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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 260/01)

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

OJ C 246, 11.9.2010

Past publications

OJ C 234, 28.8.2010

OJ C 221, 14.8.2010

OJ C 209, 31.7.2010

OJ C 195, 17.7.2010

OJ C 179, 3.7.2010

OJ C 161, 19.6.2010

These texts are available on:

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Designation of the judge to replace the President of the Tribunal for the purpose of dealing with applications for interim measures

(2010/C 260/02)

On 8 September 2010, in accordance with Article 103(2) of the Rules of Procedure, the Tribunal decided that, for the period from 1 October 2010 to 30 September 2011, Judge H. TAGARAS, President of the Second Chamber, will replace the President of the Tribunal for the purpose of dealing with applications for interim measures in the event of the President's absence or his being prevented from attending.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 16 June 2010 — Sabine Hennigs v Eisenbahn-Bundesamt

(Case C-297/10)

(2010/C 260/03)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Sabine Hennigs

Defendant: Eisenbahn-Bundesamt

Questions referred

1. Taking into account the right of parties to a collective agreement to collective bargaining which is guaranteed by primary law (now Article 28 of the Charter of Fundamental Rights of the European Union, 'CFREU'), does a collective pay agreement for public sector employees, which, as in Paragraph 27 of the Bundes-angestelltentarifvertrag (Federal collective agreement for contractual public sector employees, 'BAT') in conjunction with the Vergütungstarifvertrag (collective pay agreement) No 35 under the BAT, determines basic pay in individual salary groups by age categories, infringe the primary-law prohibition of age discrimination (now Article 21(1) of the CFREU) as given expression by Directive 2000/78/EC? ([1])

2. If question 1 is answered in the affirmative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the ruling of the Court of Justice in the preliminary reference proceedings:

   (a) Does the right to collective bargaining give the parties to a collective agreement the discretion to eliminate such discrimination by transferring the employees to a new collective pay structure based on job, performance and professional experience, whilst preserving the entitlements they acquired in the old tariff structure?

   (b) Must question 2 a) in any event be answered in the affirmative if the final assignment of the transferred employees to the grades within a pay group of the new collective pay structure does not depend solely on the age category attained in the old tariff structure and if the employees who are admitted to a higher grade of the new structure typically have more professional experience than the employees assigned to a lower grade?

3. If questions 2 (a) and (b) are answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

   (a) Is indirect discrimination on grounds of age justified by the fact that it is a legitimate aim to preserve acquired social entitlements and because it is an appropriate and necessary means of achieving that aim to temporarily continue to treat older and younger employees differently for the purposes of a transitional arrangement, if this difference of treatment is being gradually phased out and the only alternative in practice would be to reduce the pay of older employees?

   (b) Taking into account the right to collective bargaining and the associated autonomy in collective bargaining, must question 3(a) be answered in the affirmative if parties to a collective agreement agree on such a transitional arrangement?

4. If questions 3(a) and (b) are answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

   Even taking into account the associated additional costs for the employer concerned and the right of the parties to a collective agreement to collective bargaining, must the infringement of the primary-law prohibition on age discrimination, which is inherent in a collective pay structure and which makes it invalid as a whole, always only be eliminated by taking the highest age category as a basis in each case when applying the collective pay agreements until a new system which is in conformity with Union law comes into force?

5. If question 4 is answered in the negative by the Court of Justice of the European Union or by the Bundesarbeitsgericht on the basis of the principles set out by the Court of Justice in its preliminary ruling:

   Having regard to the right of the parties to a collective agreement to collective bargaining, would it be compatible with the Union law prohibition on age discrimination and the requirement for an effective sanction in the event of a breach of that prohibition, to grant the parties to a collective agreement a manageable deadline (e.g. six months) in which to retrospectively correct the invalidity of the pay structure they have agreed, and stipulate that in the event that no new structure which is in conformity with Union law is introduced within the deadline, in applying collective rules in each case the highest age category will be taken as a basis and, if so, what discretion in terms of the duration of the retrospective effect of the new structure which is in conformity with Union law could be granted to the parties to a collective agreement?

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 16 June 2010 — Land Berlin v Alexander Mai

(Case C-298/10)

(2010/C 260/04)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Land Berlin

Defendant: Alexander Mai

Question referred

Taking into account the right of parties to a collective agreement to collective bargaining which is guaranteed by primary law (now Article 28 of the Charter of Fundamental Rights of the European Union, 'CFREU'), does a collective pay agreement for public sector employees, which, as in Paragraph 27 of the Bundes-angestelltentarifvertrag (Federal collective agreement for contractual public sector employees, 'BAT') in conjunction with the Vergütungstarifvertrag (collective pay agreement) No 35 under the BAT, determines basic pay in individual salary groups by age categories, infringe the primary-law prohibition of age discrimination (now Article 21(1) of the CFREU) as given expression by Directive 2000/78/EC? (1)

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 29 June 2010 — Agrana Zucker GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-309/10)

(2010/C 260/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Agrana Zucker GmbH

Defendant: Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

Questions referred

1. Is Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy [1] to be interpreted as meaning that the temporary restructuring amount laid down in paragraph 2 of that article of EUR 113,30 per tonne of quota for sugar and inulin syrup for the marketing year 2008/2009 must in any case be imposed in full, even if such payment would result in a (significant) surplus in the restructuring fund and there appears to be no prospect of any further increase in financing requirements?

2. In the event that the reply to the first question is in the affirmative:

   Does Article 11 of Regulation (EC) No 320/2006 in that case infringe the principle that the Community can act only within the powers conferred on it, because Article 11 could, by means of the temporary restructuring amount, introduce a general tax which is not limited to financing expenditure benefiting the persons called upon to pay the tax?

[1] OJ 2006 L 58, p. 42.

Reference for a preliminary ruling from the Tribunal da Relação do Porto (Portugal) lodged on 1 July 2010 — Companhia Siderúrgica Nacional, Csn Cayman Ltd v Unifer Steel SL, BNP-Paribas (Suisse), Colepccl SA, Banco Português de Investimento SA (BPI)

(Case C-315/10)

(2010/C 260/06)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Applicants: Companhia Siderúrgica Nacional, Csn Cayman Ltd

Defendants: Unifer Steel SL, BNP-Paribas (Suisse), Colepccl SA, Banco Português de Investimento SA (BPI)

Questions referred

1. Does the fact that the Portuguese judicial authorities have declared that they lack jurisdiction by reason of nationality to hear an action concerning a commercial claim constitute an obstacle to the connection between causes of action referred to in Articles 6(1) and [28] of Regulation No 44/2001, [1] where the Portuguese court has another action pending before it, a Paulian action brought against both the debtor and the third-party transferee, in this case the transferee of a debt receivable, and the depositaries of the subject-matter of the claim assigned to the third-party transferee, the latter having their seats in Portugal, in order that they may all be bound by the *res judicata* decision to be given?

2. In the event of a negative response, may Article 6(1) of Regulation No 44/2001 be freely applied to the case?

[1] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany), lodged on 7 July 2010 — Grünwald Logistik Service GmbH (GLS) v Hauptzollamt Hamburg-Stadt

(Case C-338/10)

(2010/C 260/07)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Grünwald Logistik Service GmbH (GLS)

Defendant: Hauptzollamt Hamburg-Stadt

Question referred

Is an anti-dumping regulation adopted by the European Commission in proceedings under Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] invalid because the Commission adopted that anti-dumping regulation by reference to a normal value determined on '[an]other reasonable basis' (in this case, on the basis of the prices actually paid or payable for like products in the Community) without conducting further investigations to ascertain a normal value after two companies in a country which the Commission had initially considered to be an analogue country had been contacted in writing but to no effect (one of them not replying at all and the other indicating its willingness to cooperate but failing to respond to the questionnaire which was then sent to it), and parties to the proceedings had drawn the Commission's attention to another possible analogue country?

[1] OJ 1996 L 56, p. 1.

Action brought on 7 July 2010 — European Commission v Republic of Poland

(Case C-341/10)

(2010/C 260/08)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: J. Enegren and Ł. Habiak, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by reason of the defective and incomplete implementation of Article 3(1)(d) to (h) and Article 9 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [1] the Republic of Poland has failed to fulfil its obligations under Article 16 of that directive;

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

Pleas in law and main arguments

The material scope of Directive 2000/43/EC covers a range of areas which are mentioned in Article 3(1) thereof. Under Article 16 of the directive, Member States are under an obligation to adopt the provisions necessary to ensure implementation of the directive in all of those areas (or to ensure that those provisions are adopted by management and labour) and to inform the European Commission accordingly. It is the Commission's view that the Republic of Poland has to date complied with that obligation only in part. In the present action the Commission alleges that Poland has carried out a defective and incomplete implementation of the directive with regard to the following matters: membership of and/or involvement in an organisation of workers or employers, or any organisation the members of which carry on a particular profession, including the benefits provided for by such organisations, social protection, including social security and health care, social advantages, education, access to and supply of goods and services which are available to the public, including housing (Article 3(1)(d) to (h) of the directive). The Commission rejects the assertion of the Polish authorities that the implementation of the directive in these areas is ensured by provisions of the Constitution of the Republic of Poland, by legislation and by international agreements indicated in the course of the procedure prior to the bringing of the action.

The European Commission also alleges that Poland transposed Article 9 of Directive 2000/43/EC into national law in a manner which is defective and incomplete. That provision, which refers to measures which are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment, relates to all persons and to all situations coming within the scope of the directive. The provisions thus far communicated by the Polish authorities, however, indicate, in the Commission's view, that measures of this kind exist only in respect of employees and the employment relationship.

[1] OJ 2000 L 180, p. 22.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 19 July 2010 — Duomo Gpa Srl v Comune di Baranzate

(Case C-357/10)

(2010/C 260/09)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Duomo Gpa Srl

Defendant: Comune di Baranzate

Questions referred

1. Does the correct application of Articles 15 and 16 of Directive 2006/123/EC [1] preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

2. Does the correct application of Articles 3, 10, 43, 49 and 81 of the Treaty establishing the European Community preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

[1] OJ 2006 L 376, p. 36.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 19 July 2010 — Gestione Servizi Pubblici Srl v Commune di Baranzate

(Case C-358/10)

(2010/C 260/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Gestione Servizi Pubblici Srl

Defendant: Commune di Baranzate

Questions referred

1. Does the correct application of Articles 15 and 16 of Directive 2006/123/EC [1] preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

2. Does the correct application of Articles 3, 10, 43, 49 and 81 of the Treaty establishing the European Community preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

(1) OJ 2006 L 376, p. 36.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 19 July 2010 — Irtel Srl v Comune di Venegono Inferiore

(Case C-359/10)

(2010/C 260/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Irtel Srl

Defendant: Comune di Venegono Inferiore

Questions referred

1. Does the correct application of Articles 15 and 16 of Directive 2006/123/EC (1) preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

2. Does the correct application of Articles 3, 10, 43, 49 and 81 of the Treaty establishing the European Community preclude the provisions of national law laid down in Article 32(7)(a) of Legislative Decree No 185 of 29 November 2008, added by Converting Law No 2 of 28 January 2009 and subsequently amended by Law No 14 of 27 February 2009, under which:

   — the award of services relating to the assessment and collection of taxes and other local authority revenue to persons who fail to satisfy the minimum financial requirement of fully paid up share capital in the sum of EUR 10 million is to be null and void;

   — persons entered in the relevant register of private persons authorised to carry out activities relating to the assessment and collection of taxes and other revenue of the provinces and municipalities are required to bring their share capital up to the minimum figure in question, pursuant to Article 53(3) of Legislative Decree No 446 of 15 December 1997, as subsequently amended;

   — it is prohibited to acquire new contracts or participate in tender procedures for the operation of services relating to the assessment and collection of taxes and other local authority revenue until the abovementioned requirement to adjust share capital has been met; and

   companies in which all or a majority of the share capital is in public ownership are excluded from those provisions?

(1) OJ 2006 L 376, p. 36.

Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (United Kingdom) made on 22 July 2010 — The Air Transport Association of America, American Airlines, Inc., Continental Airlines, Inc., United Airlines, Inc. v The Secretary of State for Energy and Climate Change

(Case C-366/10)

(2010/C 260/12)

Language of the case: English

Referring court

High Court of Justice Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: The Air Transport Association of America, American Airlines, Inc., Continental Airlines, Inc., United Airlines, Inc.

Defendant: The Secretary of State for Energy and Climate Change

Questions referred

1. Are any or all of the following rules of international law capable of being relied upon in this case to challenge the validity of Directive 2003/87/EC [1] as amended by Directive 2008/101/EC [2] so as to include aviation activities within the EU Emissions Trading Scheme (together the 'Amended Directive'):

   (a) the principle of customary international law that each state has complete and exclusive sovereignty over its air space;

   (b) the principle of customary international law that no state may validly purport to subject any part of the high seas to its sovereignty;

   (c) the principle of customary international law of freedom to flyover the high seas;

   (d) the principle of customary international law (the existence of which is not accepted by the Defendant) that aircraft overflying the high seas are subject to the exclusive jurisdiction of the country in which they are registered, save as expressly provided for by international treaty;

   (e) the Chicago Convention (in particular Articles 1, 11, 12, 15 and 24);

   (f) the Open Skies Agreement (in particular Articles 7, 11(2)(c) and 15(3));

   (g) the Kyoto Protocol (in particular, Article 2(2))?

   To the extent that question 1 may be answered in the affirmative:

2. Is the Amended Directive invalid, if and insofar as it applies the Emissions Trading Scheme to those parts of flights (either generally or by aircraft registered in third countries) which take place outside the airspace of EU Member States, as contravening one or more of the principles of customary international law asserted above?

3. Is the Amended Directive invalid, if and insofar as it applies the Emissions Trading Scheme to those parts of flights (either generally or by aircraft registered in third countries) which take place outside the airspace of EU Member States:

   (a) as contravening Articles 1, 11 and/or 12 of the Chicago Convention;

   (b) as contravening Article 7 of the Open Skies Agreement?

4. Is the Amended Directive invalid, insofar as it applies the Emissions Trading Scheme to aviation activities:

   (a) as contravening Article 2(2) of the Kyoto Protocol and Article 15(3) of the Open Skies Agreement;

   (b) as contravening Article 15 of the Chicago Convention, on its own or in conjunction with Articles 3(4) and 15(3) of the Open Skies Agreement;

(c) as contravening Article 24 of the Chicago Convention, on its own or in conjunction with Article 11(2)(c) of the Open Skies Agreement?

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

(2) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance) OJ L 8, p. 3

Appeal brought on 22 July 2010 by Ravensburger AG against the judgment of the General Court (Eighth Chamber) delivered on 19 May 2010 in Case T-108/09: Ravensburger AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Educa Borras, S.A.

(Case C-369/10 P)

(2010/C 260/13)

Language of the case: English

Parties

Appellant: Ravensburger AG (represented by: H. Harte-Bavendamm, M. Goldmann, Rechtsanwälte)

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

Form of order sought

The appellant claims that the Court should:

— allow the Appeal against the judgment of the General Court of 19 May 2010 (Case T-108/09);

— set aside the judgment of the General Court;

— annul the decision of the Second Board of Appeal of 8 January 2009 (Case R 305/2008-2) and, as appropriate, the decision of the Cancellation Division of 3 September 2006 (Case 1107C);

— (as appropriate) remit the case to the OHIM for fresh consideration;

— order the Intervener and the OHIM to pay the Appellant's costs of this Appeal.

Pleas in law and main arguments

The appellant submits that the contested judgment should be set aside on the following grounds:

1. Distortion of evidence by misrepresenting the Appellant's factual statements regarding the list of goods of the Community trade mark in question by asserting that it was 'not disputed in the present case that the goods for which the mark at issue was registered include, in particular, memory games'.

2. Distortion of evidence by applying Article 52(1)(a) in conjunction with Article 7(1)(c) of the Community Trade Mark Regulation (1) and application of a flawed and overly restrictive test in assessing the descriptive character of a word mark, namely Community trade mark registration No 1 203 629 'MEMORY'.

3. Distortion of evidence by applying Article 52(1)(a) in conjunction with Article 7(1)(b) of the Community Trade Mark Regulation and application of a flawed and overly restrictive test in assessing the lack of distinctiveness of a word mark, namely Community Trade Mark registration No 1 203 629 'MEMORY'.

4. Distortion of evidence by almost exclusively relying on assumed linguistic usage in distant non-European countries.

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

Appeal brought on 23 July 2010 by Ravensburger AG against the judgment of the General Court (Eighth Chamber) delivered on 19 May 2010 in Case T-243/08: Ravensburger AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Educa Borras S.A.

(Case C-370/10 P)

(2010/C 260/14)

Language of the case: English

Parties

Appellant: Ravensburger AG (represented by: H. Harte-Bavendamm, M. Goldmann, Rechtsanwälte)

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

Form of order sought

The appellant claims that the Court should:

— Allow the Appeal against the Judgment of the General Court of 19 May 2010 (Case T-243/08);

— Set aside the judgment of the General Court;

— Annul the decision of the Second Board of Appeal of 8 April 2008 (Case R 597/2007-2);

— As appropriate remit the case to the OHIM for fresh consideration;

— Order the Intervener and the OHIM to pay the Appellant's costs of this Appeal.

Pleas in law and main arguments

The General Court erred in law in finding that it need not take into account the reputation of the earlier trade marks in finding that the conditions for the applicability of Article 8 (1)(b) and 8(5) Community Trade Mark Regulation [1] were not met.

The General Court violated the system of Article 8 Community Trade Mark Regulation I carrying out a single factual assessment of similarity with implications both under Article 8(1)(b) and Article 8(5) Community Trade Mark Regulation, even though both provisions have entirely distinct sets of tests.

The General Court erred in law and violated Article 76 Community Trade Mark Regulation in leaving the Second Board of Appeal's conclusion unobjected that the market circumstances as regards the use of house marks on the one hand and trademarks for specific products on the other hand were irrelevant.

The General Court violated Article 77 Community Trade Mark Regulation by leaving the Board of Appeal's manifestly wrongful use of its discretion to hold an oral hearing unobjected.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, 24.3.2009, p. 1

Appeal brought on 27 July 2010 by Pye Phyo Tay Za against the judgment of the General Court (Eighth Chamber) delivered on 19 May 2010 in Case T-181/08: Pye Phyo Tay Za v Council of the European Union, United Kingdom of Great Britain and Northern Ireland, European Commission

(Case C-376/10 P)

(2010/C 260/15)

Language of the case: English

Parties

Appellant: Pye Phyo Tay Za (represented by: D. Anderson QC, M. Lester, Barrister, G. Martin, Solicitor)

Other parties to the proceedings: Council of the European Union, United Kingdom of Great Britain and Northern Ireland, European Commission

Form of order sought

The appellants claims that the Court should:

— Set aside, in whole, the decision of the General Court;

— Make a declaration that Regulation 194/2008 ([1]) of 25 February 2008 is void and a nullity in so far as it concerns the appellant; and

— An order that the Council pay the Appellant's costs of this appeal and the proceedings before the General Court.

Pleas in law and main arguments

1. The Appellant contends that the following principal flaw runs throughout the General Court's judgment. The General Court accepted the Council's submission that the freezing of the Appellant's funds was justified on the basis that he is a 'family member' of a 'leading businessman', namely his father Tay Za. The General Court held that the Appellant is therefore not listed as an individual, but as part of a 'category' of persons, with the consequence that he loses all procedural protection to which he would be entitled were he listed as an individual, including the requirement for there to be some evidence put forward by the institutions to justify his listing, and basic rights of defence.

2. That approach is, in the Appellant's view, incorrect as a matter of law and fact. The Appellant is not included in the Regulation because he is part of a category of 'family members'; he is listed as an individual in his own name, on the express basis that he is himself presumed to benefit from the economic policies of the Government of Burma/Myanmar. The Appellant is therefore plainly entitled to the protection of the fundamental principles of Community law.

3. The Appellant alleges, in addition, the following particular legal flaws in the General Court's judgment.

4. First, the Court was incorrect to have found that Articles 60 and 301 EC provided an adequate legal base for the Regulation. The Appellant contends that there is an insufficient link between the Appellant and the military regime of Burma/Myanmar. He is not a ruler of Burma/Myanmar nor a person associated with a ruler, and is not controlled, directly or indirectly, by a ruler. The fact that he is the son of someone whom the Council considers to have benefited from the regime is insufficient. The General Court erroneously stated that since (in its view) the institutions would have had the power to impose a more far-reaching trade embargo on Burma/Myanmar, a fortiori it has the power to impose this asset freezing measure on an individual.

5. Second, the General Court erred in holding that the burden of proof is on the Appellant to rebut the presumption that he does not benefit from the regime. The burden should be on the Council to justify imposing a restrictive measure on the Appellant, and to put forward evidence to justify it.

6. Third, the General Court wrongly held that the Council had complied with its obligation to give reasons for the Appellant's inclusion in the Regulation. The Appellant considers that where the Council names an individual in a Regulation on the express basis that he benefits from the economic policies of a regime, the Council must give actual and specific reasons for that view, relating to the Appellant himself.

7. Fourth, the General Court erred in holding that rights of defence were not applicable to the Appellant. Rights of defence, including the right to a fair hearing and to effective judicial review, are fundamental aspects of the rule of law in the European Union which apply whenever the institutions of the Union impose a measure which directly and adversely affects an individual. Further, the General Court erred in holding that the Appellant's rights of defence (assuming they do apply) were not violated because a hearing could not have led to a different result since the Appellant had not provided information capable of a different assessment.

8. Fifth, the General Court applied an incorrect standard of review of decisions by which a person is included in an annex to an asset-freezing regulation. Judicial review of the lawfulness of a decision of that kind extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is made.

9. Finally, the General Court erred in dismissing the Appellant's arguments that his right to property had been infringed and that the Regulation was unjustified and disproportionate as applied to him.

(1) Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 OJ L 66, p. 1

Action brought on 29 July 2010 — European Commission v Republic of Finland

(Case C-380/10)

(2010/C 260/16)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and K. Nyberg, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/2/EC (1) of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), or in any event by failing to notify the Commission thereof, the Republic of Finland, with regard to the province of Åland, has failed to fulfil its obligations under that directive;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the Directive expired on 14 May 2009.

(1) OJ 2007 L 108, p. 1.

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 6 August 2010 — J. McB. v L. E.

(Case C-400/10)

(2010/C 260/17)

Language of the case: English

Referring court

Supreme Court, Ireland

Parties to the main proceedings

Applicant: J. McB.

Defendant: L. E.

Question referred

Does Council Regulation (EC) No 2201/2003 (1) of 27th November 2003 on the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (2), whether interpreted pursuant to Article 7 of the Charter of Fundamental Rights of the European Union or otherwise, preclude a Member State from requiring by its law that the father of a child who is not married to the mother shall have obtained an order of a court of competent jurisdiction granting him custody in order to qualify as having 'custody rights' which render the removal of that child from its country of habitual residence wrongful for the purposes of Article 2.11 of that Regulation?

(1) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, p. 1

(2) Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses OJ L 160, p. 19

GENERAL COURT

Order of the General Court of 7 July 2010 — Huta Buczek and Others v Commission

(Case T-440/07, T-465/07 and T-1/08) ([1])

(No need to adjudicate)

(2010/C 260/18)

Language of the case: Polish

Parties

Applicants: Huta Buczek Sp. z o.o. (Sosnowiec, Poland) (represented by: D. Szlachetko-Reiter, lawyer) (Case T-440/07); Emilian Salej, acting as liquidator of Technologie Buczek S.A. (Laryszów, Poland); Technologie Buczek S.A. (Sosnowiec) (represented by: D. Szlachetko-Reiter, lawyer) (Case T-465/07); and Buczek Automotive Sp z o.o. (Sosnowiec) (represented by: T. Gackowski initially, then D. Szlachetko-Reiter and finally J. Jurczyk, lawyers) (Case T-1/08)

Defendant: European Commission (represented by: K. Gross, M. Kaduczak, A. Stobiecka-Kuik and K. Herrmann, Agents)

Intervener in support of the applicants: Republic of Poland (represented by: M. Niechciał initially, then M. Krasnodebska-Tomkiel and M. Rzotkiewicz, Agents) (Cases T-440/07 and T-1/08).

Re:

Applications for partial annulment of the Commission Decision C(2007) 5087 final of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek

Operative part of the order

1. *There is no further need to adjudicate on the application in Case T-465/07, as brought by Emilian Salej.*

2. *The parties are to bear their own costs relating to Case T-465/07, as brought by Emilian Salej.*

([1]) OJ C 64, 8.3.2008.

Order of the President of the General Court of 29 July 2010 — Cross Czech v Commission

(Case T-252/10 R)

(Application for interim measures — Sixth Framework Programme for research, technological development and demonstration activities — Letter confirming the findings of a financial audit — Application for suspension of operation of a measure — Disregard of formal requirements — Inadmissibility)

(2010/C 260/19)

Language of the case: English

Parties

Applicant: Cross Czech a.s. (Prague, Czech Republic) (represented by: T. Schollaert, lawyer)

Defendant: European Commission (represented by: R. Lyal and W. Roels, Agents)

Re:

Application for suspension of operation of the Commission's letter of 12 March 2010 confirming the findings of the audit of financial statements submitted by the applicant for the period from 1 February 2005 to 30 April 2008 in respect of the eMapps.com, CEEC IST NET and Transfer-East projects

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 22 July 2010 — IDIAP Foundation v Commission

(Case T-286/10 R)

(Application for interim measures — Sixth framework programme for research, technological development and demonstration actions — Letter confirming the findings of a financial audit — Application for suspension of operation and for interim measures — No urgency)

(2010/C 260/20)

Language of the case: French

Parties

Applicant: IDIAP Research Institute Foundation (Martigny, Switzerland) (represented by: G. Chapus-Rapin, lawyer)

Defendant: European Commission (represented by: F. Dintilhac and A. Sauka, Agents)

Re:

Essentially, application for suspension of operation of the Commission's letter of 11 May 2010 confirming the findings of the audit concerning the breakdowns of costs submitted by the applicant, in respect of the period from 1 October 2006 to 30 September 2007 as regards the Amida project and in respect of the period from 1 January 2006 to 31 December 2007 as regards the Bacs and Dirac projects.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 1 July 2010 — Monty Program v Commission

(Case T-292/10)

(2010/C 260/21)

Language of the case: English

Parties

Applicant: Monty Program AB (Tuusula, Finland) (represented by: H. Anttilainen-Mochnacz, lawyer and C. Pouncey, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Article 1 of Commission Decision No C(2010) 142 final of 21 January 2010, in Case COMP/M.5529 — Oracle/Sun Microsystems; and

— Order the Commission to pay the applicant's costs in the proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Article 1 of the Commission Decision No C(2010) 142 final of 21 January 2010 in Case COMP/M.5529 — Oracle/Sun Microsystems declaring Oracle Corporation's acquisition of sole control of Sun Microsystems compatible with the common market and the functioning of the EEA Agreement in accordance with Council Regulation (EC) No 139/2004 ([1]).

In support of its submissions, the applicant puts forward the following pleas in law:

Firstly, the applicant claims that Commission has wrongly assessed the nature of Oracle's pledges, thereby infringing Article 2 of the EC Merger Regulation and the Commission notice on remedies ([2]). In applicant's view, by incorrectly classifying Oracle's ten pledges of future behaviour as new factual elements allowing the removal of all competition concerns and an unconditional clearance decision, the Commission committed an error in law.

Secondly, the applicant claims that by not applying the Commission notice on remedies, and consequently failing to market test the pledges, the Commission has breached both essential procedural rules and the applicant's legitimate expectations by depriving it of the opportunity formally to make its views on Oracle's pledges known. Furthermore, by classifying Oracle's pledges as new factual elements rather than as commitments, the Commission has misused its powers.

Thirdly, the Commission has infringed Article 2 of the EC merger Regulation by incorrectly assessing the effects of the pledges on Oracle post merger and in doing so has failed to meet the standard of proof imposed on the Commission under EU law, thereby committing a manifest error of assessment. The Commission accordingly erred in law in taking a clearance decision under Article 2 of the EC Merger Regulation.

Finally, the applicant claims that the Commission has committed a manifest error of assessment in its evaluation of the competitive constraint imposed by other open source competitors on Oracle post merger. The Commission erred in its assessment that even if Oracle were to remove MySQL (Sun Microsystems' main database software product) from the market following the merger, other open source database vendors would replace the competitive constraint exerted by MySQL.

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

(2) Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ 2008 C 267, p. 1).

Action brought on 6 July 2010 — Seven Towns Ltd v OHIM

(Case T-293/10)

(2010/C 260/22)

Language of the case: English

Parties

Applicant: Seven Towns Ltd (London, United Kingdom) (represented by: E. Schäfer, lawyer)

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

Form of order sought

— Partially annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2010 in case R 1475/2009-1, as far as Community trade mark application No 5650817 was rejected;

— Order the defendant to pay the costs of the proceedings including applicant's costs of legal representation.

Pleas in law and main arguments

Community trade mark concerned: A colour per se mark described as 'six surfaces being geometrically arranged in three pairs of parallel surfaces, with each pair being arranged perpendicularly to the other two pairs characterised by (i) any two adjacent surfaces having different colours and (ii) each surface having a grid structure formed by black borders dividing the surface into nine equal segments'. The indicated colours were red (PMS 200C); green (PMS 347C); blue (PMS 293C); orange (PMS 021C); yellow (PMS 012C); white and black for goods in class 28 — Community trade mark application No 5650817

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

Decision of the Board of Appeal: Annulled the contested decision and rejected Community trade mark application No 5650817

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision violates the principles of due process by infringing Articles 80(1) and 80(2) of Council Regulation (EC) No 207/2009 in conjunction with Rule 53(a) of Commission Regulation (EC) No 2868/95, as the Board of Appeal erroneously examined the substantive issue.

By its second plea, the applicant considers that the contested decision violates its right of fair proceedings by infringing Article 64(1) of Council Regulation (EC) No 207/2009, as the Board of Appeal based its decision on a completely new argument without the Applicant having been invited to submit its observations.

Action brought on 30 June 2010 — CBp Carbon Industries v OHIM

(Case T-294/10)

(2010/C 260/23)

Language of the case: English

Parties

Applicant: CBp Carbon Industries, Inc. (New York, USA) (represented by: J. Fish, Solicitor and S. Malynicz, Barrister)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 April 2010 in case R 1361/2009-1;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'CARBON GREEN' for goods in class 17 — Community trade mark application No 973531

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Article 7(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of the distinctiveness of the concerned word mark in relation to the relevant goods.

By its second plea, the applicant considers that the contested decision infringes Article 7(1)(c) of Council Regulation (EC) No 207/2009, as the Board of Appeal (i) erred in relation to the meaning and syntax of the concerned word mark, as well as its aptness or otherwise as an immediate and direct descriptive term for the goods in question; (ii) on the one hand correctly concluded that the relevant public was specialised, yet, on the other failed to establish facts of its own motion that showed the mark was descriptive to such public; and (iii) failed to establish on the evidence that there was, in the relevant specialised sphere, a reasonable likelihood that other traders would wish to use the sign in future.

Action brought on 7 July 2010 — Arrieta D. Gross v OHIM — Toro Araneda (BIODANZA)

(Case T-298/10)

(2010/C 260/24)

Language in which the application was lodged: English

Parties

Applicant: Christina Arrieta D. Gross (Hamburg, Germany) (represented by: J.-P. Ewert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rolando Mario Toro Araneda (Santiago de Chile, Chile)

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 13 April 2010 in case R 1149/2009-2;

— Order the defendant to bear the costs of the proceedings; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it become an intervening party in this case.

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 'BIODANZA', for goods and services in classes 16, 41 and 44

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

Mark or sign cited: German trade mark registration No 2905152 of the word mark 'BIODANZA', for goods and services in classes 16 and 41; Danish trade mark registration No VA 199500708 of the word mark 'BIODANZA', for goods and services in classes 16, 41 and 44

Decision of the Opposition Division: Upheld the opposition for part of the contested goods and services and allowed the application to proceed for the remaining goods of the application

Decision of the Board of Appeal: Upheld the appeal, annulled the contested decision and rejected the opposition entirely

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 42(2) and 42(5) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongly found that the applicant did not prove that the earlier trade mark has been put to genuine use in a Member State in which the earlier national trade mark is protected for use in the Community.

By its second plea, the applicant considers that the contested decision infringes Rule 22(2) of Commission Regulation (EC) No 2868/95, as the Board of Appeal failed to invite the applicant to provide the proof required as it should have specified.

Action brought on 14 July 2010 — In 't Veld v Commission

(Case T-301/10)

(2010/C 260/25)

Language of the case: English

Parties

Applicants: Sophie in t Veld (Brussels, Belgium), (represented by: O. Brouwer and J. Blockx, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Decision of the Commission of 4 May 2010, ref. SG.E.3/HP/psi-Ares (2010) 234950, to refuse full access to the applicant's confirmatory request for access to documents; and

— Order the defendant to pay the costs of the proceedings, including the costs of any intervening parties.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of the Decision of the Commission of 4 May 2010 to refuse full access to documents concerning the negotiations of a new Anti-Counterfeiting Trade Agreement, requested by the applicant pursuant to Regulation (EC) No 1049/2001 [1].

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

Firstly, the Commission's Decision infringes Article 8(3) of Regulation No 1049/2001 as it impliedly refuses access to a number of documents requested by the applicant by failing to explain why access to these documents was refused.

Secondly, the decision in question is based on an erroneous application of Article 4(4) of Regulation No 1049/2001 as the Commission failed to treat Article 4(4) as a procedural rule regarding the consultation of third parties and in fact applied it as a further exception to the obligation to disclose documents.

Thirdly, the Commission's Decision misapplied in law and in fact Article 4(1)(a), third indent, of Regulation No 1049/2001:

— Firstly, as the general reasons provided by the Commission cannot in principle be covered by the exception for the protection of the public interest as regard the European Union's international relations;

— Secondly, as the Contested Decision contains manifest errors in its assessment of individual documents.

In addition, should the Court consider that any parts of the documents requested by the applicant are protected under Article 4(1)(a), third indent of Regulation No 1049/2001, the applicant submits that Article 4(6) has been wrongly applied, and the principle of proportionality breached, insofar as the Commission has failed to consider whether it was appropriate to grant partial access and to confine refusal to the parts of documents that were appropriate and strictly necessary.

Finally, the applicant also submits that the Commission did not fulfil its obligation to state reasons for the decision in question, thereby breaching Article 296 TFEU.

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

Action brought on 15 July 2010 — Crocs v OHIM — Holey Soles and Partenaire Hospitalier International (Representation of footwear)

(Case T-302/10)

(2010/C 260/26)

Language in which the application was lodged: English

Parties

Applicant: Crocs, Inc. (Delaware, USA) (represented by: I. R. Craig, Solicitor)

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

Other parties to the proceedings before the Board of Appeal: Holey Soles Holdings Ltd (Vancouver, Canada) and Partenaire Hospitalier International (La Haie Foissière, France)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 March 2010 in case R 9/2008-3;

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

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: No 257001-0001 (footwear)

Proprietor of the Community design cited in the invalidity proceedings: The applicant

Party requesting the declaration of invalidity of the Community design: The other parties to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Declared the Community design invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant claims that the contested decision infringes Articles 7(1) and 6(1) of Council Regulation (EC) No 6/2002, as the Board of Appeal wrongly applied the provisions of these articles and was led to incorrect conclusions in relation to the novelty, the individual character and the technical function of the Community design.

Action brought on 14 July 2010 — dm drogeriemarkt GmbH & Co. KG v OHIM — S.E.M.T.E.E. (caldea)

(Case T-304/10)

(2010/C 260/27)

Language in which the application was lodged: English

Parties

Applicant: dm drogeriemarkt GmbH & Co. KG (Karlsruhe, Germany) (represented by: O. Bludovsky and P. Hiller, lawyers)

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

Other party to the proceedings before the Board of Appeal: S.E.M.T.E.E. (Escaldes Engornay, Andorra)

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 29 April 2010 in case R 899/2009-1 and, by the way of correction, delete the applicant's trademark;

— Alternatively, annul the decision of the First Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2010 in case R 899/2009-1 and remit the case to the Office for Harmonisation in the Internal Market (Trade Marks and Designs);

— Alternatively, annul the decision of the First Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2010 in case R 899/2009-1.

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 in orange, blue and white 'caldea', for goods and services in classes 3, 35, 37, 42, 44 and 45 — Community trade mark application No 5691845

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

Mark or sign cited: International trade mark registration No 894004 of the word mark 'BALEA', for goods and services in classes 3, 5 and 8

Decision of the Opposition Division: Rejected 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 assessed that there was not a likelihood of confusion between the concerned trade marks.

Action brought on 23 July 2010 — Yusef v Commission

(Case T-306/10)

(2010/C 260/28)

Language of the case: English

Parties

Applicant: Hani El Sayyed Elsebai Yusef (London, United Kingdom) (represented by: E. Grieves, Barrister and H. Miller, Solicitor)

Defendant: European Commission

Form of order sought

— declare that the Commission's failure to act and remove the applicant from annex 1 of Council Regulation (EC) 881/2002 was unlawful;

— order immediately the Commission to remove the applicant from the said annex;

— order that the Commission pays, in addition to its own costs, those incurred by the applicant and any sums advanced by way of legal aid by the cashier of the Court of Justice.

Pleas in law and main arguments

The applicant applies under Article 265 TFEU for the revocation of Commission Regulation (EC) No 1629/2005 of 5 October 2005 amending for the 54th 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 Qa'ida Network and the Taliban [1] as concerns him.

In support of the action, the applicant relies on three pleas in law.

First, he submits that the Commission has failed to independently review the basis of the applicant's inclusion in annex 1 at any point, or required any reasons for that inclusion.

Second, he claims that the Commission has failed to provide to the applicant any reasons justifying his inclusion in annex 1 in breach of his right to an effective judicial remedy, the right to defend himself and in breach of his rights to property under the European Convention on Human Rights.

Third, he contends that the Commission's failure to remove the applicant from annex 1 is irrational as there are no reasons available which would satisfy the relevant criteria for inclusion in annex 1 and the United Kingdom Foreign and Commonwealth Office stances that the applicant no longer fulfils the relevant criteria.

[1] OJ 2005 L 260 p. 10

Action brought on 28 July 2010 — ELE.SI.A v Commission

(Case T-312/10)

(2010/C 260/29)

Language of the case: Italian

Parties

Applicant: Elettronica e sistemi per automazione (ELE.SI.A) SpA (Giudonia Montecelio, Italy) (represented by: S. Bariatti, P. Tomassi and P. Caprile, lawyers)

Defendant: European Commission

Form of order sought

— confirm and declare that ELESIA has properly complied with its contractual obligations;

— confirm and declare that, by failing to pay the amount due in respect of ELESIA's activities and by requesting repayment of the amount already paid, the Commission has breached its contractual obligations;

— accordingly, order the Commission to pay Euro 83 627,68, plus interest, in respect of the costs incurred by ELESIA for the purposes of the Project and which have not yet been reimbursed by the Commission;

— accordingly, annul, revoke — if necessary, through the issuance of corresponding credit notes — or in any event declare unlawful the debit notes by which the Commission has requested repayment from ELESIA, and award damages accordingly;

— in any event, order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The consortium, of which the applicant company in this case is coordinator, entered into a contract with the Commission for the realisation of the project 'I-Way, Intelligent co-operative system in cars for road safety', financed by funds allocated within the context of the 'Sixth Framework Programme for Technological Research and Development'.

As it formed the view that serious irregularities had been committed during the realisation of the project in question, the European Commission decided to rescind the contract.

The applicant maintains, first, that the Commission's conduct is in total breach of the relevant contractual provisions and of the applicable principles of law, such as those of equity, proportionality and good administration. Second, the applicant contends that, after it had correctly carried out all of its contractual obligations for almost the entire 36-month period provided for under the contract, the Commission has no intention of recognising any amount as due, on the basis, moreover, of an audit which is irregular in several respects, and notwithstanding the fact that the applicant cooperated fully in good faith throughout the contractual period and even thereafter.

In support of its contentions, the applicant submits, specifically, that it correctly and consistently carried out its contractual obligations, whereas, by contrast, the Commission breached Articles II.1.11, II.16.1, II.16.2 and II.29 of the General Contractual Conditions, as well as the applicant's rights of defence and the provisions contained in Regulation No 2185/96. ([1])

([1]) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292 of 15.11.1996, p. 2).

Action brought on 26 July 2010 — Three-N-Products Private/OHMI — Shah (AYUURI NATURAL)

(Case T-313/10)

(2010/C 260/30)

Language in which the application was lodged: English

Parties

Applicant: Three-N-Products Private Ltd (New Delhi, India) (represented by: C. Jäger, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mr S Shah, Mr A Shah, Mr M Shah — A Partnership t/a FUDCO (Wembley, United Kingdom)

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 1 June 2010 in case R 1005/2009-4;

— Order the defendant to confirm the decision of the Opposition Division of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 2 July 2009 and to reject the community trade mark application No 5805387 in its entirety;

— Order the defendant to bear the costs of the proceedings;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal and the Opposition Division, should it become an intervening party in this case.

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 'AYUURI NATURAL', for goods in classes 3 and 5

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

Mark or sign cited: Community trade mark registration No 2996098 of the figurative mark 'Ayur', for, amongst others, the goods in classes 3 and 5; Community trade mark registration No 5429469 of the word mark 'AYUR', for, amongst others, goods in classes 3 and 5

Decision of the Opposition Division: Upheld the opposition and rejected the application in its entirety

Decision of the Board of Appeal: Upheld the appeal, annulled the contested decision and rejected the opposition

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 7 and 8 of Council Regulation (EC) No 207/2009, as the Board of Appeal erroneously stated that there is no likelihood of confusion and that the earlier trademarks have a suggestive connotation in relation to the goods at hand which reduces the distinctive character of the earlier marks.

By its second plea, the applicant considers that the contested decision infringes Article 65(2) of Council Regulation (EC) No 207/2009, as the Board of Appeal misused its power by ruling the contested decision since it lacks objectivity and legal basis.

Action brought on 19 July 2010 — Constellation Brands/OHMI (COOK'S)

(Case T-314/10)

(2010/C 260/31)

Language of the case: English

Parties

Applicant: Constellation Brands, Inc. (New York, USA) (represented by: B. Brandreth, Barrister)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2010 in case R 1048/2009-1;

— Remit the case to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and order that restitutio in integrum be granted in respect of community trade mark application No 942128;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'COOK'S'

Decision of the Trade Marks and Register Department: Rejected the request for restitutio in integrum and confirmed the cancellation of the Community trade mark registration No 942128

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 81 of Council Regulation No 207/2009, as the Board of Appeal erred in the application of this article and in its assessment of the facts in holding that the applicant's representatives had failed to exercise due care in the circumstances.

Action brought on 23 July 2010 — Consorzio del vino nobile di Montepulciano and Others v Commission

(Case T-318/10)

(2010/C 260/32)

Language of the case: Italian

Parties

Applicants: Consorzio del vino nobile di Montepulciano (Montepulciano, Italy), Contucci di Alamanno Contucci & C. Società Agricola Sas (Montepulciano, Italy), Villa S. Anna Società Semplice Agricola di Fabroni Anna S. E M. Società Semplice (Montepulciano, Italy), Il Conventino Società Agricola per Azioni (Montepulciano, Italy) (represented by: D. Dodaro, S. Cianciullo, G. Brini and G. Nazzi, lawyers)

Defendant: European Commission

Form of order sought

— Declare that the contested regulation is invalid or inapplicable, or in any event annul the amendment made by it to Annex XV to Commission Regulation (EC) No 607/2009, in so far as it incorrectly identifies the technical error to be corrected as merely the inclusion of the 'Montepulciano' grape variety denomination in Part B of that annex, applying the system of derogations under Article 62(3) and (4) of Regulation 607/09 to the protected designation of origin 'Vino Nobile di Montepulciano', without having regard to the specific nature of that designation.

— In the alternative, declare that the contested regulation is invalid or inapplicable, or in any event annul the amendment made by it to Annex XV, in so far as, in order to move the 'Montepulciano' grape variety denomination to part A of that annex for the purposes of Article 62(3) of Regulation (EC) 607/2009, which relates to grape names which consist of or contain a protected designation of origin, the contested regulation indentified the protected designation of origin as the single word 'Montepulciano', deleting the traditional term 'Vino Nobilie di', which has formed an essential part of the designation since it was recognised.

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

Pleas in law and main arguments

The present action is directed against Regulation No 401/2010, [1] in so far as, by adopting that regulation in order to correct the error of including the 'Montepulciano' variety name in Part B of Annex XV to Regulation No 607/2009, [2] the Commission moved the name to Part 'A' of Annex XV and at the same time deleted the traditional term 'Vino Nobile di Montepulciano' from the first column of the table in the annex.

In so doing, the defendant categorised as the mere movement of text a substantive change which has a much more significant effect than that permitted by the scope of Article 62(3) of Regulation No 607/2009. The defendant thereby also manifestly misused its powers, using that provision inappropriately for purposes beyond those pursued by it, to the detriment of producers of Vino Nobile di Montepulciano and the Consorzio del Vino Nobile and, generally, to that of consumers and the market.

The applicants also allege infringement of Article 23 of the TRIPS Agreement. In that connection, it is submitted that the surreptitious deletion of the traditional term 'Vino Nobile' from the protected designation of origin 'Vino Nobile di Montepulciano' is not a sufficient or appropriate measure for pursuing the aims set out in the TRIPS Agreement, since it increases the likelihood of confusion, in particular on the part of Community consumers who are not Italian, who would be easily misled by labelling which makes no distinction as to the use of the term 'Montepulciano'. Thus, there would be an insufficiently clear distinction between the various products designated by that term, when used either as an indication of provenance from the homonymous geographical area without the traditional term, or as an indication of the variety name, preceding rather than following the geographical indication.

[1] Commission Regulation (EU) No 401/2010 of 7 May 2010 amending and correcting Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ 2010 L 117, p. 13).

[2] Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ 2009 L 193, p. 60).

Action brought on 2 August 2010 — Fürstlich Castell'sches Domänenamt/OHMI — Castel Frères (CASTEL)

(Case T-320/10)

(2010/C 260/33)

Language in which the application was lodged: English

Parties

Applicant: Fürstlich Castell'sches Domänenamt, Albrecht Fürst zu Castell-Castell (Castell, Germany) (represented by: R. Kunze, Solicitor, G. Würtenberger and T. Wittmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Castel Frères SA (Blanquefort, France)

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 4 May 2010 in case R 962/2009-2;

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

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'CASTEL' for goods in class 33 — Community trade mark registration No 2678167

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

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

Trade mark right of the party requesting the declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for refusal pursuant to Article 7 of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7 of Council Regulation No 207/2009, as the Board of Appeal: (i) on the one hand correctly acknowledged that 'Castell' was a recognised indication of origin in relation to wine, yet, on the other erred in considering that the contested trade mark 'CASTEL' was conspicuously different from 'Castell' and hence concluded that the contested trade mark could be registered, (ii) by saying that 'CASTEL' was a word commonly used for 'castle' in the wine industry, failed to draw the conclusion that 'CASTEL' could not be registered; Infringement of Articles 63, 64, 75 and 76 of Council Regulation No 207/2009, as the Board of Appeal did not properly take into account the facts and arguments submitted; Infringement of Article 65 of Council Regulation No 207/2009, as the Board of Appeal acted ultra vires in justifying its decision by a 'peaceful coexistence', although this doctrine is not apparent for consideration for the registration of a trade mark.

Action brought on 4 August 2010 — SA.PAR. v OHIM — Salini Costruttori (GRUPPO SALINI)

(Case T-321/10)

(2010/C 260/34)

Language in which the application was lodged: Italian

Parties

Applicant: SA.PAR. Srl (Rome, Italy) (represented by: A. Masetti Zannini de Concina, M. Bussoletti and G. Petrocchi, 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: Salini Costruttori SpA (Rome, Italy)

Form of order sought

— declare the present action admissible;

— annul the decision of the First Board of Appeal of OHIM of 21 April 2010 on the grounds of breach of Articles 52(1)(b) and 53(1)(a) of Regulation (EC) No 207/2009 and of a deficient statement of reasons;

— order OHIM to pay the costs of the present proceedings and of those before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'GRUPPO SALINI' (registration application No 3 832 161) for services in Classes 36, 37 and 42.

Proprietor of the Community trade mark: The applicant.

Party requesting the declaration of invalidity of the Community trade mark: SALINI COSTRUTTORI SpA.

Trade mark right of the party requesting the declaration of invalidity: Well-known trade mark in Italy, de facto trade mark, domain name and company name of 'SALINI' for services in Classes 36, 37 and 42.

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

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and declaration of nullity of the Community trade mark.

Pleas in law: Breach of Article 53(1)(a), in conjunction with Article 8(1)(b) and 8(2)(c), of Regulation No 207/2009 on the Community trade mark, breach of Article 52(1)(b) of that regulation, and deficient statement of reasons.

Action brought on 30 July 2010 — Clasado v Commission

(Case T-322/10)

(2010/C 260/35)

Language of the case: English

Parties

Applicant: Clasado Ltd. (Milton Keynes, United Kingdom) (represented by: G.C. Facenna, Barrister, M.E. Guinness and M.C. Hann, Solicitors)

Defendant: European Commission

Form of order sought

— Annul those parts of Commission Regulations (EU) No 382/2010 ([1]) and No 384/2010 ([2]) of 5 May 2010 relating to health claims submitted by the applicant in respect of Bimuno^{BT} (BGOS) Prebiotic; and

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

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of those parts of Commission Regulations (EU) No 382/2010 and No 384/2010 of 5 May 2010, where it has been decided that health claims submitted by the applicant in respect of Bimuno^{BT} (BGOS) Prebiotic, a prebiotic food supplement designed to support the immune system and gastrointestinal health in humans, and reduce the risk of travellers' diarrhoea, do not comply with the requirements of Regulation (EC) No 1924/2006 ([3]), and thus should not be authorised.

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

Firstly, the Commission infringed an essential procedural requirement when it adopted the regulations in question, namely the procedure for comment by the applicant and public under Article 16(6) and 17 of Regulation (EC) No 1924/2006.

Secondly, in doing so the Commission also wrongly disregarded Article 38(1) of Regulation (EC) No 178/2002 ([4]), which is designed to ensure that the European Food Safety Agency carries out its activities with a high level of transparency.

In addition, by concluding that supplementary comments made by the European Food Safety Agency on the applicant's applications on 4 December 2009 did not constitute an opinion, or part of the opinion, referred to in Article 16 of Regulation (EC) No 1924/2006, the regulations in question were adopted on the basis of an error of law.

Furthermore, the Commission's regulations whose annulment is being sought were adopted in violation of Clasado's right to be heard under Article 41 of the Charter of Fundamental Rights of the European Union ([5]), and its legitimate expectations.

Finally, the Commission also infringed the right to sound administration, which is one of the general principles common to the constitutional traditions of the Member States, and in particular its obligation as the decision-maker under Article 17 of Regulation (EC) No 1924/2006 to apply diligent and independent scrutiny to all the relevant material before it.

([1]) Commission Regulation (EU) No 382/2010 of 5 May 2010 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health (OJ 2010 L 113, p. 1).

([2]) Commission Regulation (EU) No 384/2010 of 5 May 2010 on the authorisation and refusal of authorisation of certain health claims made on foods and referring to the reduction of disease risk and to children's development and health (OJ 2010 L 113, p. 6).

([3]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

([4]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

([5]) Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 1 July 2010 — De Roos-Le Large v Commission

(Case F-50/10)

(2010/C 260/36)

Language of the case: Dutch

Parties

Applicant: Simone Thérèse De Roos-Le Large ('s Hertogenbosch, Netherlands) (represented by: E. Lutjens and M.H. van Loon, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision ordering the applicant to repay the amount of the survivor's pension overpaid to her late mother

Form of order sought

— Annul, pursuant to Article 264 TFEU, the Commission's decision of 12 May 2010;

— Order the European Commission to pay the costs.

Action brought on 16 July 2010 — Allgeier v FRA

(Case F-58/10)

(2010/C 260/37)

Language of the case: English

Parties

Applicant: Timo Allgeier (Vienna, Austria) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Union Agency for Fundamental Rights

The subject matter and description of the proceedings

First, annulment of the decision of the defendant not to pursue the complaint for harassment lodged by the applicant. Second, recognition that the applicant has been a victim of harassment conducted by his superiors, and compensation for material and non-material loss.

Form of order sought

— The annulment of the decision of the Agency of Fundamental Rights dated 16 October 2009 rejecting the claims of the Appellant insofar as it does not recognize that he has been victim of an harassment conducted by Mr. M. and Mr. A. and, if necessary, the annulment of the decision dated 6 April 2010 rejecting the complaint;

— the recognition that he has been victim of harassment conducted by Mr. M. and Mr. A. and the necessary disciplinary consequences; or, alternatively, (i) the opening of a new administrative enquiry, fair, independent and impartial with the creation of a panel of experts for the performance of the administrative enquiry and (ii) the adoption of all the necessary measures in order to allow a fair enquiry without any possible pressures and interferences;

— the compensation of the Appellant's material prejudice, provisionally evaluated at EUR 71 823,23;

— the granting of EUR 85 000 in compensation of the moral prejudice resulting from the way the entire procedure was conducted and the Decision reached;

— the condemnation of FRA to the payment of the costs.

Action brought on 20 July 2010 — Barthel and Others v Court of Justice

(Case F-59/10)

(2010/C 260/38)

Language of the case: French

Parties

Applicants: Yvette Barthel (Arlon, Belgium) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Court of Justice

Subject-matter and description of the proceedings

Annulment of the decision of the Court of Justice rejecting the claim by the applicants for payment of the allowance for continuous work or shiftwork provided for in the first indent of Article 1(1) of Council Regulation (ECSC, EEC, Euratom) No 300/76 of 9 February 1976, determining the categories of officials entitled to allowances for shiftwork, and the rates and conditions thereof (OJ 1976 L 38, p. 1)

Form of order sought

— Annul the decision of the Registrar of the Court of Justice of the European Union rejecting the applicants' claim of 8 June 2009 for payment, as from 20 December 2006, of the allowance for continuous work or shiftwork provided for in the first indent of Article 1(1) of Council Regulation (ECSC, EEC, Euratom) No 300/76 of 9 February 1976;

— order the Court of Justice to pay the costs.

Action brought on 22 July 2010 — Chiavegato v Commission

(Case F-60/10)

(2010/C 260/39)

Language of the case: French

Parties

Applicant: Fulvia Chiavegato (Bettembourg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the list of officials promoted under the 2009 promotion procedure and, incidentally, the formal measures leading to that decision

Form of order sought

— Annul the list of officials promoted under the 2009 promotion procedure adopted by the Appointing Authority on 13 November 2009 in so far as that list does not contain the applicant's name and, incidentally, the formal measures leading to that decision;

— Order the European Commission to pay the costs.

Action brought on 30 July 2010 — Esders v Commission

(Case F-62/10)

(2010/C 260/40)

Language of the case: French

Parties

Applicant: Jürgen Esders (Berlin, Germany) (represented by: S. Rodriguez, M. Vandenbussche and C. Bernard-Glanz, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision reassigning the applicant to Brussels as part of the 2010 rotation.

Form of order sought

— Declare this action to be admissible;

— annul the appointing authority's decision of 27 July 2010 reassigning the applicant to Brussels as from 1 September 2010;

— order the European Commission to pay the costs.

Action brought on 5 August 2010 — Lunetta v Commission

(Case F-63/10)

(2010/C 260/41)

Language of the case: French

Parties

Applicant: Calogero Lunetta (Brussels, Belgium) (represented by: L. Levi and C. Christophe Bernard-Glanz, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Commission terminating the procedure opened on the basis of Article 73 of the Staff Regulations following the applicant's accident of 13 August 2001 and awarding him a partial permanent invalidity rate of 6 %, and an order requiring the defendant to pay to the applicant a sum in respect of damages

Form of order sought

— declare that the present application is admissible;

— if appropriate, request that the defendant produce the decision adopted by the President of the Court of Justice of the European Union to designate the third doctor of the Medical Committee;

— if appropriate, request that the defendant produce a copy of the documents in the file opened under the number 10006353;

— annul the decision of the Appointing Authority of 28 October 2009 terminating the procedure opened on the basis of Article 73 of the Staff Regulations following the applicant's accident of 13 August 2001 and awarding him a partial permanent invalidity rate of 6 % and, in so far as necessary, the decision of the Appointing Authority rejecting the complaint;

— in consequence, find that the partial permanent invalidity rate should be assessed on the basis of the rules and of the assessment scale in force at the time of the accident and until 1 January 2006, and that the examination of the application made by the applicant under Article 73 of the Staff Regulations should be resumed by a Medical Committee formed in an impartial and neutral manner which is able to work rapidly in complete independence and without any preconceived views;

— order the defendant to pay damages fixed *ex aequo et bono* at EUR 50 000 (fifty thousand euro) in respect of the non-material harm suffered as a result of the contested decisions;

— order the defendant to pay damages fixed provisionally at EUR 25 000 (twenty-five thousand euro) in respect of the material damage suffered on account of the contested decisions;

— order the defendant to pay interest for late payment on the lump sum payable under Article 73 of the Staff Regulations at a rate of 12 % over a period which began on 13 August 2002 at the latest and up until the complete payment of the lump sum;

— in any event, order the defendant to pay damages fixed *ex aequo et bono* at EUR 50 000 (fifty thousand euro) in respect of the damage suffered as a result of infringement of the principle that action is to be taken within a reasonable period;

— order the European Commission to pay the costs.

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