrongly applied the legal provisions in question; infringement of international agreements concerning the protection of geographical indications.

Action brought on 24 March 2010 — Solae v OHIM — Délitaste (alpha taste)

(Case T-145/10)

(2010/C 148/67)

Language in which the application was lodged: English

Parties

Applicant: Solae Holdings LLC (St. Louis, United States) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal: Délitaste S.A. Industrielle et Commerciale d'Aliments (Thessaloniki, Greece)

Form of order sought

— Deem the present appeal and attached documents to have been duly filed;

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 December 2009 in case R 92/2009-2; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark "alpha taste", for goods and services in classes 29, 30, 39 and 43

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

Mark or sign cited: Community trade mark registration of the mark "ALPHA", for goods in class 29

Decision of the Opposition Division: Partially admitted the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 30 March 2010 — Meda Pharma v OHIM — Nycomed (ALLERNIL)

(Case T-147/10)

(2010/C 148/68)

Language in which the application was lodged: German

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: Nycomed GmbH (Konstanz, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of 29 September 2009 in Case R 697/2007-4 concerning the opposition filed on the basis of German mark No 1 042 583 'ALLERGODIL' against application No 4 066 452 for the Community trade mark 'ALLERNIL';

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

Pleas in law and main arguments

Applicant for a Community trade mark: Nycomed GmbH

Community trade mark concerned: Word mark 'ALLERNIL' for goods in Class 5

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

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

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, [1] since the trade mark law principles of likelihood of confusion were not correctly applied

— Infringement of Article 75 of Regulation No 207/2009 due to breach of the duty to give reasons

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

Action brought on 25 March 2010 — Hynix Semiconductor v Commission

(Case T-148/10)

(2010/C 148/69)

Language of the case: English

Parties

Applicant: Hynix Semiconductor, Inc. (Icheon-si, Korea) (represented by: A. Woodgate and O. Heinisch, Solicitors)

Defendant: European Commission

Form of order sought

— annul the Commission Decision in Case COMP/38.636 — Rambus, dated 9 December 2009;

— order the Commission to pay the costs;

— grant such other relief as the Court considers appropriate.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the Commission Decision adopted in the framework of Case COMP/38.636 — Rambus relating to a proceeding under Article 102 TFUE and Article 54 EEA, concerning the claiming of potentially abusive royalties for the use of certain patents for "Dynamic Random Access Memory" (DRAM). By the contested decision the Commission made binding upon Rambus certain commitments in accordance with Article 9 of the Council Regulation (EC) No 1/2003 [1] and decided that there were no longer grounds for action. The applicant is the competitor of Rambus and it lodged a complaint for the initiation of proceedings against it.

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

First, the applicant argues that the Commission violated Article 9 of Regulation 1/2003 by choosing the procedure set out in this article where its concerns related to a serious violation of Article 102 TFUE to the extent that it intended to impose a fine. Further, it claims that there were no procedural savings in applying Article 9. In the applicant's opinion, the commitments made biding by the Commission were manifestly inappropriate given the facts of the infringement in stake and it submits therefore that the Commission violated Article 9 of Regulation 1/2003, Article 102 TFUE and principle of sound (impartial) administration by accepting Rambus commitments. The applicant further submits that by applying incorrect proportionality test without applying the conditions set out in Article 9 itself and by misstating certain concerns and making erroneous conclusions as to whether the commitments deal with its concerns, the Commission erred in reaching the conclusion that there are no longer grounds for action. Furthermore, the applicant claims that the Commission failed to give reasons as to the appropriateness and adequacy of the commitments and therefore committed a serious error of assessment.

Second, the applicant argues that the Commission misused its powers under Article 9 of Regulation 1/2003.

Third, it claims that the Commission committed procedural errors when adopting the contested decision by not using its powers under Regulation 1/2003 and not further investigating the question of remedy adequately.

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

Action brought on 25 March 2010 — Hynix Semiconductor v Commission

(Case T-149/10)

(2010/C 148/70)

Language of the case: English

Parties

Applicant: Hynix Semiconductor, Inc. (Icheon-si, Korea) (represented by: A. Woodgate and O. Heinisch, Solicitors)

Defendant: European Commission

Form of order sought

— annul the Commission Decision C(2010) 150 dated 15 January 2010;

— order the Commission to pay the costs;

— grant such other relief as the Court considers appropriate.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the Commission Decision C(2010) 150 rejecting, for lack of the Community interest, the applicant's complaint regarding alleged violations by Rambus of Articles 102 TFUE in connection with claiming of potentially abusive royalties for the use of certain patents for "Dynamic Random Access Memory" (DRAM) (Case COMP/38.636 — Rambus) following the Commission decision of 9 December 2009 by which it made binding upon Rambus certain commitments in accordance with Article 9 of the Council Regulation (EC) No 1/2003 (1) and decided that there were no longer grounds for action.

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

First, it submits that the Commission violated essential procedural requirements by not granting the applicant sufficient access to relevant documents.

Second, the applicant argues that there remains strong community interest in pursuing its complaint. It submits that the Commission based its rejection decision exclusively on the fact that there is no longer community interest given that it adopted the Article 9 decision. In the applicant's view, in this case the position and reasoning adopted by the Commission makes the question of Community interest and the validity of the rejection decision intrinsically linked to the validity of the Article 9 decision which is contested by the applicant in Case T-148/10.

Third, fourth and fifth plea raised by the applicant are identical to the first, second and third plea that it puts forward in Case T-148/10 and concern the alleged violations committed by the Commission when adopting the Article 9 decision making binding upon Rambus certain commitments.

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

Action brought on 26 March 2010 — Telefónica O2 Germany v OHIM — Loopia (LOOPIA)

(Case T-150/10)

(2010/C 148/71)

Language in which the application was lodged: English

Parties

Applicant: Telefónica O2 Germany GmbH & Co. OHG (Munich, Germany) (represented by: A. Fottner and M. Müller, lawyers)

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

Other party to the proceedings before the Board of Appeal: Loopia AB (Västeras, Sweden)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2010 in case R 1812/2008-1; and

— Order the defendant to bear the costs, including those related to the appeal proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark "LOOPIA", for services in class 42

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

Mark or sign cited: German trade mark registrations of the word mark "LOOP", for goods and services in classes 9, 38 an 42; Community trade mark registration of the word mark "LOOP", for goods and services in classes 9, 16, 35, 38 ad 42; Community trade mark registration of the word mark "LOOPY", for goods and services in classes 9, 38 and 42

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Annulled the contested decision, rejected the opposition and allowed the application

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

Action brought on 1 April 2010 — Bank Nederlandse Gemeenten NV v Commission

(Case T-151/10)

(2010/C 148/72)

Language of the case: Dutch

Parties

Applicant: Bank Nederlandse Gemeenten NV (The Hague, Netherlands) (represented by: B. Drijber, lawyer)

Defendant: European Commission

Form of order sought

— Annul the Commission's Decision of 15 December 2009 (C(2009) 9963) in so far as concerns the Commission's finding that the opportunity for housing corporations to borrow from the Bank Nederlandse Gemeenten NV constitutes State aid within the meaning of Article 107(1) TFEU;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant's application is for the partial annulment of Commission Decision C(2009) 9963 final of 15 December 2009 concerning State aid No E 2/2005 and N 642/2009 — The Netherlands, Existing and special project aid to housing corporations.

In support of its application the applicant submits, first, that the contested decision is contrary to Article 107(1) TFEU because the Commission's conclusion that the applicant's loans constituted State aid was based on an incorrect interpretation of the condition for liability.

Second, the contested decision is contrary to Article 107(1) TFEU because the Commission's conclusion that the applicant's loans were not in accordance with market conditions, and therefore contained an advantage, was based on an incorrect interpretation of the facts.

Third, the Commission infringed the obligation to state reasons and the principle of care because, despite the submissions concerning the loans which the applicant put forward through the Netherlands authorities, the Commission found, without any investigation, that the loans were State aid.

Action brought on 30 March 2010 — El Corte Inglés v OHIM

(Case T-152/10)

(2010/C 148/73)

Language in which the application was lodged: Spanish

Parties

Applicant: El Corte Inglés SA (Madrid, Spain) (represented by: J. Rivas Zurdo, M. López Camba and E. Seijo Veiguela, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Azzedine Alaïa (Paris, France)

Form of order sought

— annul the decision of the Fourth Board of Appeal of OHIM;

— order the party or parties which oppose this action to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'ALIA' (application No 3 788 999) for goods in Classes 3, 14, 18 and 25.

Proprietor of the mark or sign cited in the opposition proceedings: The French company Azzedine Alaïa.

Mark or sign cited in opposition: International word mark 'ALAÏA' (No 773 126) for goods in Classes 3, 18 and 25, Community figurative mark which contains the verbal element 'ALAÏA' (No 3 485 166), for goods and services in Classes 16, 20 and 25, and the earlier unregistered mark 'ALAÏA' for the manufacture, sale of clothing, articles for women and fashion accessories.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

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

Action brought on 6 April 2010 — Schneider España de Informática v Commission

(Case T-153/10)

(2010/C 148/74)

Language of the case: English

Parties

Applicants: Schneider España de Informática, SA (Madrid, Spain), (represented by: P. De Baere and P. Muñiz, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's decision C(2010) 22 final of 18 January 2010 finding that post-clearance entry in the accounts of import duties is justified and remission of those duties is not justified in a particular case (REM 02/08);

— Order the European Commission to bear the costs of the proceedings.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the annulment of the Commission's decision of 18 January 2010, by which the defendant concluded that the import duties concerned for colour televisions should be entered in the accounts since the conditions for the application of Article 220(2)(b) of the Community Customs Code [1] were not met. The contested decision also concluded that the remission of the import duties concerned was not justified pursuant to Article 239 of the Community Customs Code.

In support of his appeal, the applicant submits the following pleas in law:

Firstly, the applicant alleges that the defendant infringed its rights of defence since it took a decision which was solely based on the documents submitted by the applicant.

Secondly, the defendant infringed Article 220(2)(b) of the Community Customs Code, taken together with Article 236 of the Community Customs Code, as:

— The defendant erroneously considered that the anti-dumping regulations adopted against imports from third countries are automatically applicable to goods in free circulation in the EU-Turkey customs union;

— The defendant failed to inform traders that Council Regulation (EC) Nº 2584/98 [2] was also applicable to goods in free circulation in the EU-Turkey customs union;

— Alternatively, the defendant wrongly considered that no error had been committed by the competent authorities as the Turkish authorities wrongly confirmed that the anti-dumping duties imposed on goods from third countries were not applicable to goods in free circulation in the EU-Turkey customs union;

— The defendant wrongly considered that no error had been committed by the competent authorities as the Spanish customs authorities wrongly assumed that goods accompanied by an origin certificate could not be subject to any additional duties or trade protection measures, and therefore failed to inform economic operators that their imports from Turkey could be subject to trade measures, even if such goods were in free circulation.

In addition, the applicant submits that the error committed by the competent customs authorities could not have been reasonably detected by the person liable for payment, having acted in good faith and complied with all the provisions laid down by legislation in force as regards the customs declaration.

Finally, the applicant submits that it finds itself in a special situation within the meaning of Article 239 of the Community Customs Code and that no deception or obvious negligence can be attributed to the applicant pursuant to this legal provision.

[1] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1).

[2] Council Regulation (EC) No 2584/98 of 27 November 1998 amending Regulation (EC) No 710/95 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed (OJ L 324, p.1).

Action brought on 6 April 2010 — Confederación de Cooperativas Agrarias de España and CEPES v Commission

(Case T-156/10)

(2010/C 148/75)

Language of the case: Spanish

Parties

Applicants: Confederación de Cooperativas Agrarias de España (Madrid, Spain), Confederación Empresarial Española de la Economía Social (CEPES) (Madrid, Spain) (represented by: M. Araujo Boyd and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

— Accept as admissible and uphold the pleas in support of annulment submitted in this action;

— annul Article 1 of the contested decision;

— alternatively, annul Article 4 of the contested decision, and

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

Pleas in law and main arguments

This action is brought against the Commission Decision of 15.12.2009 (State aid No C 22/2001) relating to measures to support agriculture implemented by Spain following the fuel price increase. That decision declares that certain measures to support agriculture included in Royal Decree Law 10/2000 of 6 October on emergency support for agriculture, fisheries and transport, [1] notified by Spain on 29 September 2000, constituted aid incompatible with the common market and orders recovery.

The measures in question were the subject of an initial Commission Decision of 11 November 2001 ('the initial decision') which declared that 'the measures to support agricultural cooperatives provided for by Royal Decree Law 10/2000 (…) do not constitute aid within the meaning of Article 87(1) EC'. That initial decision was annulled by a judgment of 12 December 2006, [2] on the ground of an inadequate statement of reasons, since the Commission did not in its decision take sufficient account the effect which other taxes, apart from those affecting companies, might have had on the tax arrangements applying to cooperatives. Thereafter, without adopting a fresh decision to initiate the procedure, the Commission adopted on 15 December 2009 the contested decision.

The applicants put forward five pleas in support of annulment:

— The first plea is based on the Commission's infringement of the right of the parties concerned in the proceedings to be heard, since the Commission adopted the contested decision, the findings of which are diametrically opposed to those contained in the initial decision, without re-opening the formal procedure or giving the parties concerned the opportunity to submit their comments.

— The second plea consists of the complaint that the Commission is going beyond what is required by the judgment in Case T-146/03, which merely found fault with the lack of an adequate statement of reasons in certain aspects of the initial decision. Instead of correcting those details, the Commission revised elements of its initial decision which were not called into question by the court. Such conduct on the part of the Commission infringes the principles of legal certainty and the protection of legitimate expectations of concerned parties.

— Third, the applicants challenge the classification of the measure as State aid, on the ground that it is not enough to assert that, because they have a tax status which differs from that of companies, agricultural cooperatives whose trade is not 100 % with its members (the pure mutual cooperative model) enjoy an 'advantage', disregarding the fact that cooperatives and limited liability companies are not in a similar situation either in fact or in law. Moreover, even if such comparability were accepted — which is disputed — the tax arrangements of cooperatives do not entail any advantage, rather the differences are justified by the structure and nature of the Spanish tax system, as the Commission itself recognised in the initial decision, that aspect of which was not called into question by the judgment of 12 December 2006.

— Alternatively, as a fourth plea in law, the applicants argue that the Commission did not state adequate reasons and erred in its analysis of the compatibility of the measure, in the light of Article 107(3)(c) TFEU, and that the measure at issue should have been declared to be compatible.

— Lastly, the applicants challenge the order for recovery made in the contested decision

(1) Boletín Oficial del Estado No 241/2000 of 7 October, p. 34614.
(2) Case T-146/03 [2003] ECR II-98.

Action brought on 8 April 2010 — Barilla v OHIM — Brauerei Schlösser (ALIXIR)

(Case T-157/10)

(2010/C 148/76)

Language in which the application was lodged: English

Parties

Applicant: Barilla G. e R. Fratelli SpA (Parma, Italy) (represented by: A. Colmano, G. Sironi and A. Vanzetti, lawyers)

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

Other party to the proceedings before the Board of Appeal: Brauerei Schlösser GmbH (Düsseldorf, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 January 2010 in case R 820/2009-2;

— Dismiss the opposition filed by the other party to the proceedings before the Board of Appeal against the registration of the Community trade mark concerned;

— Alternatively, remit the case to the defendant so that it may dismiss the opposition; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "ALIXIR", for goods, among others, in class 32

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

Mark or sign cited: German trade mark registration of the word mark "Elixeer", for goods in class 32

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

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 8 April 2010 — Longevity Health Products v OHIM — Tecnifar (E-PLEX)

(Case T-161/10)

(2010/C 148/77)

Language in which the application was lodged: English

Parties

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

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

Other party to the proceedings before the Board of Appeal: Tecnifar — Industria Tecnica Farmaceutica, SA (Lisbon, Portugal)

Form of order sought

— Admit the complaint filed by the applicant;

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 February 2010 in case R 662/2009-4 and dismiss the opposition filed by the other party to the proceedings before the Board of Appeal with respect to pharmaceutical and veterinary medical products with the exception of medicinal products for diseases related to the central nervous system; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "E-PLEX", for goods and services in classes 3, 5 and 35

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

Mark or sign cited: Portuguese trade mark registration of the word mark "EPILEX", for goods in class 5

Decision of the Opposition Division: Partially allowed the opposition

Decision of the Board of Appeal: Partially dismissed the appeal

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

Action brought on 12 April 2010 — Grupo Osborne v OHIM — Confecciones Sanfertús (TORO)

(Case T-165/10)

(2010/C 148/78)

Language in which the application was lodged: Spanish

Parties

Applicant: Grupo Osborne (El Puerto de Santa María, Spain) (represented by: J. Iglesias Monravá, 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: Confecciones Sanfertús, SL (Graus, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) in Case R 0638/2009-2;

— Uphold the registration of the Community trade mark No 2 844 264 in Class 25, and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Grupo Osborne.

Community trade mark concerned: Word mark 'TORO' (registration application No 2 844 264) for goods and services in Classes 18, 25 and 39.

Proprietor of the mark or sign cited in the opposition proceedings: Confecciones Sanfertús, S.L.

Mark or sign cited in opposition: Spanish word mark 'LETORO' (No 465 635) for goods in Classes 24 and 25 and Spanish figurative marks containing the word 'TORO' (No 802 043 and No 1 513 622) for goods in Class 25.

Decision of the Opposition Division: Opposition upheld and application for registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect interpretation of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark; the fact that there is a previous ruling by the Opposition Division which decides on the compatibility of the marks 'TORO' and 'LETORO'; and the fact that the evidence of use presented does not prove the use of the Spanish marks 'LETORO' (word) and 'TORO' (figurative).

Action brought on 14 April 2010 — Grupo Osborne v OHIM — Industria Licorera Quezalteca (TORO XL)

(Case T-169/10)

(2010/C 148/79)

Language in which the application was lodged: Spanish

Parties

Applicant: Grupo Osborne SA (El Puerto de Santa María, Spain) (represented by: J. Iglesias Monravá, 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: Industria Licorera Quezalteca, SA

Form of order sought

— Annul the decision dated 22.01.2010 of the Board of Appeal of OHIM in Case R 223/2009-2 refusing registration of the Community trade mark No 4 769 279 TORO XL in Class 33;

— Permit, consequently, registration of the Community trade mark No 4 769 279 TORO XL in Class 33, and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Grupo Osborne.

Community trade mark concerned: Word mark 'TORO XL' (application for registration No 4 769 279) for goods and services in Classes 32, 33 and 43.

Proprietor of the mark or sign cited in the opposition proceedings: Industria Licorera Quezalteca, SA.

Mark or sign cited in opposition: Community figurative mark (No 4 027 124) containing the expression 'XL' for goods in Class 33 (alcoholic drinks).

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Opposition upheld and application for registration refused.

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

Action brought on 15 April 2010 — Slovak Telekom v Commission

(Case T-171/10)

(2010/C 148/80)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

— annul the Commission Decision C(2010) 902 of 8 February 2010 relating to a proceeding pursuant to Articles 18(3) and 24(1) of Council Regulation 1/2003 [1] (Case COMP/39523 — Slovak Telekom); and

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the annulment of Commission Decision C(2010) 902 of 8 February 2010 ordering it, in accordance with Articles 18(3) and 24(1) of Council Regulation No 1/2003, to provide certain information in the framework of the Case COMP/39523 — Slovak Telekom relating to a proceeding under Article 102 TFUE and imposing periodic penalties in case of non compliance with the said decision.

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

Firstly, the applicant alleges an error of law concerning the Commission's powers to request information under Article 18(3) of Council Regulation No 1/2003 covering a period that predates the Slovak Republic's accession to the European Union. Prior to 1 May 2004, the Commission had no power to apply European Union law to conduct investigations in within the territory of the Slovak Republic. As a consequence, the Commission is not entitled to use the powers of investigation enshrined in Article 18(3) of Regulation 1/2003 to obtain information pertaining to that same period.

Secondly, the applicant claims that the contested decision should be annulled because it infringes the principle of procedural fairness enshrined in Article 41(1) of the Charter of Fundamental Rights [2]. The Commission's investigation into Slovak Telekom's conduct during a period where the EU law was not applicable and Slovak Telekom was under no obligation to comply with these rules may be prejudicial to Slovak Telekom. The Commission could take this information into account in its assessment. Indeed, the contested decision makes clear that this is the Commission's intention.

Thirdly, the applicant contends that the contested decision should be annulled because it infringes the principle of proportionality. This principle is reflected in Article 18(3) of Council Regulation No 1/2003, according to which the Commission is empowered to require undertakings to provide all necessary information. In the Slovak Telekom case, however, the Commission failed to establish the required link between the requested pre-accession information and the allegedly illegal conduct after 1 May 2004. As a result, information or documents pertaining to the pre-accession period are not necessary in order to enable the Commission to assess whether Slovak Telekom's post-accession conduct complies with the EU law.

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

[2] Charter of Fundamental Rights of the European Union, OJ C 83 of 30 March 2010, p. 389.

Order of the General Court of 23 March 2010 — France v Commission

(Case T-279/07) [1]

(2010/C 148/81)

Language of the case: French

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

[1] OJ C 211, 8.9.2007.

Order of the General Court of 23 March 2010 — Caisse Nationale des Caisses d'Epargne et de Prévoyance v Commission

(Case T-289/07) [1]

(2010/C 148/82)

Language of the case: French

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

[1] OJ C 235, 6.10.2007.

Order of the General Court of 23 March 2010 — Banque Postale v Commission

(Case T-345/07) ([1])

(2010/C 148/83)

Language of the case: French

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

([1]) OJ C 269, 10.11.2007

Order of the General Court of 12 April 2010 — Bulur Giyim Sanayi ve Ticaret Sirketi v OHIM — Denim (VIGOSS)

(Case T-431/08) ([1])

(2010/C 148/84)

Language of the case: English

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

([1]) OJ C 313, 6.12.2008.

Order of the General Court of 26 March 2010 — Commission v TMT Pragma

(Case T-527/08) ([1])

(2010/C 148/85)

Language of the case: Italian

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

([1]) OJ C 32, 7.2.2009.

Order of the General Court of 19 March 2010 — Telekomunikacja Polska v Commission

(Case T-533/08) ([1])

(2010/C 148/86)

Language of the case: Polish

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

([1]) OJ C 44, 21.2.2009

Order of the General Court of 22 March 2010 — Al Barakaat International Foundation v Commission

(Case T-45/09) ([1])

(2010/C 148/87)

Language of the case: Swedish

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

([1]) OJ C 153, 4.7.2009.

Order of the General Court of 12 April 2010 — Aecops v Commission

(Case T-256/09) ([1])

(2010/C 148/88)

Language of the case: Portuguese

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

([1]) OJ C 220, 12.9.2009.

Order of the General Court of 12 April 2010 — Aecops v Commission

(Case T-257/09) ([1])

(2010/C 148/89)

Language of the case: Portuguese

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

([1]) OJ C 220, 12.9.2009.

Order of the General Court of 15 April 2010 — Alibaba Group v OHIM — allpay.net (ALIPAY)

(Case T-26/10) ([1])

(2010/C 148/90)

Language of the case: English

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

([1]) OJ C 100, 17.4.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 15 April 2010 — Matos Martins v Commission

(Case F-2/07) [1]

(Staff case — Members of the contract staff — Call for expression of interest — Selection procedure — Pre-selection tests — Access to documents)

(2010/C 148/91)

Language of the case: French

Parties

Applicant: José Carlos Matos Martins (Brussels, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: European Commission (represented by: J. Currall and G. Berscheid, Agents)

Re:

Annul, first, the decision of EPSO of 27 February 2006 laying down the results of pre-selection tests for members of the contract staff (EU-25), secondly, the decision not to register the applicant on the database of candidates who had successfully completed those tests and, thirdly, the consequences of the selection procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Matos Martins to bear his own costs, except the costs of accommodation and travel incurred as a result of the consultation of documents by his lawyer on 30 March, 1 April and 21 July 2009 in the premises of the Registry of the Tribunal;*

3. *Orders the European Commission to bear its own costs and to pay the costs incurred by Mr Matos Martins referred to in paragraph 2 above.*

[1] OJ C 56, 10.3.2007, p. 43.

Judgment of the Civil Service Tribunal (Second Chamber) of 15 April 2010 — Angelidis v Parliament

(Case F-104/08) [1]

(Civil service — Officials — Vacant post — Execution of a judgment annulling the appointing decision — Legitimate expectations — Principle of officials' entitlement to a career — Equal treatment — Principle of sound administration — Duty to have regard to the welfare of officials — Manifest error of assessment — Misuse of powers)

(2010/C 148/92)

Language of the case: French

Parties

Applicant: Angel Angelidis (Luxembourg, Luxembourg) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament (represented by: C. Burgos and S. Seyr, acting as Agents)

Re:

First, annulment of notice of vacancy No 12564 concerning the filling of the post of Director of the Directorate-General for Internal Policies of the European Union — Directorate D Budgetary Affairs of the European Parliament and the recruitment procedure initiated by that notice. Second, annulment of the decision to reject the applicant's candidacy for the post of Director of Budgetary Affairs of the Directorate-General for Internal Policies and to appoint another candidate to that post. Lastly, a claim for damages for the non-material and material loss suffered by the applicant and for him to be appointed to the grade of Director 'ad personam'.

Operative part of the judgment

The Tribunal:

1. *Orders the European Parliament to pay the sum of EUR 1 000 to Mr Angelidis;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Parliament to bear its own costs and pay one third of the costs of Mr Angelidis;*

4. *Orders Mr Angelidis to bear two thirds of his own costs.*

(1) OJ C 44, 21.2.2009, p. 77.

Judgment of the Civil Service Tribunal (Second Chamber) of 15 April 2010 — Britto Patricio Dias v Commission

(Case F-4/09) (1)

(Staff case — Officials — Posting — Reassignment — Interests of the service — Correspondence between grade and post — Rights of the defence — Reasons stated)

(2010/C 148/93)

Language of the case: French

Parties

Applicant: Jorge de Britto Patricio Dias (Brussels, Belgium) (represented by: L. Massaux, lawyer)

Defendant: European Commission (represented by: C. Berardis Kayser and G. Berscheid, Agents)

Re:

Application for annulment of the decision to reassign the applicant

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr de Britto Patricio Dias to pay all the costs.*

(1) OJ C 69, 21.03.2009, p. 54.

Order of the Civil Service Tribunal (First Chamber) of 25 March 2010 — Marcuccio v Commission

(Case F-102/08) (1)

(Staff cases — Officials — Despatch of the applicant's personal effects — Action for damages — Action manifestly inadmissible — Action manifestly unfounded in law — Article 94 of the Rules of Procedure)

(2010/C 148/94)

Language of the case: Italian

Parties

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

Defendant: European Commission (represented by: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

Re:

Application for annulment of the Commission's decision rejecting the applicant's request for, first, compensation for the damage allegedly suffered as a result of the despatch of his personal effects from his official lodgings in Luanda and, second, the provision of copies of the photographs taken in the course of that despatch and the destruction of all documents relating to those effects.

Operative part of the order

1. *Mr Marcuccio's application is dismissed as, in part, manifestly inadmissible and, in part, manifestly unfounded in law.*

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

3. *Mr Marcuccio is ordered to reimburse to the Tribunal the sum of EUR 1 500.*

(1) OJ C 55, 7.3.2009, p. 52.

Action brought on 26 March 2010 — Cuallado Martorell v Commission

(Case F-96/09)

(2010/C 148/95)

Language of the case: Spanish

Parties

Applicant: Eva Cuallado Martorell (Augsburg, Germany) (represented by: M. Díez Lorenzo, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions not to admit the applicant to the oral test of Open Competition EPSO/AD/130/08 and to deny access to the corrected written tests and annulment with retroactive effect of the reserve list published for the appointment of Lawyer linguists having Spanish as their main language.

Form of order sought

— annul the decision of 14 September 2009 by which EPSO refused to send the applicant a copy of her written tests and an individual assessment sheet, in which were indicated the grounds which caused the selection board to award her the eliminatory mark of 18/40 in the final written test (c), and disregarded her application for admission to the oral test of Open Competition AD/130/08;

— annul the decision of 23 July 2009 by which EPSO stated that it was maintaining the eliminatory mark of 18/40 in the last written test (c) and refused the applicant admission to the oral test of Open Competition EPSO/AD/130/08 for the purpose of drawing up a reserve list for the appointment of Lawyer linguists having Spanish as their main language;

— annul the reserve list published following the competition with retroactive effect from the date of publication thereof;

— order the European Commission to pay the costs.

Action brought on 1 April 2010 — Bombín Bombín v Commission

(Case F-22/10)

(2010/C 148/96)

Language of the case: Spanish

Parties

Applicant: Luis María Bombín Bombín (Rome, Italy) (represented by: R. Pardo Pedernera, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the European Commission, in response to the applicant's complaint, to grant financial compensation in respect of only 12 rather than 29 days of accrued leave which he had not yet taken at the time he began his leave of absence.

Form of order sought

— annul the decision of the European Commission, issued on 4 January 2010, to grant and pay to the applicant financial compensation for only 12 days;

— grant to the applicant (for calculation purposes and in respect of the financial compensation) all the days of leave (in total 29 days) which he had accrued and had not yet taken at the time he began his leave of absence;

— as to costs, the applicant submits no claim, since he considers that the resolution of the present case by the Tribunal is important for the parties, both being in good faith, and the case does not justify claims in respect thereof.

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